CHAPTER 1

INTRODUCTION
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Introduction

This study takes up an inquiry into the linkages between communal riots, state accountability and justice emerging from a systematic examination of post-riot judicial inquiry commissions. Communal riots in the last two decades have generated a number of questions on the ability of the Indian State to protect its minorities (Sikhs in 1984 and Muslims in 2002). The last few riots have witnessed targeted attacks on the minority communities and a complete failure by the administration to protect them from these attacks. Communal riots involving large scale loss of life and property are therefore not only indicative of breakdown of law and order but a lapse by the State to protect the basic rights of its citizens. It is for the protection of individual rights and liberty that the State is established and the primary reason why people dwell within the State and obey its rules. Given this understanding of liberal democracy, it can be inferred that communal riots, where one community is systematically targeted, constitutes a fundamental denial of citizens' rights - the reason for which they live as members of a civil society. The State’s inability to protect the life and property of its citizens during communal riots results in a) the victim community’s loss of confidence in the State and its agencies and b) questioning the legitimacy of the State.

Under such circumstances, the paramount concern for any government after a communal riot is to devise ways through which it can restore the confidence of the victims and in the process, consolidate its legitimacy. For this, governments establish relief and rehabilitation camps and provide compensation to the victims to overcome loses suffered during communal riots. Among the several steps that governments take immediately after riots to restore the normal life of the people, they appoint inquiry commissions so that an independent investigation can be conducted into the riots and the lost trust or faith in the government and other agencies of the State can be restored. Inquiry commissions are appointed also to bring forward credible information related to a riot because most often, there are different versions

which emerge and there is an attempt to define or attach meaning to incidents of communal violence where there is a "struggle to control interpretations and explain the violence."\(^2\) It is in this struggle that one particular version emerges as dominant and most often it is the official version and in an attempt to protect this version evidences are distorted or the incident of violence itself is dismissed as a trivial and spontaneous confrontation between people of different communities.\(^3\) Under such circumstances, a demand for an inquiry into the riots emerges from civil society on the belief that an independent inquiry would shed new light on some of these aspects and challenge the official version of the riots making the State answerable for its actions during the riots.

In addressing the immediate concerns of the victims and while dealing with the diverse interpretations of the riots, the intention of governments is to demonstrate their neutrality. There is a realization that the neutral character of the government can be established only with the appointment of an independent inquiry particularly when there are questions raised on the actions/inactions by different agencies of the State during the riots. Since these commissions are appointed to bestow the aura of neutrality, it would be useful to study them in detail to understand whether they are successful in this or not. The commissions are expected to compile a report on their findings and in the process restore the legitimacy of the State and bring peace between the two communities involved a) by naming the groups or persons responsible for the communal riot and b) by assuaging the victims through compensation.

There are both procedural and substantial dimensions to a commission's functioning and this study aims to investigate both these aspects. At a procedural level, how a commission is appointed, the circumstances of appointment, who are appointed as the members, how does a commission function and conduct its inquiries? How does it decide the procedure that needs to be followed for the inquiry? What is the mandate before a commission? While these would provide an understanding of whether post-riot commissions were appointed in the spirit of

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\(^3\) Gyanendra Pandey, "In Defense of the Fragment: Writing about Hindu Muslim riots in India Today," *Representations*, No. 37, Special Issue: Imperial Fantasies and Post Colonial Histories, (Winter), 1992, pp. 27-55, calls this the "master narrative" which becomes the official or dominant version.
the Commissions of Inquiry Act, 1952, it is equally important to probe into some of the substantial aspects of functioning of commissions.

