CHAPTER IV

NANAVATI COMMISSION AND SRIKRISHNA COMMISSION: POST-RIOT COMMISSIONS SINCE 1980s
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Nanavati Commission and Srikrishna Commission: Post-Riot Commissions Since 1980s

The Srikrishna and Nanavati Commission were appointed in a time period when there were direct aspersions being cast not just on the agencies of the State but on the government and the key members of political parties for instigating the mob to indulge in riotous activities. The role of the State and its agencies has always come under uncomfortable scrutiny, but since the 1980s the actions of the State’s agencies during situations of communal riots, questioned the secular credentials of the Indian State. The state was no longer perceived as a neutral agency both during the time of communal riots and particularly in a post-riot situation.1 The State’s role during the communal riots was questioned even in the 1960s and 1970s as was witnessed during the Ahmedabad and Bhiwandi riots, but what changed after the anti-Sikh riots was the attempts made by State apparatuses in a post-riot situation to conceal the unfair means which were adopted during the communal riots. There were attempts made to destroy evidence, conceal facts and stall investigation after communal riots and the Nanavati and Srikrishna Commissions were appointed under these circumstances.2

It became convenient for the political organizations, in such a situation, to exploit the religious sentiments of the people for electoral gains. The communal riots in this phase were therefore a result of the larger political changes in the country. These larger political changes were in the form of the Bharatiya Janata Party’s rising popularity and electoral success, the Congress government’s response to the Shah Bano case, which undermined the party’s image of representing a secular vision and in general, the dominance of issues important to both majority and minority religious communities.3 It was in an environment of resentment and

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dissatisfaction with the way the agencies of the State conducted themselves during communal riots, that two judicial inquiry commissions were appointed to inquire into two different riots. Both the Nanavati Commission and Srikrishna Commission appointed to inquire into the anti-Sikh riots (1984) and Mumbai riots (1992-93) respectively are vital to understand the shift in the pattern of communal riots since 1980s and the State’s response to these situations.

Initiating a systematic examination of the Nanavati and Srikrishna Commission of inquiry, this chapter is an extension of the previous chapter where a study of these two commissions and their inquiry would not only bring forward the subtle and more explicit differences with the earlier phase of communal riots investigation, but more significantly, provide a picture of how these commissions have executed their function as agencies for making the state account for its actions. Also, the two commissions deal with different types of riot situations. These two are important cases to understand how in a post-riot situation different groups including the state indulge in the act of defining the violence. What are these different definitions given to violence, providing different meanings to the same act?

This chapter seeks to address the following questions: What were the circumstances under which the two commissions were appointed? What was the purpose stated for their appointment, the role played by rumors and speculative theories in the appointment of these two commissions? The mandate given to the two commissions and how far did the mandate have a role in shaping the scope of the commission? More importantly, how did the two commissions work with the given terms of reference? Did they go beyond the allocated space within which they were expected to work or did they restrict themselves to the scope allotted to them? These questions are addressed in the initial sections with each commission. The latter part of the analyses of each commission deals with the following set of questions. What issues emerged with regard to the appointment of members of these commissions and how did the commissions deal with them? What evidences emerged before the commission with regard to the role of police, the government in power, political parties during the riots? How did the Nanavati and Srikrishna Commission interpret these evidences? What set of evidences made it possible for the Srikrishna Commission to clearly state the perpetrators and similarly what was the understanding of anti-Sikh riots coming from the report of the
Nanavati Commission? How far are the reports and recommendations of these commissions reflective of the changing nature of communal riots in the country? What has been the impact of civil society investigation of communal riots on the functioning of judicial inquiry commissions?

Anti-Sikh Riots and Nanavati Commission of Inquiry

Facts About the Anti-Sikh Riots

Riots broke out in Delhi and other parts of the country after the assassination of the then Prime Minister, Indira Gandhi by her Sikh bodyguards on 30 October 1984. The Sikhs were the target during these riots in which 3874 people were killed all across the country and in Delhi alone the number of people killed were 2401 along with a loss of property which was difficult to gauge. These numbers were provided much later by the Ahuja Committee Report, appointed to investigate the number of deaths during the riots, as there was no consensus with regard to the number of people killed in these riots. Before the Nanavati Commission there were seven committees and two commissions appointed to inquire into the different aspects of the anti-Sikh riots. Delhi was one of the worst affected regions as a result of these riots that were witnessed in some parts of Uttar Pradesh and Bihar as well. Within Delhi, most of the deaths occurred in Trilokpuri, Kalyanpuri, Mangolpuri, Sultanpuri, Nand Nagri, Palam village, Shakurpur and Gamri and there was wide scale damage to property in Lajpat Nagar, Jangpura, Defence Colony, Friends Colony, Maharani Bagh, Patel Nagar, Safdarjung Enclave and Punjabi Bagh. Considered one of the most valiant

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4 Report on the No. of Deaths in the November 1984 riots in Delhi by R. K. Ahooja, Home Secretary, Delhi Administration: Delhi, p 2 and p. 8
5 ibid
6 Marwah Commission, Mishra Commission of Enquiry, Kapur Mittal Committee, Jain Banerjee Committee, Potti Rosha Committee, Jain Aggarwal Committee, Ahooja Committee, Dhillon Committee, Narula Committee were formed before the Constitution of Nanavati Commission to inquire into the anti-Sikh riots
communities in India, the anti-Sikh riots hurt more than anything else the ego of the Sikhs and resulted in the alienation of this community in a number of ways.  

**Response of the Government**

The government after the anti-Sikh riots initially did not agree to appoint a judicial commission of inquiry to investigate the riots and instituted an Inquiry Commission only in 1985, one year after the riots had occurred. In the meantime, there were several independent reports stating that the violence during the anti-Sikh riots was planned indicating the alleged involvement of the members and officials of ruling Congress government in instigating and leading the mob to violence. These reports also indicated the inept role played by the police in controlling the mob from indulging in violence. How did the government respond to these allegations?

The Congress government instead of immediately appointing a judicial commission of inquiry to alleys such conflicting views on the riots, decided to believe that the assassination of Mrs. Gandhi and the riots which followed were part of the same design to destabilize the government. Rajiv Gandhi while addressing a Congress rally suggested that judicial probe would not be favorable to the Sikhs. In one of his public speeches at Khagaria, Bihar, Rajiv Gandhi said that extremist forces had assassinated Mrs. Gandhi and then attempted widespread communal violence to create disorder and division in the country. The Thakkar Commission of Inquiry was appointed by the government to inquire into the assassination of Mrs. Gandhi but the terms of reference of the commission did not mention the riots which

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9 12 April, 1985, *The Times of India*.

10 Reports of planned attack came in many daily newspapers and magazines. See, for instance, Madhu Kishwar, "Gangster Rule – The Massacre of the Sikhs," *Manushi*, Vol. 5, No. 1, November-December, 1984, pp. 10-32. It is also included the independent investigative reports carries out by the People’s Union for Civil Liberties (PUCL) and People’s Union for Democratic Rights (PUDR).


followed the assassination. This was a departure from the 1960s and 70s when after a communal riot governments would not hesitate to appoint commissions of inquiry, particularly when there was a demand for them coming from civil society and opposition. After the anti-Sikh riots, the Sikh community had certainly lost confidence in the ability of the State to protect them and under such circumstances most governments would have appointed a judicial probe to restore that lost confidence. But, the Congress government did not choose to do so immediately. While the Congress government chose to remain silent by not appointing a judicial commission, there was no end to speculative theories on why the attacks happened on the Sikhs.

