

THE DERAILED REPORT OF SABARMATI EXPRESS

COMMENTS ON THE REPORT OF
NANAVATI COMMISSION

BY

JAN SANGHARSH MANCH
104, Maharana Pratap Complex,
Near V.S. Hospital,
AHMEDABAD-380 006.
Tel: (079)26577280

PREAMBLE:

1. On 28th February 2002, the news dailies of Gujarat were carrying the screaming headlines of the gruesome death of 59 innocent Karsevaks. When the entire nation should have been solemnly sharing the sorrow of this tragedy, the politics was in the offing. What was most prominently reported was the declaration of Shri Narendra Modi made on the previous day at Godhra. The Chief Minister had alleged that-

“The deaths were not the result of any communal conflict but was the result of a pre-planned terrorist conspiracy..”

2. From that day onwards the tone was set and the conclusions of the Enquiry Commission headed by Justice Nanavati which was appointed by Shri Narendra Modi does not change the tune. What is of course shocking is that another term of reference made by the government on 20th July 2004 to look into the role and conduct of the then Chief Minister and/or any other minister in his council of ministers, police officers (i) in dealing with political or political organizations which may be found to have been involved in any other event referred to hereinabove (ii) in the matter of providing protection, relief, rehabilitation of the victims of communal riots (iii) in the matter of recommendations and directions given by NHRC from time to time has also been disposed of in a single paragraph of the final report Part-I at para-229.
3. It is pertinent to mention that the JAN SANGHARSH MANCH had by its application dated 31-8-2007 specifically asked for the cross-examination of the chief Minister, Shri Ashok Bhatt, the then Health Minister, Shri Gordhan Jhadafia, the then Home Minister and few other officers on the basis of the telephone call analysis of the data produced by the DSP Shri Rahul Sharma before the Commission. The entire analysis under the title of ‘Deadly Plan’ was annexed to

the application with specific analysis showing that the Chief Minister, his office, the Home Minister and the Health Minister were all prima-facie in contact with each other and had taken several decisions including the decision to hold the post-mortem at open railway yard and the sending of the dead bodies to Ahmedabad that resulted in the murderous riots on and from 28th February 2002. This application was followed up by reminder application dated 27-11-2007 making the same request. Both these applications were heard together by the Commission. The coram at that point of time being Justice G.T. Nanavati and late Justice K.G. Shah. The applications were fully heard and kept for orders but till today, the applicants have not been informed about what orders have been passed or whether any order was passed at all. Besides this, there are several other evidences which connect the Ministers to the riotous events of those days. It is therefore surprising that the Commission simply brushes aside all applications to dig out the truth and give clean chit to Shri Narendra Modi. This single paragraph has completely shattered the hopes of the riot victims to get justice since otherwise also the Commission has not given any report regarding the post-Godhra events.

4. Another aspect that is required to be noted is that on the basis of the direct evidence on record of the eye witnesses like the passengers, Karseveks, railway employees, local police etc. the Commission has come to a very definite conclusion in paragraph-170 and first part of paragraph-212 of the report to the effect that S-6 coach of Sabarmati Express was burnt due to burning rags and some unspecified inflammable material in pouches being thrown from outside that ignited the rexin seats and other material inside the coach. The Commission, however, switches on to the conspiracy theory from paragraph-226 onwards by relying upon the case papers including confessional statements made under POTA produced by the Investing Officer of the Godhra criminal case Shri Noel Parmar. Admittedly, the direct evidence did not even remotely suggest either conspiracy or the coach being burnt by the use of 140 liters of petrol. Thus, the commission relied upon the

evidence of the police case and has merely re-stated what the police had stated in their report under section 173(8) of Cr.P.C. At this juncture, it is also required to be noticed that the Supreme Court has ordered further investigation of the Godhra case by a special investigation team headed by a retired director of CBI Shri Raghavan. This order presupposes that the supreme Court has not accepted the report of Shri Noel Parmar since otherwise the supreme Court would not have ordered further investigation, which is now pending. In this view of the matter, it is most inappropriate on the part of the Commission to use the conclusions of Shri Noel Parmar as the conclusive evidence of the so called conspiracy.