After establishment of commissions for restoring trust and the neutrality of the State, they meet with some skepticism from society. In India, there have been numerous reports and writings on how commissions don’t solve the purpose because of inherent delays and the long time that they take to come out with their findings. This criticism levied at commissions of inquiry is not completely unwarranted, given the statistics of their performance. According to government records, since independence, among the numerous incidents of communal riots, commissions of inquiry have been appointed on 40 occasions. These commissions were appointed to inquire into some of the major riots where two groups belonging to different castes or religion were involved. Among the 40 commissions appointed, Action Taken Report (ATR) by the government is available for only 11 commissions of inquiry. Only fourteen commissions have submitted the report within a span of one year and the rest have taken between two to eight years to finish their inquiry and submit a report to the government.4

While this is the record of inquiries appointed on communal riots, the fate of commissions appointed on other matters of public importance has been no different. A glimpse at the situation in West Bengal suggests the grim scenario as far as judicial commissions are concerned. Since 1977, of the 22 judicial commissions appointed in West Bengal, two never completed their investigation, five submitted no reports and 12 submitted reports for which the government did not come out with an ATR.5 These commissions were appointed to inquire into issues ranging from leakage of examination papers to allegations of corruption in different public departments. But, some of them like Samarendra Chandra Deb Commission appointed to inquire into communal riots took about a decade to come out with their reports.6

6 ibid
This situation does not seem to have changed in the recent years in West Bengal and other States.

Most of the perceptions on inquiry commissions are therefore based purely on some of these statistical data, which are important, but do not bring forward the complete picture. In a situation where commissions are viewed as non-performing institutions whose relevance is questioned time and again and yet there is also a demand for them after a communal riot based on the expectation that they would conduct a fair inquiry, it becomes important to have a substantial understanding of these commissions. The examination of some of the substantial issues related to commissions of inquiry would provide an answer to whether all commissions in general can be categorized as a “waste of time” as often argued or is this true of certain commissions of inquiry?

Given that all commissions are established, function and deliver a report within the framework of the Commissions of Inquiry Act, why is it that they evoke different responses during the tenure of their functioning and even after submitting the report? What are some of the key concerns which come before post-riot commissions during the inquiry and how do they tackle them? Which are the commissions that are able to refute the official understanding of communal violence and which are the ones that accept the official version of the violence? These questions lend a thorough analysis to the functioning of these commissions and their assessment. Such an assessment of commissions of inquiry would bring to the forefront some of the impediments in the functioning of this public institution. Have the reports of these commissions come anywhere close to making an assessment on what causes a riot and who or what was responsible for the particular incident of communal riot? Are commissions able to serve the basic purposes for which they get appointed? What understanding of communal riots, state accountability and justice emerge from the report of these commissions? Also, how does the State react or respond to the interpretation of a communal violence that emerges from the report of commissions? This work through a systematic examination of four judicial inquiry commissions reflects on some of these questions. While making this inquiry, the study has a comparative tone where parallels are
drawn with commissions in other countries (Britain and Canada) and also between post-riot commissions appointed in two different time periods in India, the pre-1980s and post-1980s.

This subject remains relatively unexplored in social sciences even when there are concerns after every communal riot on the growing need to make the State accountable for its actions and inactions. Most studies on communal riots have now come to accept that the State does not act as a neutral arbitrator during instances of violence between two different communities. But, this acceptance is followed by a dismissal of any further inquiry into the subject on the pretext that nothing substantial can be done to amend the situation. While, there are numerous newspaper reports and scholarly writings which demand accountability for the lapses from State during communal riots, none of them try to solve the conundrum of why has it been difficult in our country to make the State accountable for alleged cases of complicity after communal riots?

There are very few studies addressing the various issues that emerge after a communal riot and even when such attempts are made, they are largely concentrated on the victims and their narratives and deal with the everyday initiatives taken by the victims to normalize their lives. Such studies are important as they turn their attention to the problems faced by the victims of communal riots. They are essentially bottom up approaches, that is, they do not, by and large, analyze the State’s response to questions related to accountability and justice after a riot through the appointment of judicial commissions. These studies along with some of the civil society inquiry reports on particular communal riots clearly indicate that justice for the victims of communal riots remains an important challenge. There is an immediate demand that those who suffered loses during the course of the violence be compensated and those responsible for the violence be punished. Do justice for the victims of communal riots


feature in the mandate and reports of inquiry commissions? How have commissions understood the term ‘justice’ and made recommendations to that end?