There were two different reasons being cited for the riots against the Sikhs. While some sections of the print media and civil society groups started suggesting that the attacks were organized and systematically planned by the Congress (I) leaders and cannot be called as riots but as “massacres”, there was another section which suggested that the attacks were a result of the Sikh communities expressions of joy after the assassination of Mrs. Gandhi and therefore the community “deserved what it got.” Such views provided a completely different definition to the violent attacks that followed between 31 October and 3 November, 1984 and it was this definition which was categorically challenged by a number of liberal civil society members, suggesting that even if this rumor were true then “it in no way justifies the burning of a single Sikh.” Different meanings were being attached to the same act of violence and these existed alongside the state’s response to the riots and its interpretation of the events which were coming from the official circles of the state machinery. The response of the Rajiv Gandhi government to the anti-Sikh riots and particularly to the demand for an inquiry commission was a marked departure from the way previous governments have responded in a post-riot situation. If in a post-riot situation the

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14 Some of the reports that emerged in the Newspaper Times of India tried to justify the attacks on Sikhs based on rumors that the community had distributed sweets after the assassination of the country’s Prime Minister, Mrs. Indira Gandhi. The first view that the riots were planned and organized was given voice in the article by Pritish Nandy, “Who Can Put Out These Fires,” Illustrated Weekly of India, 23-29 December 1984, pp. 6-7, Rajni Kothari, “What does the future hold for Indian Politics in the Wake of Mrs Gandhi’s assassination,” Illustrated Weekly of India, 23-29 December 1984, pp. 8-11.

15 Ramachandra Guha, “The multiple careers of Dharma Kumar,” Studies in History, Vol. 19, 2003, pp. 127-137. In this article, Guha talks about this position taken by the leading historian, Dharma Kumar, who was a professor in the Delhi School of Economics and Sociology at that time.
government is expected to assure the people that similar incidents would not occur in future then the Rajiv Gandhi government did not succeed in this endeavor.

Civil Society Response and Establishment of Mishra Commission

After the government decided not to appoint a judicial commission to probe the anti-Sikh riots, there were independent investigations taken up by Citizens' Group and in the process they recorded oral evidence from the victims on the events which resulted in the killing of many members of the Sikh community. The inquiry conducted by a team of the PUCL and a committee headed by a former Chief Justice of the Supreme Court, Mr. S.M Sikri confirmed reports of killing and large scale arson during the time of riots. The reports submitted by civil rights groups to the government had stated that the violence was organized and named various people from local figures to well known politicians of the Congress (I), to policemen for allowing, instigating or participating in the killings. The report of the Citizens Commission headed by Justice Sikri came to the conclusion that the violence was not spontaneous but was organized by members of the Congress (I) and was primarily meant to arouse the passions of the majority community in order to consolidate the Hindu votes in the coming election. The State, according to this report, had forgotten its role of protector and instead it became the collaborator to violence against a minority. There are different interpretations on how much these reports were responsible for compelling the government to appoint an official judicial commission.

It was believed that the Rajiv – Longowal Accord was also responsible for the government appointing a judicial commission. While it would be hard to understand which of these, the

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16 An intensive set of oral evidences were recorded by Uma Chakravarti and Nandita Haksar 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.

17 Report of a joint inquiry into the causes and impact of the riots in Delhi from 31 October to 10 November 1984 New Delhi: People's Union for Democratic Rights (PUDR), People's Union for Civil Liberties (PUCL), November 1984. See, Smitu Kothari and Rajni Bakshi, “When will it Begin?,” *Illustrated Weekly of India*, 4-10 August 1985, pp. 23-25.

18 Who are the Guilty, Report of a joint inquiry into the causes and impact of the riots in Delhi from 31 October to 10 November 1984 by People's Union for Democratic Rights (PUDR) and People's Union for Civil Liberties, New Delhi, November 1984, pp.

Rajiv - Longowal Agreement or the reports of the Citizens' group, had a more decisive impact on the governments’ decision to appoint a judicial commission, what can be inferred is that this certainly was a new phase as far as post-riot situation were concerned. The tradition of establishing inquiries by independent citizens’ group goes back to the British period in India. The famous Congress Punjab inquiry conducted in 1920, the inquiry into Kanpur riots of 1930 worked in parallel with the official commissions of Inquiry into the same issue. This trend has continued after every riot and now irrespective of the government’s appointment of a judicial commission, citizens’ groups have done their own parallel investigation and come out with an independent report but reports from independent civil society groups taking the initiative to investigate a riot and therefore making the state account for its actions was a new post-riot tactic, something which was not witnessed in the past. This was the first time that detailed accounts of a riot came from the report of civil society investigations when there was no sign of an official inquiry. Also, for the first time perhaps a civil society report came out with a blatant process of naming the perpetrators just days after a communal riot had occurred. The report directly named the culprits, some of them belonging to the ruling Congress Party.

An initial reaction of the government to some of these reports came in the form of the Ministry of Home Affairs and the Prime Minister’s Office asking for explanations from the Police Department on the involvement of Congress leaders and workers in instigating the riots. The civil society activism was perhaps at its peak in this case when the PUDR went a step further and filed a case against the government for not appointing a judicial inquiry to inquire into the violence that had killed a sizeable number of Sikhs in the country. Though, the case went against PUDR and the court referring to the Commission of Inquiry Act states that it cannot force the government to appoint an official inquiry on any matter, it became

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22 This information is based on a reading of several letters explaining the role of the police during anti-Sikh riots and the alleged role of the Congress leaders in the riots. The letter of explanation dated 19/ 1/ 1984 by Mr. V.P. Marwah, Additional Commissioner of Police stated complicity of Balwant Kokar and explanation regarding involvement of some of the Congress leaders. Most of these explanations suggested that they did not have any FIRs filed against leaders of the Congress in their jurisdiction and therefore the report was baseless in indicating their involvement.
difficult for the government to ignore the demand for an official inquiry.  This eventually resulted in the first official acknowledgement of the 'possible' involvement of some Congress leaders and complicity of certain police officials in instigating the mob to engage in riotous activities. Following this, it was only logical for the Congress government to appoint a judicial inquiry commission headed by Justice Rangannath Mishra to investigate the anti-Sikh riots. This official inquiry was one among the two commissions and seven other committees appointed to inquire into the several aspects of these riots. While it has been often pointed out that there were so many inquiries into a single riot, it is worth mentioning here that each of these investigated different aspects related to anti-Sikh riots. Even the number of deaths during the wake of anti-Sikh riots was a subject of varied interpretation. While on the one hand the official version indicated few numbers of deaths, the newspaper reports suggested exaggerated numbers.

Road to Appointment of the Nanavati Commission

The Nanavati Commission was appointed in the year 2000 while the anti-Sikh riots occurred in 1984 and was ninth among the several commissions and committees appointed to inquire into the anti-Sikh riots. The Rangannath Mishra Commission’s inquiry and its work needs to be discussed in some detail as the decisions of this commission and the response that it received had a direct bearing on the appointment and functioning of the Nanavati Commission.