5. It is equally pertinent to note here that the Central Review Committee constituted under the POTA Repeal Act had specifically reviewed the Godhra train burning case and had come to the specific conclusion that it was a case of unlawful assembly committing various offences under IPC and other special Act but certainly, not under the POTA and there was certainly no conspiracy as envisaged under POTA. This decision of the Central review committee has not been challenged by the government of Gujarat and therefore, has binding effect on all including the Nanavati Commission. Shockingly even though the order of the Central review Committee was placed on record of the Nanavati commission, the same has been totally ignored.
6. Before we deal with the factual findings by the Commission, it would be important to mention in this Preamble the fact that the Commission was aware of the interim report made by Justice Banerjee commission and had infact, called for all the relevant record by their own orders. Shockingly again, all the evidence collected by Justice Banerjee Commission and its conclusions have been once again ignored.

We shall now deal with the factual findings of the Nanavati Commission.

What are the evidence collected by the Commission to support the conspiracy theory?

1. 59 passengers including Karsevaks had died in the burning coach of S-6 of Sabarmati Express near the 'A' cabin of Godhra railway station on 27th February 2002. The Nanavati Commission holds that this burning of S-6 coach was a pre-planned conspiracy by certain 'communal Muslims' of Godhra!

What should be the evidence to support such a conclusion?

2. To establish such a serious charge, even prima-facie, the following ingredients are required to be established from the evidence collected by the Commission:
 - (a) That there was a set of persons who had met to conspire for burning the S-6 coach on 27th February and this conspiracy would also include the planning to execute such an offence. As the S-6 coach of Sabarmati Express that was going towards Ahmedabad was to be executed allegedly on 27th February 2002 at about 2.55 am, the planning had to be done prior thereto at least on 26th February.
 - (b) The pre-planning to be essentially done on 26th February on the basic presumption that the train was running at right time and would reach Godhra in the early morning at about 2.55 am.
 - © The conspirators prior to 26th February must necessarily have the information that the Karsevaks were traveling in Sabarmati Express in general and in several of them in S-6 coach in particular.
 - (d) That the place of burning of S-6 coach had to be determined firstly assuming the train to be on right time and therefore, the manner in which the train was supposed to be stopped and the place of stoppage had to be disclosed from evidence.
 - (e) That certain specific persons were required to be detailed to carry out the function of stopping the Sabarmati Express at the predetermined spot.

- (f) That the fuel required to burn the coach had to be collected and stored in transport kept ready to be brought at relevant spot.
- (g) That specific person had to be detailed to carry out the actual act of burning.

The above are the minimum requirements to even come to the prima-facie conclusion regarding conspiracy.

3. What do the facts directly collected by the commission (those who had come and deposed before the Commission) reveal?

- (a) That the Sabarmati Express had reached Godhra on 27th February 2002 at 7.43 hours in the morning i.e. around five hours late than its schedule time which was 2.55 hours in the morning.
- (b) The Commission has not even tried to find out what was the original plan in case such a plan existed to burn S-6 coach if the train had come at 2.55 hours. All that is found is one of the accused in the police case had allegedly found out around 11.00 pm on 26th February that the train was running late and that he had thereafter directed all other so called accused to go on to sleep and come back in the morning to Aman Guest House! Thus, no original plan is revealed nor any change of plan is discussed or revealed. In fact, there is not even iota of evidence to show that after coming to know that the train was running late, the so called conspirators had met thereafter to modify their plan/conspiracy to fit the new timing, save and except telling executors to go to sleep.
- (c) As per the findings and conclusion of the Commission, there was indeed an altercation and quarrel between the passengers/Karsevaks with the local vendors who were Muslims.(Para-66) In para-67 and 68, for very strange reason, the Commission refuses to believe that one girl Sophia Banu was attempted to be abducted, completely overlooking the fact that the said girl had herself

personally deposed before the Commission and Justice Nanavati had himself examined her without a single contradiction found in her statement. The refusal of the Commission to accept the fact of attempted abduction of Sophia is deliberate since the Commission wanted to establish that the conspirators were trying to spread a rumour about the abduction of Sophia in order to collect the large crowd.

