CHAPTER VI

CONCLUSION
The concerns related to State accountability and justice, after the occurrence of communal riots, are approached in this study through an examination of post-riot judicial inquiry commissions. After analyzing the larger debates on judicial commissions and functioning of post-riot commissions, it is difficult to classify the effectiveness of this public institution as black or white. There are shades of grey in the way these commissions have performed and therefore, it is not easy to give an affirmative or negative answer to the larger question of whether these commissions have been successful. The study has argued that there are certain minimum expectations from all judicial commissions and particularly in the case of post-riot commissions, the anticipation has been that they would eventually make the State agencies accountable, identify the perpetrators or organizers of communal riots and recommend measures that would ensure justice for the victims. The ability of commissions to restore confidence of the people on the State and its agencies is dependent to a large extent on these issues.

What emerges from this study is a complicated picture, wherein some commissions succeed largely in restoring the lost trust of people and re-establishing the legitimacy of the State, while there are others which are not able to achieve this. The commissions that fulfill the minimum expectations have appeared to function in a manner which is, by and large, viewed as fair and neutral. The difference between commissions appearing to function/not function in a fair and neutral manner is rooted, to a large extent, in both the procedural and substantial aspects of their functioning.

Procedurally, some commissions (Jaganmohan Reddy and Srikrishna Commissions, for instance) adopted methods like conducting a public inquiry as against an in camera one, interpreted their mandates objectively and effectively, have gone beyond only relying on evidence placed before them and provided equal opportunities to those participating to
express their grievances to ensure a fair and neutral inquiry. At a more substantial level, commissions that have not appeared to be subservient to the governments in their working, with an ability to grasp the larger political context of their appointment and take decisions accordingly have been viewed as fair and neutral. For instance, Srikrishna Commission functioning in a hostile environment for most part of its inquiry managed to hold its ground and in the process reaffirm the trust and expectations of the victims on judicial commissions. Similarly, the Reddy Commission emphasized the importance of a public inquiry while investigating communal riots by refusing the suggestion of the government to conduct an in camera inquiry.

Even when commissions have functioned in this manner, it has been an arduous task for them to restore the legitimacy of the State and its agencies, especially since the 1980s. This is primarily because during the course of their inquiry, it is not only about how commissions function but also about how governments operate vis-à-vis commissions. A fair and neutral inquiry by commissions has not always been translated into restoring the legitimacy of the State and its agencies. This is largely because governments have often not taken steps to maintain the independence of commissions and have, on occasions, even created obstacles to the conduct a credible inquiry into the riots. The problems faced by Srikrishna Commission in relation to access to government documents and the eventual dissolution of the Commission by the Maharashtra government as discussed in Chapter IV further highlight this critical aspect of inquiry. Commissions that are able to achieve both (function in a fair and neutral manner and restore the legitimacy of the State) have had the support of a government whose actions are in sync with the functioning of the commissions and with the larger concerns of fairness, neutrality and independent inquiry (Jaganmohan Reddy and Madon Commissions). The time of establishment of a judicial commission, appointment of members and the resources, facilities provided to a commission during the course of its inquiry are all indicators of whether a government aspires for restoration of its legitimacy which gets undermined during the riots.

While majority of post-riot commissions have not been able to identify the perpetrators or implicate authorities who did not take adequate action to control the riots, there are a select
few (Srikrishna and Madon) who were able to recognize the perpetrators and give concrete evidence of lapses from the administration in controlling riots. Commissions on certain instances have given indications of probable involvement of politicians, important ministers (Nanavati Commission) and dereliction of duty by individual police officials. The differences among commissions and their ability to apportion responsibility for riots is based on the nature of evidence, how a commission interprets such evidence, the different competing explanations which emerge for the same incidents of riots and how a commission deals with these different versions.

There are instances when concrete evidence emerges before a commission on the involvement of political organizations in organizing and instigating communal riots and under such circumstances, commissions have been able to identify the perpetrators (Madon and Srikrishna Commissions). The ability of a commission to provide unambiguous answers based on facts and evidences presented before it depended to a large extent also on the time lag between the occurrences of the riots that it was inquiring into and the establishment of the commission (Nanavati Commission). There were always doubts before the Nanavati Commission on the authenticity of the evidence which came before it and due to the lapse of fifteen years, it was not in a position to gather the required information from varied sources to verify evidence produced before it.