As said earlier, the Rajiv Gandhi government after viewing the number of citizens' investigatory reports and as part of the Rajiv – Longowal Agreement, appointed a judicial inquiry commission into the events which resulted in the killing of so many Sikhs after the assassination of Mrs. Gandhi. Thus came into effect the first commission on anti-Sikh riots chaired by Justice Rangannath Mishra on 26 April 1985. This commission submitted its report to the government on 23 August 1986 with the primary conclusion that the violence

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24 An estimate of the official number of deaths can be inferred from the First Information Reports registered by the Police. For instance while in Seemapuri area 205 people were killed only 10 FIRs were registered. In Shakapur, 105 people were killed but the number of FIRs registered was just three.
followed by the assassination of Mrs. Indira Gandhi was not organized. In a two-volume report the commission pointed out that the riots were a result of the mob violence triggered off by the assassination. The commission did not believe anyone to have directly instigated the riots. However, the commission held the Delhi Police guilty of inaction during the riots. The commission also suggested the appointment of a committee to probe into the number of deaths in Delhi during the riots.

The Rangannath Mishra Commission was marred with the problem of trust right from the beginning. There were a number of allegations made against the commission and it is not the task of this study to scrutinize each of these allegations and make a case for or against them. The important issue to understand in this case is why there was a lack of trust with the commission. The Mishra Commission’s conduct and the procedure it adopted for the inquiry was the first step where it lost the trust particularly of those representing the victims. The last chapter of this work argued that a crucial sign of a fair inquiry is to conduct a proceeding in public unless there are sections of the inquiry which after consultations with the concerned parties is decided to be conducted in private. Justice Mishra decided to conduct the entire inquiry behind closed doors without consulting the different parties concerned with the matter. This was one of the main reasons why the Citizen’s Justice Committee, the primary body representing the Sikhs decided to withdraw from the proceedings and the commission lost the trust of the victims. This was against the principle of transparency and the Justice Committee did not view that a closed door inquiry would help the cause of the victims in anyway and would obstruct the most important function of bringing the correct facts of the event before the public. The Raghubir Dayal Commission which inquired into the Ranchi-Hatia riots and held its inquiry in camera came to the conclusion in its report that the procedure adopted by it hampered the task of the commission. Such prior conclusions by other riot commissions should have been considered by the Mishra Commission while establishing its procedure. But, this was not the only reason sited in the 26 page representation filed by the Citizens Justice Committee as reasons for withdrawing from the

proceedings, which stated in its withdrawal letter that its participation in the proceedings of the inquiry was both “ineffective and pointless.” They alleged the commission to have leaked the evidence even before the findings was established. Also, the commission had cross examined H K L Bhagat without informing the bodies that were representing the victims. Of the 2,905 affidavits filed before the commission, 2,266 were against the Sikh community suggesting that they had celebrated the assassination of the Prime Minister. Overall there was complete lack of trust between the commission and those representing the victims which eventually hampered the course of the inquiry and the final findings.

The commission was accused of supporting the perpetrators and providing shelter to the Congress members involved in instigating the riots. The proceedings of the commission were closed for the press and the documents were not shown the Citizens' Justice Committee representing the riot victims. The facts of these allegations are difficult to intercept but overall the image of the commission got further tarnished when later Justice Rangannath was nominated by the Congress Party as a member of the Rajya Sabha which strengthened the case that the commission did not function in a neutral manner. If commissions are appointed to restore the public trust after communal riots, then the Mishra Commission was not able to achieve this objective. The problem therefore with the Mishra Commission is not so much in its findings, for the commission found 19 Congress (I) workers, all of them working at the lower level, guilty of involvement in the riots. The problem seems to be more in relation to the procedures adopted by the commission that made it difficult to restore the lost confidence of the Sikh community in the agencies of the State. The commission was not able to convince the victims and those who were representing the victims that the inquiry was being conducted

31 In an interview conducted by the researcher 9.8.2007, Mr.Phoolka had mentioned these reasons for the withdrawal of the Citizens' Justice Committee from the Mishra Commission of Inquiry. A Statement was filed by the Gurudwara Management Committee citing reasons for the withdrawal of the Carnage Justice Committee.

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in a fair and neutral manner and the decision to conduct an in camera inquiry accentuated this growing suspicion.

But, there were some positives which came out of the Mishra Commission as well. Based on the recommendation of the commission a separate committee was appointed to investigate the role of the Police during the riots. To implement this recommendation on 23 February 1987, the government appointed three committees with different mandates. A committee consisting of Justice Dilip Kapoor, a retired Chief Justice of the Delhi High Court and Ms. Kusum Lata Mittal, a retired Secretary to the Government of India, was appointed. Another Committee consisting of Justice M.L. Jain, a retired Judge of the Delhi High Court and Mr. E.N. Renision, a retired I.P.S officer (later on replaced by Mr. A.K.Banerjee) was constituted to examine the cases relating to riots in Delhi.\(^{33}\) The Ahooja Committee was appointed to conduct an inquiry to find out the total number of Sikhs killed in Delhi between 31 October 1984 and 7 November 1984 and was to make appropriate recommendations regarding the payment and other relief to the family members of those who were killed during the riots.\(^{34}\)

While there were as many as three committees appointed, they were all constituted to investigate different aspects of the anti-Sikh riots and therefore came out with recommendations which were in line with their mandate. The first committee, headed by the home secretary, Delhi administration was to "ascertain the death toll in the riots" The second committee, by Justice Dalip Kapoor and Kusum Lata Mittal, was to enquire into "delinquencies and good conduct of police" and the third committee, by Justice M L Jain and A K Banarjee, a former IPS officer, was to "recommend the registration of cases where necessary and to monitor the investigation thereof" in all riot related cases.\(^{35}\)

After the submission of the reports by these Committees inquiring into the specific aspects of the riots, there was a wide spread demand particularly from the Sikh community for an inquiry into several aspects of violence, abuse of authority, remissness and apathy of law enforcement agencies and those who were in position to exercise control over them, excesses

\(^{33}\) ibid
\(^{34}\) Op. Cit 103
committed and action taken in the wake of communal riots.\textsuperscript{36} By the time the Nanavati Commission was appointed in 2000, number of issues related to anti-Sikh riots were already ascertained and there were cases filed in courts against some of the perpetrators both political leaders and police officials on the basis of credible evidence found of their involvement in instigating the mob to attack the Sikhs. It was in this backdrop that the demand for another commission of inquiry on anti-Sikh riots was voiced.

The question remains, what was the need to appoint a fresh inquiry into the anti-Sikh riots after almost two decades of the riots? While, the Rangannath Commission failed to restore the public trust, the appointment of several committees based on its recommendations really set the pace for the appointment of the Nanavati Commission. The change in administration with the National Democratic Alliance (NDA) led by BJP came to power in 1998, proved an important change in favor of establishing the Nanavati Commission but more importantly there was also consensus within the Congress Party for the appointment of an independent commission to inquire into the anti-Sikh riots.\textsuperscript{37} Dr. Manmohan Singh, the Congress Member of Parliament in the Rajya Sabha spoke of this consensus in a debate on inquiry into anti-Sikh riots.\textsuperscript{38} There were a set of people comprising of lawyers and retired civil servants who voiced their favor of appointment of such a commission. The NDA government in lieu of these demands decided to appoint a commission of inquiry under the Chairmanship of Justice Nanavati, a retired judge of the Supreme Court and the government issued a notification to that effect on 8 May 2000.\textsuperscript{39} The decision to appoint a commission of Inquiry to inquire into the anti-Sikh riots was taken by the National Democratic Alliance Government in its Cabinet meeting on 12 January 2000.\textsuperscript{40} While, the appointment of this commission was not a process adopted through the parliament, in the subsequent paragraphs it would be discussed that the appointment was a result of consensus from all political parties.