- (d) The collection of large crowd and the alleged stone throwing by this crowd had become central to the finding of the Commission to establish that the stone throwing and the collection of the crowd in the station as well as near 'A' cabin was a part of the conspiracy to stop the passengers from coming out of S-6 coach. A question is required to be asked if this was such an important ingredient of the conspiracy, where would this crowd come in case the train had arrived at the right time in the morning at 2.55 am? The report is totally silent on such important aspect.
- (e) The next most important question is assuming that some plan was made, where and how was the train supposed to be stopped for the purpose of burning S-6 coach? It is an admitted fact that the train stopped at two places. Firstly after starting from the station when it was stopped by chain pulling from several coaches and secondly the train once again stopped near 'A' cabin.
- (f) The evidence of Shri Pachuram Verma and smt. Meenakshi Devi on the record of the Commission is very clear. They had seen Karsevaks wearing saffron headbands coming running after the train had started and the chain was pulled essentially to pick them up in the first instance. In para-73 of the report, the Commission brushes aside this evidence and comes to its own conclusion without any evidence that the chain was not

pulled because some passengers were left behind. Shockingly, not only the Commission ignored the evidence of the train guard and another Karsevak, the Commission did not even refer to the actual conclusions of the first investigating officer of the case Shri K.C. Bawa which is at Exhibit-5608. Shri Bawa in his cross-examination had specifically stated that Shri Verma had informed him in person that the persons wearing saffron band had come running to the train and had boarded the train and Shri Verma had personally come to know that the train pulling was done because these persons were left out. Thus, what the railway guard, who is the primarily responsible officer decides on the factum of chain pulling or the investigating officer who had filed the first chargesheet, had to say, was not believed by the Commission only because the Commission had to blame the Muslims for the conspiracy. The real fact is that the chain pulling was done by the passengers for permitting the Karsevaks to board the train and there is no other evidence on record to contradict the same. In fact, the Commission has not dealt with the first chain pulling incident in any other part of the report save and except in para-73 and has actually forgotten to decide as to who actually pulled the chain.

- (g) So far as the second stoppage at 'A' cabin is concerned, the Commission was more elaborate to deal with the same and discussions are at para-77 and para-150 and 151. The Jan Sangharsh Manch had established from evidence on record, that instead of reported chain pulling from four coaches, the record of the Dy. Superintendent of the Station showed that the chain pulling was done from five coaches. Not being able to resolve this contradiction, the Commission simply rejects the record of the Dy. Suptd. Of railway as incorrect.

- (h) Once again, eager to rely upon the evidence produced by Shri Noel Parmar to the effect that certain Muslim vendors including Anwar Abdul Sattar Kalandar had stopped the Sabarmati express near 'A' cabin by turning the ACP 'Disc' from outside, the Commission even rejected the fact that the change in the design of the braking system of railway which was placed on record, had made it impossible for operating the ACP (Alarm Chain Pulling) by rotating the disc from outside. In paragraph-51 of the report, the Commission comes to a new theory that the ACP could be operated by rotating the clappet valve which was inside the box but admitted that it could not be done by rotating the disc. The Commission however completely ignored the fact that the evidence and allegation made by Shri Noel Parmar was that Shri Anwar Kalandar had 'rotated the Disc' from outside to stop the train! The Commission however has very little appreciation of evidence on record so long as the Commission could use its own imagination to substitute hard facts.
- (i) The most shocking part however is that Shri Anwar Kalandar was cited as witness in the Godhra criminal case by Noel Parmar and he had been physically tortured by Shri Noel Parmar to confess that he had turned the disc to stop the train. Shri Kalandar wanted to come to the Commission to depose that he was coerced in giving his confession but Shri Noel Parmar actually abducted him once again and his plea to the Commission to give him police protection to come to the Commission was also rejected. Shri Kalandar had therefore filed an affidavit before the Commission stating that he was physically coerced by Shri Noel Parmar to give the evidence that he had rotated the disc to stop the train but this unchallenged affidavit was totally ignored by the

Commission. Such are the methods of the quest of truth by the Nanavati Commission.