The evidence emerging before commissions often indicated the planning and preparation which occurs after the riots. The establishment of an inquiry commission was followed by preparation of explanations by the police and these were pre-empted ways of tackling official inquiry into the riots. This aspect has emerged from the reports of various post-riot commissions like in the case of Reddy and Madon Commissions, where they have indicated that prepared and standard answers became the norm of the day and factual information on the riots were often not presented before commissions. The explanations provided by some of the senior officers suggested that they even perceived the commissions to be a means to apportion blame on the police for the riots. The police deliberately not sharing some of the inciting speeches made before the riots with the Reddy Commission was an outcome of this insecurity, which finds mention in the report of the Commission as well. Similar preparations
were witnessed in the case of Srikrishna commission also where as soon as the government started considering the appointment of a judicial commission to inquire into the riots in Mumbai, a new Commissioner was appointed and police officials started preparing lengthy explanations to defend their actions. Anticipating an official inquiry after the riots, the police refused to register FIR of victims in an attempt to distort evidence. These were pre-planned attempts to ensure that even if there was an inquiry into the riots, concrete evidence against the police could never be established. In this process facts are concealed to dissuade the commissions from arriving at the “truth” on the incidents under inquiry.

On occasions, commissions have found it difficult to ascertain the correct facts on the extent of involvement of political organizations in instigating the mob into violence. This was because of the emergence of many different interpretations of the riots making it difficult for a commission to ascertain which version is closest to truth. Each of these versions brought a new definition to the same incidents of communal riots, where for the victims the riots were a failure of the State to protect them and their community. But, the police had a different version to narrate before the commission. A commission in situations like these reaches out for information and does not only depend on those which are produced before it. It is based on how commissions interpreted these versions that they arrived at different conclusions when it comes to the involvement of political parties or individuals in instigating and organizing riots.

Even when commissions have conducted themselves in a fair and neutral manner and identified the perpetrators, it has not automatically meant justice for the victims in the retributive sense leading to punishment for the perpetrators. What has been ensured through a commission’s report is a debate in the Legislative Assemblies and Parliament on the indictment of political parties, individual ministers and police officials and governments have had to answer uncomfortable questions. They have on occasions led to public apologies by the Head of the State or resignation of ministers and on rare instances dismissal or transfer of a police official (usually from the lower ranks). But, the facts which come out from the reports of post-riot commissions have almost never resulted in punishment of those responsible. A constant demand for punishment of those involved in organizing riots and for
dereliction of duty by administrative and police officials has been witnessed in civil society organized campaigns and the odd instances of arrests or suspensions have occurred during such instances. Justice emerging from reports of commissions is, therefore, reparative where for damage control compensation is granted to victims. While compensation has meant a token acknowledgement of the wrong committed, it has not been instrumental in addressing the trauma, anger and in some cases sentiments of revenge that emerge after communal riots. The long term issues of survival, trauma and the urge for revenge can be addressed by alternate ways of viewing justice that are more restorative in their approach. In light of these different aspects to the response that a post-riot commission report receives, this study concludes that the understanding of justice emerging from inquiries into communal riots is largely reparative and while retribution in the form of punishment is aspired for, it has been a distant proposition for the victims. Under the circumstances, victims of communal riots and organizations representing them have tried seeking for better and more compensation.

The understanding of communal riots which emerges from the reports of post-riot commissions suggests that riots are organized and planned where there is a specific role played by different actors at different points of time. The investigation by almost every post-riot commissions on the role played by local level leaders, political organization and parties and lapses by the police and administration in controlling riots emphasizes that each of these are involved one way or the other in the riots. While some actors are directly engaged in instigating riots and organizing them (most often political parties and local level leaders), there are others like the police and administration who on number of occasions endorse their activities by not taking action against them.