\textsuperscript{38} Rajya Sabha Debates, 12 December 1999.
\textsuperscript{40} “Cabinet nod for fresh probe into anti-Sikh riots,” \textit{The Hindu}, 13 January 2000
Speculative reports emerged on the appointment of the Nanavati Commission and that the commission was appointed by the National Democratic Alliance to gain political mileage out of the issue as it could corner the Congress. This was denied by the NDA’s Union Parliamentary Minister, Mr. Pramod Mahajan and he suggested that the decision was backed by the need to re-examine the involvement of agencies of the State in the anti-Sikh riots. The NDA government certainly facilitated the appointment of another commission of inquiry as the Carnage Justice Committee representing the victims of the riots accepted that it was difficult for the appointment of another commission on anti-Sikh riots had the Congress been in power but the important factor to note was that there was consensus even within the Congress in favor of a judicial commission around that time. The same Congress which was reluctant to appoint the Rangannath Mishra Commission soon after the riots, was quite willing to endorse the NDA’s decision to appoint another commission of inquiry after a decade had passed since the riots had occurred. All these factors cumulatively made possible the appointment of the Nanavati commission of inquiry to investigate matters related to anti-Sikh riots. More significantly, the suggestion for the appointment of a judicial inquiry commission came from within the Sikh community suggesting their willingness to participate in the proceedings of a judicial commission.

These factors indicate the space that democracy provides to address certain wrongs committed against a particular community with strong indications of involvement of political parties and state agencies in the attacks. It is democratic politics which made the NDA government address the demand from the Sikh community for an inquiry commission and the same compulsions of democracy made the Congress arrive at a consensus for providing support to the appointment of an independent judicial commission. For instance, one cannot ignore the fact that an important ally of the NDA government around this time was the Akali Dal whose vote share helped the NDA to form the government not just in Delhi but also in the Legislative Assembly in Punjab. Since the Akali Dal was an important political party which fielded the interest of the Sikh community, it was only logical for the NDA to

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accommodate the demand for a judicial inquiry into the anti-Sikh riots. Similarly, with the change in the balance of power where regional and other smaller parties were playing a significant role in politics at the Centre, it became difficult for the Congress to respond negatively to the appointment of a commission of inquiry on a riot case where there were possibilities of the party and party members getting implicated. Therefore, the demand for another judicial inquiry commission and the appointment of the Nanavati Commission as an answer to this demand need to be viewed within the constraints and opportunities that form an important part of democratic politics, particularly in an age of coalitional governments in India.

**Mandate of Nanavati Commission**

The Nanavati Commission was mandated to enquire into the causes and course of the criminal violence and riots targeting members of the Sikh community; the sequence of events leading to and all the facts relating to such violence and riots. The commission was also to find out whether these heinous crimes could have been averted and whether there were any lapses or dereliction of duty on the part of any of the responsible authorities and to enquire into the adequacy of the administrative measures taken to prevent and to deal with the violence and the riots. The commission in its report was expected to make recommendations on future measures to be adopted to avert such riots and also measures to meet the ends of justice for the victims of these riots.

It is important at this stage to distinguish between the terms of reference that were given to the Ranganath Mishra Commission with that of the Nanavati Commission. While the Ranganath Mishra Commission was to inquire into allegations that the violence was organized, Nanavati Commission was to inquire into the causes and course of the criminal violence and riots targeting members of the Sikh community in 1984. Both of them answered whether the riots were organized or not? If it were organized then who was responsible and whether the police played a role in either instigating the mob or were there cases of deliberate

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inaction in the way the police handled the overall situation? Both the commissions tried to
deal with the specific cases of allegations against certain members of the Congress party.

The key difference in the mandate of the Nanavati Commission is the inclusion of ‘justice’
for the victims of anti-Sikh riots. What was the impact of the inclusion of this term in the
overall findings of the commission and the nature of affidavits it received?

Procedural Aspects and Challenges before the Commission

The time that a commission takes in collecting evidence is crucial in determining the actual
tenure of the commission and most of the delays with regard to inquires occur in this phase.
The Nanavati Commission was almost predicted to undergo this problem since it was being
appointed for a riot that happened almost fifteen years prior to the appointment of the
commission. It meant that there would be delays in not just filling of affidavits from the
victim and other sources but also in producing government documents before the
commission.\(^{45}\) The evidence that a commission collects sets the pace for the inquiry as based
on the evidence the final findings and recommendations are determined. This is also the
phase when the commission’s activities and decisions are closely watched both by the
perpetrators and the victims and the procedure that a commission adopts in the inquiry
determines whether it would be able to assure all the parties a fair investigation of the events
related to the riot.

After the experience of the Rangannath Mishra Commission, it was not surprising that the
Nanavati Commission decided to make its proceedings public and called upon all the
interested parties to file their affidavits related to the events under investigation. The
proceedings were in the form of public hearings and the commission had the power to call
upon any public servant or elected officials for cross-examination. The Nanavati Commission
had no occasion to hold any proceeding \textit{in camera} and only some documents produced by
the Central government were kept in sealed covers.

The Carnage Justice Committee (earlier the Citizens’ Justice Committee) filed an application along with the Delhi Sikh Gurudwara Prabandhak Committee for participation in the proceedings of the Nanavati Commission to represent the riot victims. Later the Shiromani Akali Dal (Badal Group) was also allowed to represent the riot victims. The Carnage Justice Committee in its application stated that it was going to provide free legal aid to the victims and given its association with the proceedings of the previous commission of inquiry, it was to be allowed to participate in the proceedings of the present Commission of inquiry. The other participants in the proceedings were the Central government and the Police Department. K.K. Sud was the lawyer representing the Central government while the victims were represented by H.S.Phoolka (Senior Advocate), H.S.Bawa, Daljinder Singh, N.S.Bawa, Jaspal Singh, H.J.S. Ahluwalia and Kamna Vohra. On 16 October 2000, the Carnage Justice Committee as a representative of the victims stated in an application to the commission the causes and course of violence during the anti-Sikh riots and the measures to be adopted to meet the ends of Justice. In any investigative inquiry, it becomes important as to who is representing whom and this was particularly the case with the anti-Sikh riots. The Carnage Justice Committee’s continuous association with the victims of anti-Sikh riots and the fact that the Committee had some good lawyers ultimately proved to be an asset for the victim community in this case.