- (j) The next issue was as to how the crowd collected near 'A' cabin after the train stopped for the second time? The direct eye-witness Shri Mina, who was the assistant Station Master at relevant time, standing in the 'A' cabin and watching the movement of Sabarmati Express coming from Godhra station towards 'A' cabin, has specifically stated that there was absolutely no one near 'A' cabin when the train started from the station. He has also stated that small groups of people came running behind the train and gathered in ones and twos below the 'A' cabin and there were many children and women in the crowd. An SRP Jawan was patrolling between the station and 'A' cabin had also stated in no uncertain terms that he had not noticed any unusual activity in this area before the Sabarmati Express came to Godhra or thereafter. Ignoring these direct evidence of neutral witnesses, the Commission concludes that there was a crowd waiting for the train to arrive at 'A' cabin and this was not possible without conspiracy.
- (k) So far as the burning of S-6 coach is concerned, it is the Commission's own conclusion in para-170 as well as para-212 that the S-6 coach was allegedly set on fire because burning rags were thrown from outside to inside the coach and in para-208 the Commission has come to a specific conclusion that there was no evidence given by any eye witness or passenger to establish that any person had entered S-6 coach to pour or had poured any inflammable fluid. Yet, in the second part of para-212, while concluding, the Commission comes to the abrupt conclusion that the fire was caused by 60 liters of inflammable liquid being thrown into the S-6 coach. This unusual piece of evidence was recorded by the

Commission apparently from the report of Dr.Dahia, an officer of the Forensic Science Laboratory (FSL). Even the perfunctory reading of the report dated 17-5-2002 would show that it was Dr. Dahia's personal opinion that the fire could be caused by throwing in of 60 liters of inflammable fluid but that was not evidence. It was merely an opinion of Dr. Dahia which was shockingly converted into the most valuable piece of evidence by the Commission. Such are the methods of collecting evidence by the Commission.

- (l) The Commission thereafter goes about analyzing deposition of Shri Raju Bhargav in para-132 and 133 and completely twists the evidence to suit the Conspiracy theory. Shri Raju Bhargav has clearly stated that when he reached the S-6 coach, the passengers with burn injuries were still jumping out and all of them had injuries above their waist. He had also said that he had not smelt any petrol or inflammable liquid. He had also said that while there was some flame on the Guard's side of the vestibule and somewhere near the centre of the coach there was no flame on the floor. These depositions of the DSP are not even mentioned in the report and completely ignored. The statements of all Karsevaks, passengers and specially Shri Hariprasad Joshi, an Incometax Officer, who had stated that there was no flame on the floor of the coach, were all ignored by the Commission. The peculiar burning pattern and the injury pattern of 70 passengers who had come out of the coach with minor injuries on their bodies above their waist, was also brushed aside since that did not fit into the burning theory of the Commission. It is needless to point out that if 140 liters of petrol is actually poured inside the coach and set on fire, not a single passenger of the coach would have come out alive and even if they did, they would be

completely burnt all over their lower part of the body to begin with. Not a single case of this type of burning has been noticed.

- (m) In all the FSL reports none, except one, shows the presence of any Hydro-carbon from the material collected from inside. In one such report of March-2002, residual Hydro-carbon are analysed to be present but on cross-examination the officer concerned admitted that he had not carried out any quantitative analysis which was the only method of ascertaining the ratios of different degree of volatile Hydro-carbon that are present in un-burnt petrol or in burnt petrol. In fact, he feigned complete ignorance about the quantitative analytical report submitted by JSM which established that in case his analysis was right, the material showed the presence of un-burnt petrol rather than burnt petrol.
- (n) The Commission therefore borrowed and virtually translated the various confessional statements and other evidences collected by the police to establish the conspiracy theory including the allegation that certain Muslim boy had entered the S-6 coach by cutting through the rexin cover of the vestibule between S-6 and S-7 coach. In cross-examination, it was admitted by the FSL Officer that the so called cover that was allegedly cut by the accused, did not exist and as found out by Justice Banerjee Commission, the said cover was actually sold to the Kabadiwala for a few rupees in the Ahmedabad railway yard. Secondly when about 200 or so passengers were inside the coach filling up every nook and corner of the coach including the space between the two lavatories, it would be humanly impossible not to have a single witness to notice three or four Muslim boys not only entering the S-6 coach but carrying six huge carbouys of 140 liters of petrol along the corridor from the Guard side

to the engine side, liting the same and then coming out through completely jam packed coach without the slightest burn injury. Such conclusions can be arrived at only by those who have absolutely no desire to find the truth. Lastly, it may be mentioned that none of the six so called black carbous have ever been found.

- (o) Lastly, it may be mentioned that any judicial or quasi-judicial authority must hear the parties who are adversely affected by their decisions. In the instant case, despite High Court order and despite settled law, the Commission did not summon any of the Muslim witnesses cited in the Godhra case but on the contrary, relied upon the confession of a few Muslim accused without as much as putting them on notice and without considering the fact that they had filed affidavits before the Commission stating that their confessions were obtained under duress.