A significant starting point to understand the planning and organization along with the contextualization of violence which happens after a riot can be through a study of inquiry commissions. There have been a couple of studies which have hinted in this direction. For instance, Paul Brass’s work on Hindu-Muslim riots suggests that the planning and organization is not just confined to the stage when riots occur but also extends after the riots when explanations emerge and there is a process of blame displacement in which everyone including the State gets involved. Similarly, the reports of the civil society inquiries conducted on communal riots and the details of follow up action emerging from these reports shows that the planning and organized character is not just confined to the period before and during the course of the riot but is intrinsic to the phase after the riots. Also, Beth Roy’s study on a particular incidence of communal violence which occurred in a village in East Bengal discusses how a trivial incident is soon converted into a full blown communal violence. Among the different stages that Roy explores, the phase after the violence where there are conflicting images and interpretations emerging and reconciliation is attempted between the two communities, provides some understanding of the form of justice that the State seeks to arbitrate for the victims of communal riots. Roy’s work again hints at the role of police as an agency for tackling the concerns of victims after communal riots during the colonial period but in the recent years given the important role performed by post-riot commissions and the reasons for their appointment, there has not been any serious research undertaken to understand the functioning of this public institution.

Another important aspect that this research seeks to accentuate is the overall understanding of communal riots coming out of the reports of these commissions. Several explanations on

communal riots have tried answering why riots occur, how they occur, who participated in them and what are the motivations behind the organizing and planning of riots? In the process these explanations have given reasons for the occurrence and non occurrence of communal riots ranging from existence of “institutionalized riot systems” to those of “institutionalized peace mechanisms”. Case studies on particular communal riots have been taken up to explain the reasons for the occurrence of communal riots. For instance, Asghar Ali Engineer gave an economic explanation for riots based on his study of communal riots which occurred in Bhiwandi. There were similar case studies of specific riots done by Ghanshyam Shah in the context of Gujarat, by Paul Brass on the Meerut and Aligarh riots and Sandria Frietag’s “historical-causative” explanation for communal riots is based on the case study of Uttar Pradesh. Through a detailed analysis of the Sikh Identity, Dipankar Gupta have argued that over emphasis on historical consciousness in explaining communalism leads to overlooking of other important “social forces that brought them into being.” Gupta rather suggests that the motivations behind communal identity are not constant but keep changing and therefore cannot be reasoned only to historical or economic rivalries at a given point of time. Some studies on communal riots have tried to establish linkages between institutions of State and democracy on the one side and the existence of

12 Op. cit. 9, p. 15. Brass uses the phrase “institutionalized riot system” while talking of riots in India and suggests that there is a strong endemic character to these riots which makes them an institutionalized system particularly in areas where they have repeatedly occurred. There are a number of agencies like political parties, police and organizations that work in collaboration for the riots to occur for their own individual interests. There is no single agency but a number of agencies which work together to give shape to a communal riot and therefore there are a number of things which work simultaneously to make riots endemic. In the other side of the spectrum are scholars like Ashutosh Varshney who have argued that it is the presence or absence of associational civic life which are detrimental in the presence and absence of communal riots. See, Ashutosh Varshney, Ethnic Conflict and Civic Life: Hindus and Muslims in India, New Delhi: Oxford University Press, 2002.


communal strife or peace on the other, suggesting the intrinsic connection between different forms of institutions and ethnic peace or violence.  

Given these range of explanations for communal riots available from academic writings, this study on post-riot commissions of inquiry would bring forward the reasons for and details of communal riots surfacing from the reports of these commissions. Are there any linkages between the explanations emerging from commission reports with those provided in scholarly writings on the subject? In other words, do these inquiries re-assert some of the existing views on communal riots?