Like most inquiry commissions, Nanavati Commission also fixed a stipulated time period for affidavits to be filed by the government, the police forces, and victims of the riots, organizations or any concerned citizen who had witnessed the riots. A notification to this effect was given on 12 June 2000 inviting all groups, individuals, associations, institutions and organizations having knowledge directly or indirectly of facts and circumstances relating to the matters to file their affidavits and statements before the commission within six weeks of the notification. The commission received a request for extending the time for filing the affidavits by the Carnage Justice Committee citing the reason that the Courts were closed in the month of June and therefore it would not be possible for the people to file their affidavits

46 Application to Nanavati Commission filed by the Carnage Justice Committee for granting permission to participate in the proceedings of the commission. Dated 9/5/2000.
47 The Notification issued by the Justice Nanavati Commission of Inquiry on 12 June, 2000
in the month of June. Since the commission did not get a sufficient response and based on the request from the Carnage Justice Committee, the time for the same was extended till 30 September 2000. 2,557 affidavits were filed before the Nanavati Commission of Inquiry against 3,752 filed before the Rangannath Mishra Commission and 415 filed before the Jain Banerjee Commission of Inquiry into the anti-Sikh riots. Again, because of the lapse of time there were a number of victims who had died or migrated to places outside the city or country and could not file affidavits before the commission. This was one of the reasons why the commission received less number of affidavits as compared to the Rangannath Mishra commission. There were another set of victims who had never spoken before and were for the first time filling an affidavit and giving their evidence. There were many who never came forward particularly when it came to providing evidence against some of the high profile Congress leaders who were alleged to have played a role in instigating the mob. Whether it was Nanavati Commission or the Ranganath Mishra Commission, certain kinds of crimes never reached the proceedings of the inquiry. The anti-Sikh riots not only witnessed killings and murders but there were different types of assaults including rape that the women victim underwent during the three days when rioting occurred. While these women narrated such incidents before social workers and academics who have been involved in studying these riots, they never came forward before the commissions to narrate their experiences.

After the filing of affidavits, the Nanavati Commission began its proceedings by examining the witnesses of the 1984 anti-Sikh riots. The first witness was examined by the commission on 17 April 2001 and 118 witnesses were examined by the commission. The commission on its own and also on being requested by the parties issued summons to 33 persons out of which 21 appeared and gave evidence. The last evidence was recorded by the commission on 12 March 2004. It took almost three years for the commission to examine 118 witnesses. The commission issued notices under Section 8 B of the Commission of Inquiry Act to those

48 Application filed by the Carnage Justice Committee to the Nanavati Commission requesting the extension of date for filing affidavits to 15 July 2000.
50 Interview of Justice Nanavati published on 9 August 2005 in Times of India
51 Jyoti Grewal, Betrayed by the State: The Anti Sikh Pogrom of 1984, New Delhi: Penguin Books, 2007, p. 170 and 171. The senior advocate, H. S. Phoolka, provides an answer to the question posed by the author, why women victims never shared rape incidents in their affidavits before the two commissions appointed to investigate the anti-Sikh riots.
persons to be adversely affected by the findings to be recorded by the commission and such notices were issued to 141 persons with a view to enable them to give their explanations before the commission. 17 prominent people holding important positions during the riots were also issued summons by the commission. A number of such persons were not available for explanation as they had either died or retired from service. The last explanation was submitted before the commission on 24 November 2004. Clearly, the Nanavati Commission was not able to do much about this problem as this lacuna could not be addressed because of the lapse of so much of time.

Apart from these affidavits and statements filed before the commission, a large number of evidence were in the form of government documents, records of incidents during the time of riots, the First Information Reports recorded by the police which the commission demanded from the government and its different branches as and when it requires. On being requested by the different parties representing the victims, the Nanavati Commission directed the Central government, the Delhi government, the Police Department and the Army to produce relevant records which could throw light on the anti-Sikh riots of 1984. While these provide a factual picture, they do not tell the true story behind the problems that the Nanavati Commission faced in acquiring evidence on the matter. Since the Nanavati Commission was inquiring into riots that had occurred 16 years before the appointment of the commission, there were many records which were untraceable by the government and therefore could not be made available to it. As a result of the delay in providing the commission with the evidence demanded by it from the Home Ministry, it was able to examine only 15 witnesses in the first year of its appointment. The records which were requested to be produced by the Home Ministry consisted of the details of the communication between the Home Ministry on the one hand and the Ministry of Defence, the Army and the Lt. Governor of Delhi on the other, besides the minutes of the meetings Home Minister of the day P.V. Narasimha Rao had held from October 31, 1984 to November 5, 1984. The second application, dated February 26, 2001, requested the Ministry to furnish 95 files, which formed part of the report of the Justice Ranganath Mishra Commission of Inquiry. The third application, sent on March 26, 2001, sought copies of depositions made before the Justice Rangannath Mishra
Commission by the then Chief of the Army Staff, General A.S. Vaidya, Major General A.S. Jamwal and Major J.S. Sandhu.\(^{52}\)

The Home Ministry claimed that it was not able to locate a number of documents requested by the commission and the time lapse between the events and the inquiry was stated as the main reason for inability of the ministry to produce the documents. The difficulty in getting hold of documents relevant for the inquiry was one of the reasons that the commission kept requesting for repeated extensions from the Union Cabinet.\(^{53}\) The Ministry of Home Affairs finally submitted 679 affidavits out of 3083 submitted before the Rangannath Mishra Commission. There were some documents that the Ministry could not locate even after subsequent extensions and the commission was left with no choice but to carry on with its proceedings without these documents.

Based on these evidences and explanations, the Nanavati Commission arrived at some general conclusions and came out with its findings and recommendations in its report which consisted of two volumes. The first volume of the Report has four parts where the evidences have been divided according to the police stations in Delhi along with the other evidences that were given by eminent citizens in the country. The last part of the first volume deals with the assessment of evidence and recommendations for action. The second volume of the report has annexures comprising of a list of affidavits filed before the Nanavati, Rangannath and Jain-Banerjee Commissions of Inquiry. The entire report of the Nanavati Commission comprises of 340 pages including both the volumes.

**Role of the Carnage Justice Committee**

This section dwells in detail on the role played by the Carnage Justice Committee which represented the victims of the anti-Sikh riots before the Nanavati Commission. What difference did it make for the victims of the anti-Sikh riots to be represented by an independent body that was earlier called the Citizens’ Justice Committee and represented

\(^{52}\) Op. cit 45

\(^{53}\) In all the commission was given ten extensions and its term finally got over in January, 2005 when it submitted its report. See, “Report on 84 riots on January 31,” *Times of India*, 27 January, 2005
their case before the Mishra Commission as well? The name of the Citizens’ Justice Committee was changed to Carnage Justice Committee as it had taken logistic support from the Akali Dal which provided it a space at the Rakhabganj Gurudwara to operate from there and since it was only concerned with the victims of the 84 riots, it was only logical that its name suggested this. But, it was perhaps for the first time that an independent body was formed only for the purpose of representing the victims of the 84 riots. Prior to this, victims were represented by forums that already existed and most often in post-riot inquiries dealing with Hindu-Muslim violence, the two communities were represented by organization belonging to their respective communities or organizations that were formed for relief work after the riots. In this regard, the Carnage Justice committee’s representation of the victims of anti-Sikh riots was a first of its kind where the sole purpose of its formation was to seek justice for the victims of anti-Sikh riots. Initially, when the committee was formed to represent the victims in front of the Ranganath Mishra Commission, it was a group comprising of concerned citizens, most of whom were lawyers or those who had held positions of eminence in the government or the armed forces. With the solitary aim of providing justice to the victims of anti-Sikh riots, its role became important, right from deciding the kind of affidavits that would be filed before the Ranganath Mishra Commission and later before the Nanavati Commission, to the line of argument and cross examination that would be carried forward.54