In investigating the reasons for communal riots, commissions have differed in their approach. Some have gone into the deeper factors like overall political situation, economic rivalries and ideological differences to understand why communal riots occur (Srikrishna Commission). There are others who while recognizing the significance of one factor (like processions) in the occurrence of communal riots have explored why a particular factor has time and again resulted in riots in a particular place (Madon Commission). Further, some commissions have argued against probing into why riots generally occur and the factors responsible for the
same and have instead stressed on investigating the reasons for occurrence of the riot under inquiry (Jaganmohan Reddy Commission). The reasons for organization of riots have varied depending on who organizes them and for what purpose. In foregrounding some of the reasons, commissions have recognized the instrumental role of communal riots for political organization to either create a base or to disrupt the smooth functioning of a government to gain benefits from the situation. For instance, the Bhiwandi riots was largely viewed by the Madon Commission as a means for the Shiv Sena, the key political party accused of instigating the riots, to create a political base for itself in the area. The statements by victims and description of the details of riots indicates that once the riots breakout there are different dynamics like economic rivalries, hatred for a particular community, revenge, that provide a complex character to these riots. In bringing out these important aspects of communal riots, commission reports have re-established some of the academic explanations given for communal riots.

Communal riots are a representation of the political situation of the time period in which they occurred. For instance, the inquiries into the riots which occurred in 1960s and 70s by Reddy and Madon Commissions, suggests that local level processions, religious festivals and rallies were the starting points for communal riots. Commissions during this time did not have to investigate the direct involvement of government or Cabinet members in instigating riots. By the time the Nanavati and Srikrishna commissions were appointed, the political context had changed significantly. The political changes occurring at the national level had a direct and distinct impact on occurrence of communal riots. Post-riot inquiries since 1980s have suggested that communal riots were justified as a measure of retaliation against a particular community. The Mumbai riots were justified by more than one member of the Shiv Sena based on the logic of retaliation by the Hindu community and this was time and again emphasized during the proceedings of the official inquiry. This was something new where a political organization was glorifying the role it had played in targeting a particular community during communal riots and giving a justification for the same which was woven around the logic of ‘retribution’. Instances of retaliation were witnessed from both communities and there was a cause and effect sequence to riots where riots were followed by even more gruesome form of violence (Mumbai riots).
What comes out clearly from a study of the specific post-riot commissions is that there are differences among commissions depending on the circumstances of their appointment, the larger political context of their appointment, the mandate before a commission and how they interpret the different versions of the same events. It is precisely because of these differences that some commissions are viewed as conducting a fair and neutral inquiry while others are not. These variations in conducting an inquiry by commissions has also meant differences in their ability to apportion responsibility on the State for the occurrence of riots and identifying the perpetrators. Therefore, it is difficult to measure the effectiveness of these commissions within the parameters of success or failure and situate them within blanket categories of non-performing institutions.

In undertaking the key responsibility of building the confidence of victims of communal riots judicial commissions and their reports have left a legacy. The detailed accounts of riots, proceedings and reasons for following a certain type of inquiry, evidences for and against a certain contentious issue, the key findings and recommendations, all these are not just information on the events which the commissions inquire into but also an account of how inquiries into communal riots are conducted. There is an institutional legacy that these commissions leave after the inquiry and most often than not they become reference material for other similar inquiries. For instance, the Madon commission while deciding on its procedure referred to the Raghubir Dayal commission inquiring into the Ranchi Hatia riots and also the British Royal commissions on Tribunals of Inquiry while providing the reasons for conducting a public inquiry as against a private in camera inquiry. Similarly, the Reddy commission makes reference to the proceedings of the Mudhra commission while giving reasons for allowing cross examination during the proceedings. The legacy left behind by commissions through their reports has a vital impact on future establishment and relevance of this public institution. In conducting a fair and neutral inquiry while some commissions have enhanced the legacy of this institution, there are others which have raised serious doubts and reservations on their ability in making the State accountable and restoring its legitimacy. Each commission leaves behind an impression on those who participate in the inquiry and on
the larger civil society and therefore the work done by previous commissions have an impact on how the next commission would be perceived and viewed.

The thesis while bringing to the fore some of the challenges to the functioning of judicial commissions in the light of the changing political context and nature of communal riots suggests certain previously unexplored mechanisms to deal with substantial concerns of riot victims. This study leaves further possibility for looking at parallels between post-riot judicial commissions in India and Truth Commissions established to deal with historical crimes, violence and concerns emanating from them. In arguing for a restorative approach to justice for the victims of communal riots, the study emphasizes for a framework that takes into account some of the substantial issues emerging from violence after riots.