Also, evident from some of the writings on communal riots is the difference in the nature of riots in the pre-1980s and the post-1980s. While the post-independence and the post-1980s cannot be seen as water tight compartments, nevertheless, there was a different context to the occurrence of communal riots after the 1980s where the larger political changes in the country played an important role in the nature of rioting. Communal riots have occurred in India at regular intervals since the Jabalpur riots in 1962. There were major communal riots after every few years whether it was the riots in Ranchi-Hatia (1967) or in Ahmedabad (1969), Bhiwandi (1970) and Jameshedpur (1975). The political atmosphere in the 1980s changed with the rise of Hindutva forces and with the demolition of the Babri Masjid in December 1992 there was an increase in the frequency of communal riots and they became a constant and persistent feature. More than the frequency of communal riots, it was the scale and proportion of violence that acquired a disturbing trend.

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17 Donald Horowitz, Ethnic Groups in Conflict, Berkeley: University of California Press, 1990, pp. 99-135. In the case of communal riots in India, the connection between multiparty democracies, the system of proportional representation election and Hindu-Muslim riots is established in the work of Steve Wilkinson where he attributes the presence and absence of communal violence in a particular state to the system of administration, which is again directly proportional to competitive politics. Steve I. Wilkinson, Votes and Violence: Electoral Competition and Communal Riots in India, Cambridge: Cambridge University press, 2004, p. 1-23.


20 The number of communal incidents was constantly on the rise in the 1980s. For instance, a total of 196 people lost their lives in 319 communal incidents in 1980 as against 375 people in 427 incidents in 1981 and 261 people in 304 incidents in 1979. See, Moin Shakir, “An analytical view of communal violence,” in Asghar Ali Engineer (ed.), Communal Riots in Post Independence India, New Delhi: Sangam Books, 1991, pp. 88-103. In 1990, there were 92 communal incidents but the numbers of people killed were 571. In 1992, there was an
Systematic attacks on one particular community during communal riots, most often the minority community resulted in the erosion of trust and faith on the institutions of State to protect its citizens. Since 1980s there has been a difference not only in the nature of communal riots but also in the response of the State to situations of communal riots. The ambiguity of governments on issues vital for both the majority and minority religious communities (Shah Bano case and Babri Masjid issue) resulted in the questioning of the secular credentials of the Indian State. The events which unfolded in Gujarat in February 2002, leading to a large scale massacre of people of the minority community and more significantly the subsequent explanations given by the authorities of the State, further tarnished the secular credentials of the State in India.

State complicity, celebration of violence and difficulty in obtaining justice for the victims were not just integral to Gujarat riots. They were witnessed during communal riots in Mumbai in 1992-93, parts of North India after the demolition of Babri Masjid and earlier during the anti-Sikh riots in 1984 after the assassination of Mrs. Indira Gandhi. Overall, the role of the State and its agencies in fomenting riots has been more direct since the late 1980s.

Another important change witnessed since the late 1980s was the dominance of coalitional politics in determining the electoral trends in the country, something which was not a factor before the 1980s. Given the change in the context of occurrences of communal riots and the nature of rioting as well, this study takes two commissions from the pre-1980s phase and two commissions from the post-1980s phase to reflect on some of the concerns related to post-riot inquiry that emerge in these phases.

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22 In the case of anti-Sikh riots this point is reflective from oral evidences recorded by Uma Chakravarti and Nandita Haksr which has been produced in a book form titled, *The Delhi Riots: Three Days in the life of a Nation*, New Delhi: Lancer Publications, 1987.
Approach and Study Plan

This thesis will explore the following four Judicial Inquiry Commission Reports:

Justice Jaganmohan Reddy Commission for Inquiry into the riots in Ahmedabad in 1969
Justice D. P. Madon Commission for Inquiry into the riots of Bhiwandi and Jalgaon in 1970
Justice Nanavati Commission for Inquiry into the Delhi riots in 1984
Justice Srikrishna Commission for Inquiry into the riots in Bombay in 1992-93