In other words, playing the role of intermediary, the Carnage Justice Committee provided a certain direction to the case of the victims that was to be presented before the official commission. The direction was given to the extent that at one stage when the commission felt that the Mishra Commission was no longer functioning in favor of the victims and it was not a forum where justice could be sought for them then it decided to withdraw from the inquiry itself. The members of the committee decided not to participate in the proceedings of the inquiry but the affidavits filed with the aid of the Citizens’ Justice Committee were not withdrawn. But, the intermediary role played by this organization became an important stand point for the commission because any lack of trust shown by this group soon began to be

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54 This information is based on going over the arguments prepared by the Carnage Justice Committee to put forward their case before the Nanavati Commission. The information was collected as part of collecting primary data from the office of the Carnage Justice committee situated in Rakhabganj Gurudwara, New Delhi.
seen as that of the victims and defeated the very purpose of appointment of a judicial commission. This certainly had a bearing in the functioning of the Nanavati Commission much later which realized from the beginning that it had to maintain a certain level of trust with those representing the victims. The mode of inquiry chosen by the commission is just a case in point.

For a number of victims the appointment of a judicial commission meant that they could seek compensation for the crime that was committed against them. The filing of more than 3,000 affidavits which were just demands for compensation suggests this.\(^{55}\) But, to bring out the truth behind what happened, it was important to highlight those affidavits which spoke in detail about the crime, the perpetrators and the role played by the state and its agencies in protecting or not protecting the Sikhs. The Justice Committee to a large extent concentrated on these types of affidavits and tried to build the argument around them so that the case of the victims got strengthened before the commission.\(^{56}\) This was an important task given the nature of the crime committed and the perpetrators being important members of the political class; perhaps it could not have been left to the victims alone to file their respective affidavits directly to the commission.

The Carnage Justice Committee played a significant role in roping in a number of prominent members of the civil society to come forward and file their affidavits to relate the incidents on the anti-Sikh riots. This was essentially done to strengthen the case of the victims and suggest that the attacks had a planned nature and character to them.\(^{57}\) Therefore what came as evidence before the commission was rooted through the Carnage Justice Committee. This body representing the Sikh victims divided the affidavits into various categories depending on whether they were pleas for compensation or those which narrated incidents of police excesses and the involvement of Congress (I) leaders in instigating the mob against the Sikhs. Arguments were drawn out for each set of affidavits so that the cases could be represented in the best possible way before the commission. The argument being made here is that post-riot inquiries are not just about interpretation of evidence by the commission as

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56 Op. cit 37, p. 195
57 ibid, p. 195-196.
was suggested in the earlier chapter, but they are also about how the case of the victims is represented before the commission. The Justice committee’s decision to include prominent members of civil society as witnessed, their decision to give importance to both sets of affidavits involving compensatory requests and those against police behavior or descriptions of high profile perpetrators had an impact on the final findings of the Nanavati Commission. This course taken by the Justice committee was a well thought out method to approach the inquiry considering the limited success that it had in representing the case before the Rangannath Mishra Commission of inquiry. The circumstances of the inquiry, procedure adopted by the Nanavati Commission to conduct a public inquiry and the previous experience played a significant role in the way in which the Sikh victims of the 1984 riots were represented by the Carnage Justice Committee.

Evidence before the Commission: Findings and Conclusions

The appointment of Nanavati Commission questioned the possibility of arriving at the truth when the inquiry was being conducted after 16 years of riots. Whether the violence is a prolonged one between two communities or gross human rights violations committed by military, authoritarian or even democratic regime, under all these circumstances, the common question that has been raised is: how truth about past violent acts can be brought forward so that justice is sought to victims of such violence.\(^{58}\) How far is it possible to bring forward the truth behind violence that occurred several years before the appointment of an inquiry? This question is often raised in the context of Truth Commissions that are appointed to record past human rights abuses and come out with a comprehensive report. While examining the proceedings of the Nanavati Commission and recording of evidence, this issue seems to acquire a vital position.

There were two different trends that can be deciphered from the recording of evidence of the Nanavati Commission. The first trend was one of skepticism as this commission was at a disadvantageous position on several levels right from the outset because of huge lapse of

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time. The previous chapter argued that commissions have not always based their conclusions on the evidence that is brought before them but they have tried to reach new sets of evidence on their own initiative. The Nanavati Commission had limited scope to reach any evidence as a result of its own initiative. While the Nanavati Commission had at its disposal the evidence that was collected by the previous commission and committees on the riots, but again the large time gap resulted in a number of important records getting misplaced and these documents never reached the commission. There was also a second, less obvious, trend where some of the victims and officials found it easier to come forward and give their evidence after several years. While, appointing a commission under these circumstances provides the perpetrators the required time to prepare statements and justifications, it also makes the victims better equipped to narrate the violence.

Because of a series of independent and official investigations already held on the anti-Sikh riots, the Nanavati Commission had two sets of interpretations of the evidence available on anti-Sikh riots. The first set was based on the findings of the independent civil society investigations that suggested that the riots were organized, planned and were systematic attacks on the Sikh community and the Congress party and its members had played a proactive role in instigating the mob to indulge in violence. The second set was based on the findings of the Rangannath Mishra Commission which was of the view that the riots were spontaneous and the work of anti-social elements and the Congress party, as a whole, cannot be blamed for them, though some of its local level leaders were involved in instigating the mob. The existence of these set of findings had an impact on the functioning of the Nanavati Commission and more importantly, on the response the commission's report received.

Based on the mandate of the commission and what came as evidence before it, there were three major issues at stake with regard to finding the true facts on anti-Sikh riots. The first was about the nature of the riots itself, whether they were organized against the Sikh community or not? The second was with regard to the role of the Congress government in power and linked to that was the involvement of the Congress Party and some of its senior leaders during the riots. Did some of the Congress leaders instigate the mob to indulge in violence? Was the government passive in controlling the mob which was attacking the Sikh
Community? The third issue was in relation to the controversial nature and actions of the police force during the riots and whether they helped the mob to indulge in violence instead of providing security to the Sikhs who were under attack. While this was an important subject by the time the Nanavati Commission was appointed, the alleged role of the police inaction during the anti-Sikh riots was in a number of ways an officially acknowledged and established fact. The Rangannath Mishra Commission, Kusum Lata Committee, the Jain-Benerjee Panel and the Potti-Rosha Committee, all of them were unanimous about the police inaction in controlling law and order during the 1984 riots. But, the Nanavati Commission was expected to move a step further in recommending action to be taken against those police officers and personnel who were acknowledged to have played a partisan role and not helped in quelling the riots and therefore erred in performing their duties. Based on the evidence that came before it, the commission was expected to come out with findings and recommendations on these three key aspects. In all there was a wide range of expectations on the Nanavati Commission and an already informed opinion on the anti-Sikh riots which wanted the commission to take a particular direction in its report.