The four commissions have been chosen for they deal with different types of riots, which occurred in different time periods. The first two inquiry commissions deal with pre-1980s riot situation and with riots that occurred during religious processions. Some of these inquiry commissions formed after the communal riots in the 1960s clearly indicated the instrumental role of religious and other mass processions as breeding ground for communal riots. The Justice Raghubir Dayal Commission for inquiring into the Hatia, Ranchi communal riots of August 1967 indicated that the agitated and angry slogans shouted during the student processions against making Urdu as one of the official languages of Bihar had provoked and caused initial rioting.

This study examines Jaganmohan Reddy and D.P. Madon Commissions of inquiry established to inquire into the 1969 Ahmedabad riots and 1970 Bhiwandi riots to understand some of the issues that emerged before these commissions in the 1960s and 70s when the State and its agencies had a seemingly less direct role in inciting communal riots. While the Madon Commission was appointed to inquire into riots which occurred in Bhiwandi, Jalgaon and Mahad, this thesis examines only the commission’s investigation of riots in Bhiwandi. What were the circumstances under which these two commissions get established and how were the members appointed? The Jaganmohan Reddy commission and its establishment are particularly important as the multi member composition of the commission is analyzed to understand some of the issues related to appointment and how commissions deal with them. What was the mandate given to post-riot commissions in the earlier decades and how did these commissions interpret the terms of references? D.P. Madon commission was appointed
to inquire into riots that occurred during a religious procession. Processions have since the 19th century provided agency to the growth of communal riots and there is something intrinsic to processions and the way they are organized that eventually make communal riots inevitable.23 Given this factor, this study would examine the understanding of religious processions that emerges from the Report of Madon Commission. Overall, what has been the nature of inquiry into communal riots conducted by these two commissions? What were some of the key findings of both the Reddy and Madon Commissions and how did the commissions arrive at these conclusions? Also, the equation that these two commissions shared with the governments which appointed them would emerge from studying some of the vital aspects related to the inquiries into Ahmedabad and Bhiwandi riots.

In the post 1980s phase, the Nanavati Commission of inquiry into the 1984 Delhi riots and the Srikrishna Commission of inquiry on the 1992-93 Mumbai riots have been chosen for detailed analysis. Through a detailed examination of the circumstances of establishment, appointment of members, the proceedings and evidence which came before these two commissions, the attempt would be to reflect on some of the recent dynamics of post-riot inquiry that were specific to this phase. The two commissions, inquiring into the anti-Sikh riots and Mumbai riots are important to understand this shift in the pattern of communal riots since 1980s and the State’s response to these situations. Also, what was the impact of all this on the functioning of judicial inquiry commissions? What was the relationship between judicial commissions and governments which appointed them in the 1980s and 90s?

There were a number of commissions and committees appointed to inquire into the 1984 Delhi riots, but this study would analyze the Nanavati Commission of inquiry which was appointed in 2000 and came out with its findings in 2005. This commission was appointed several years after the riots had taken place and therefore is significant to understand the circumstances and reasons for its appointment and what specific issues emerged before this

commission as a result of the time of its establishment. The Nanavati Commission of Inquiry is an important case to study the role played by the State in setting up of these commissions and the relevance of justice to the victims when the perpetrators are identified after more than a decade of the act of violence. The question of justice also becomes important when the perpetrators include the agencies and authorities of the State. The different inquiry commissions formed to investigate the anti-Sikh riots have raised a number of issues related to post-riot commissions of inquiry. The objective ability of some of these inquiry commissions to investigate the riots was questioned.