Other than these major issues, there were questions like, was the Army called at the right time or was there a delay in calling the same? Also, were there discrepancies in the recording of deaths during the time of riots? Before moving on to the findings of the commission on each of these, a description of the evidence that came before the commission would give an idea of the kind of matter the commission was handling. This is essentially to understand the way truth is told after the act of violence and also how the same event is interpreted in different ways and given different voices before the commission. Like all events of violence, even in this case there were two distinct voices that emerged in front of the Nanavati Commission and these were the voice of the victim and that of the perpetrator. But, some of the alleged perpetrators in this case were members of a prominent political party and occupied important cabinet position in the government and seen as responsible for maintaining the law and order. There was a third voice which belonged to prominent members of the civil society and their interpretation of the events that unfolded during 31 October -3 November, 1984.
Evidence on Police Action during the Riots

The behavior of the police has been a source of debate in communal riots which occurred in Bhiwandi and Jalgaon (1970), Jamshedpur (1979), Meerut (1990) and Bhagalpur (1989). Vibhuti Narain Rai, an IPS officer, in his report on police behaviour during communal riots concludes that the police function in a partisan manner during most riots and does not act as a neutral law enforcement agency. He says that perceptible discrimination is visible in the use of force, preventive arrests, enforcement of curfew, treatment of detained persons in the police stations, reporting of facts and investigation.59 The anti-Sikh riot witnessed a completely reluctant attitude from the police to protect the people, particularly the minorities from violence. What was perhaps new in the allegations against police behaviour in anti-Sikh is the apparent and deliberate action of the police to protect the perpetrators of riots and also an attempt to conceal the correct facts after the riots. The impression that the Police seems to have carried during the anti-Sikh riots in Delhi, Kanpur, Gaziabad and several other parts of the country was that the riots had the approval of the government and therefore they chose to take no action against the riotous mob. The next few paragraphs deal with the quality of evidence that reached the commission against police action during the riots.

The evidence that came before the commission against the police officers and their personnel was not just from the victims but also from some of the officers from within the police forces who acknowledged to a partisan role played by the forces during the riots. New evidence was produced when two retired Sikh policemen came forward and gave evidence on what the majority of the police forces were doing during the 1984 riots. Harbans Singh, a sub inspector in the Jamunapuri Police station during the riots said that he was not allowed to perform any duty and in the wireless room he could see that wherever there were communications of Sikhs defending themselves, the orders were to take action against the Sikhs.60 These revelations before the Nanavati Commission was coupled with entries in the wireless log books that further substantiated the evidence. Similarly, Hardian Singh Shergil,

60 Affidavit filed by Harbans Singh, witness number 61 on 29 August 2001 before the Nanavati Commission
who was ASI in CID, gave an account of the Geeta Colony police station which he visited and saw that a number of wireless messages of Sikhs being attacked were not recorded. These two policemen could come forward before the Nanavati Commission as they were no longer in the services. While an inquiry after so many years has a number of obstacles in gathering evidence, on some occasions, witnesses are comfortable in giving their evidence not immediately after the riot but at a much later stage. They feel less threatened and more confident after a few years to narrate what they witnessed during the riots. In other words to suggest that a post-riot inquiry after so many years is a futile exercise is to arrive at a hasty conclusion and is an argument that does not take into account how the evidence was recorded and why a particular aspect of the events which occur during the riots are difficult to record for any inquiry immediately after the riots.

One of the witnesses Ravinder Singh deposing before the Nanavati Commission said that the police had not only failed to protect the Sikhs but instead had booked false charges against some members of the community, forcibly entered their houses, seized their weapons and had beaten them up for no reason. Individual members of the civil society who were not directly affected by the riots came and deposed before the commission giving details of police inaction. The statement filed by Madhu Kishwar alleged that when the Lajpat Nagar Gurudwara was being attacked that the police stood there without trying to stop the mob from attacking the Gurudwara.

There were three types of allegations made against the police during the anti-Sikh riots a) the police were a mute spectator in many cases where the violence was happening. There was no response from the police when the victims went to lodge their complaint or demanded assistance. b) On number of occasions the police even went to the extent of assisting the rioters in attacking the Sikhs. c) There was a lot of discrepancy in the manner in which the FIR was recorded by the police. Most of these FIRs were manipulated or they lacked vital

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62 “Police was biased against Sikhs in 1984: Witness,” Times of India, 4 February 2002.
63 Statement made by Ms. Madhu Kishwar as witness No. 111 before the commission on 6 February 2002.
information about the incident and this subsequently has a bearing on the number of deaths officially acknowledged.

Other than allegations against the police behavior in general, there were specific aspersions caste against particular police officers for their questionable role during the 1984 riots. Writer Kushwant Singh in his affidavit mentioned about the police looting many Sikh shops in Khan Market area instead of protecting them. In his affidavit, Major N.S. Phull has named a DCP as an accomplice in registering a false case against him. Similarly, the statement made by Jasbir Singh, witness no. 158, there were allegations made against the complicity of ACP, H.C.Jatav for his complicity during the riots. In his affidavit, Jasbir Singh said, “A mob had come near my uncle’s house and they were looting shops. We, some Sikhs, had caught 4 or 5 persons and handed over them to the police officer whose name I subsequently came to know was Mr. H.C. Jatav. The police had allowed those persons to go away after some time and they had also gone away from that place telling us that we should defend ourselves.”

Not a single victim had stated in their affidavit that they had received any help from the police while they were being looted and attacked by the mob. On 11 July 2001, a 72 year old survivor of the violence, Asha Singh deposed before the commission that he saw “the police helping the rioters and they did not come to the rescue of any of the Sikh families in the area (Karol Bagh).” There were no policemen to be seen in the congested colonies of Tirlokpuri or Mayur Vihar where the violence had been savage over the last 24 hours. The few that were posted along the main national highway, Vikas Marg, where three bodies were burning refused to see them.

While, these evidences came directly from the witnesses, the First Information Reports and the records provided further proof of lapses by the police. The police according to many victims refused to take First Information Reports (FIR) in police stations after their houses

64 The testimony of Kushwant Singh before the Nanavati Commission
65 Affidavit No. 238 filed by Major N. S. Phull filed to the Nanavati Commission.
66 The Statement made by Jasbir Singh, witness no. 158 before the Nanavati Commission on 31 January
67 ibid
68 “Police abetted rioters, allege victims,” The Hindu, 12.07.2001
69 “Massacre in East Delhi,” The Telegraph, 3 November 1984
and shops were attacked by the mob. According to number of victims not only did the police refuse to take their FIR but falsely charged them for a crime in which they were involved. Some of the Sikhs had used their personal licensed guns or other weapons to defend themselves and the police according to them had not considered this and taken them under custody. Communal riot is a cognizable offence under the Criminal Procedures of the Indian legal system for which the First Information Report is an extremely useful piece of evidence.

An FIR initiates a police investigation and can lead to the arrest and prosecution of a criminal offender. Secondly, a FIR provides an early report of the commission of a criminal offence—before memories fail or stories are changes. The recording of crime incident is governed by Section 154 of the Criminal Procedure that authorizes a police officer to register a citizen complaint if it involves a criminal offence. This accords considerable powers to the subordinate officers who are often the first to investigate an incidence of violence and they decide whether a crime is serious enough to be registered at all. The registration of crimes is largely a function of discretionary judgments by the police officers. The situation is no different when crimes related to communal riots are reported in a police station. Moreover, the promotion and performance of an officer is dependent and evaluated on the basis of rise and fall of crime or violence rates.