The Srikrishna Commission of inquiry deals with the first major riot which occurred after the demolition of Babri Masjid, and under changing political situation in the country when the Bharatiya Janata Party (BJP) had become a significant force in Indian Politics. The Srikrishna Commission is also the only post-riot inquiry which was dissolved and later re-installed. When this commission was appointed the Congress was in power in Maharashtra and later it was the Shiv Sena-BJP coalition that came to power during the proceedings of the commission. How did the change in government impact the functioning of this commission and how did coalitional politics come to play a vital role in shaping some of the issues related to post-riot inquiry, is addressed through a study of the Srikrishna Commission. Both the Srikrishna and Nanavati Commissions reports were produced several years after the communal riots had occurred, raising questions regarding the relevance of these commissions and recommendations made by them. Each of these inquiry commissions would be studied to understand the role of the government in setting up these commissions and its response to the recommendations made by them.

**Structure of the Study**

This study is divided into five chapters where the first chapter introduces the subject and sites reasons for taking up this inquiry along with the importance and relevance that the study has to social science research. The second chapter locates this study of post-riots commissions in the larger framework of commissions of inquiry with a view to understanding the background conditions that go into the functioning of these commissions – matters like the
appointment of members, circumstances of appointment of commissions, the procedures adopted, the mandate of commissions and the debates around these aspects. This chapter tries to probe into the basic attributes that a commission of inquiry is expected to have, to function in an efficient and independent manner.

The third chapter provides a background into the functioning of post-riot inquiry commissions in the 1960s and 1970s by examining some of the features and overall findings of the Jaganmohan Reddy and Madon Commissions. This chapter provides an overall understanding of the nature of communal riots during this phase which had an impact on the judicial commissions appointed to inquire into these riots. The fourth chapter deals with the case studies of Nanavati and Srikrishna Commissions and attempts to understand the shift in the nature of riots as also in the characteristic features of the phase after the riots. The State’s response to riots, the reasons for the appointment of commissions, the issues which the commissions had to deal with in this phase, the role of the civil society in investigating riots and the functioning of commissions, all these underwent a change. This chapter, through a detailed investigation of the Nanavati and Srikrishna Commissions, provides an understanding of this change and also the way these commissions addressed questions related to State accountability and justice. The final chapter of this work deals with how governments respond to some of the reports of these commissions. What happens after the report is submitted? The government’s response to reports of these commissions is important to reflect on justice for the victims of communal riots and the subsequent need for alternate means to addressing justice for the victims of riots.

Research Material

The primary research material for this work came from the reports of the four judicial inquiry commissions which have been chosen as case studies for this work. Other than the reports and the Memorandum of Action Taken by the government after the submission of the report by these commissions, a large part of the resource for this work was in the form of affidavits and statements filed by the victims and the alleged perpetrators during the riots. In the case of anti-Sikh riots, the inquiry commission reports of the previous commissions appointed before
the Nanavati Commission were used as resources for this study. More than 2000 affidavits filed by the victims of anti-Sikh riots to the Nanavati Commission were surveyed for the purpose of this study.

Apart from all this, where it was possible, the study has used the First Information Reports filed in various police stations during the time of communal riots. These reports are important sources for judicial commissions of inquiry to understand the nature of police behavior during communal riots. The idea behind surveying all this material was to understand what is available to the commissions of inquiry in the form of evidence while inquiring into communal riots and how based on the availability of affidavits, statements and FIR reports they arrive at a particular conclusion or make their recommendations. This also helped in understanding the problems in the approach taken up by inquiry commissions.

Other than these primary sources, this research has used the newspaper reports of the time periods when the riots had occurred and particularly reports related to the appointment, proceedings of the commission, statements made by the Chairman and the government responses to the commission reports. These reports provided details of the proceedings of inquiry commissions and the reasons for extending their tenure or in some cases even dissolving them.

The present political context and an urgency to devise ways to make the powerful structures of the State accountable for their actions makes it significant to understand the nature and functioning of public institutions like judicial inquiry commissions that are appointed by government for this purpose. While the emphasis and focus of this study would be post-riot commissions, through a discussion of the issues and debates concerning commissions of inquiry in general, the attempt is to understand the nature of post-riot commissions within the larger debates related to this public institution.