The lapses in recording FIRs and unprofessional and casual investigation by the police led to a number of acquittals in cases related to violence during the anti-Sikh riots of 1984. In several cases the police even went ahead and filed an FIR against those Sikhs who defended themselves. The police records show that most of the arrests made by the police on 1 November 1984 were of Sikhs. The courts in a large number of judgments cited lapses in police investigation as the reason for acquittals. The FIRs in many cases did not mention the names of any of the rioters. The police officers did not want to convert their own information of the riots and their own knowledge of the burning of Sikh houses into an FIR. They waited

for eye witnesses and recorded vague reports.\textsuperscript{73} The number of preventive and substantive arrests made by the police during the time of riots was almost negligible in most of the important police station in Delhi. For example: Lajpat Nagar where a number of incidents occurred and two Gurudwaras were also burnt, no arrests were made in the four days of the riots.\textsuperscript{74}

The alleged role of the police in instigating the mob and their failure to discharge duty during the anti-Sikh riots was determined by the Kusum Lata Mittal Committee Report which was appointed on 23 February 1987.\textsuperscript{75} Based on the recommendations of the Mittal Committee, the Nanavati Commission directed the Home Ministry to provide details of action taken against the police officials found guilty by the Mittal Committee. The required information was provided by the Home department and the list sent to the commission indicated that out of the 52 police officials against whom charges were made, 13 had retired, 32 were exonerated from the charges based on the departmental inquiry against them, one of them was warned by the department and charges were withdrawn against two.\textsuperscript{76} The Nanavati Commission’s recommendations on the excesses by the police and their alleged complicity with rioters were based on the affidavits filed by the victims along with an overview of the action taken by the government against the police officials. The commission also summoned the policemen against whom allegations were made, to appear before the commission and give their statements.

\textsuperscript{73} State vs. Kishori and Shabnam (Karkardooma court, Delhi, S.C. No. 45/95, FIR No. 426/84). Also see, Vrinda Grover, “Role of Police in 1984 anti-Sikh Massacre, Delhi,” in Asghar Ali Engineer and Amarjit S. Narang (ed.) \textit{Minorities and Police in India}, New Delhi: Manohar, 2006, p.196. This chapter is a part of the affidavit filed by Vrinda Grover to the Nanavati Commission of Inquiry where she has submitted the decisions taken in 126 cases related to violence during Anti-Sikh riots, all of which indicated lapses by the police. A detailed study has also been done by Grover on the subject titled, \textit{Quest for Justice: 1984 Massacre of Sikh citizens in Delhi} as part of a project with Oxfam and is an unpublished work.

\textsuperscript{74} This information is based on a study of the arrests made by the major police stations in Delhi during the course of the riots. This information is present in the police log books and daily dairies in the police stations and was produced before the commission. The police stations included Karol Bagh, Patel Nagar, D.B.G. Road, Rajinder Nagar, Srinivasapuri, Lajpat Nagar, Delhi Cantt., R.K. Puram, Kalka ji, Naraina


\textsuperscript{76} List of the status of action taken against the police officials against whom action was recommended by Mittal Committee submitted to the Nanavati Commission by Home Department, Home Ministry, Dated 15 March 2002.
A Different Version of Events

The statements made by police officials provided different version where most of them tried to justify their actions during the course of anti-Sikh riots. Considering that Nanavati Commission was appointed sixteen years after the riots which it was to inquire into, the statements filed by the police officials were tediously prepared and rehearsed before they were presented before the commission. The Commissioner of Police Mr. S. C. Tandon in his statement before the commission explained that as soon as he heard about Mrs. Indira Gandhi’s assassination by her Sikh bodyguards, he had given directions to all the Deputy Commissioner’s of Police to be ready with the force and make arrangements for the maintenance of law and order in the city. He had met Maj. Gen Jamwal, General Officer Commanding, Delhi Area and requested him to be ready with the army units in case of a requirement. Gen. Jamwal had told him that the troops were not ready in Delhi but would arrive from the nearest place which was Meerut. Mr. Tandon also stated that 70 units of additional force were requested in aid of the police force to control the riots but only 19 units were provided. Mr. Tandon had also informed the Cabinet Secretary that the Army deployed in South Delhi was refusing to take action without orders from the civilian authorities. Mr. Tandon tried conveying through his statement that there was no lapse from the Police in controlling the mob and the problem was witnessed because of the lack of forces available and the non availability of the armed forces on time. He also suggested that there might have been some lapse at the lower levels and the department had decided to conduct an inquiry against those officials as soon as the situation had become normal in Delhi.77

Again cross examination which was used under severe strictures by the Rangannath Mishra Commission proved to be an important tool to understand what happened in the first three days of the riots when maximum Sikhs were killed. The Commissioner while being cross examined was not able to provide an appropriate answer for why he was underplaying the number of deaths of Sikhs in the first four days. He kept insisting that the deaths were only around 1000 while the actual toll in Delhi alone as was later claimed by the government in a

77 A written statement by the then Commissioner of Police S C Tandon, Delhi, before the Nanavati Commission of Inquiry dated 26 January 2002.
debate in the Rajya Sabha was around 2733. The lacunas in Police mishandling of the situation further became evident when a number of other police officials appeared before the commission and were unable to provide answers to cross examination by the lawyers representing the victims regarding the registering of FIRs and inaction by the police. For example: in a cross examination, Mahinder Singh who was the SHO of Mandir Marg Police Station stated that he did not come across any records showing that information was received by the police with respect to looting and burning of 23 shops and taxis before complaints were received by the owners of these shops. He was not able to produce the daily dairies which contained all the information regarding the action taken in a police station. He said that he did not have the photocopy of the Daily Dairy Register of 1.11.84 and he was not aware where the original was. He was not able to answer a number of questions regarding preventive measures, FIR recorded and other important events before the commission. Similar cross examination of Amrik Singh Bhullar, Assistant Commissioner of Police, Special Branch, New Delhi, revealed that he was not aware of any incident to have taken place on 31.10.84 and five people were arrested, who were all Sikhs. He did not have knowledge of where was the Daily Dairy Register of Patel Nagar Police Station. He said that the FIR recorded refers to the incidents in general without making particular references and they do not mention the places where the various incidents had taken place.

**The Commission on Police Action**

The Nanavati Commission in its report says that as a result of not recording separate FIRs and statements of witnesses and not investigating the cases properly, it became difficult for the commission to make recommendations against many of the persons who have been named by the witnesses to have participated and facilitated the riots. The commission has recommended the formation of an independent police force which is free from political influence and well equipped to take immediate and effective action. The commission in its findings has held that the Commissioner of Police, Mr. S.C. Tandon was responsible for the

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78 Statement of Mahinder Singh, SHO Mandir Marg during the riots, before the Nanavati Commission on 10 September 2001
79 Statement of Amrik Singh Bhullar, Police Station Patel Nagar, before the Nanavati Commission on 4 October 2001.
situation of law and order in Delhi during the time of riots and therefore the explanation from him that he was not properly informed by the his subordinates was not satisfactory. It was his duty and responsibility to be aware of what was going on in Delhi during those days and to take proper and prompt steps. He ought to have taken strict action against the defaulting officers immediately and ought to have given directions to be more assertive with crowds.

The commission holds the police forces responsible for their lapses in not filing First Information Reports and in case these reports had been filed in time, a large number of people could have been saved. According to the commission the police forces were either negligent in performance of their duties or that they had directly or indirectly helped the mobs in their violent attacks against the Sikhs. But, the commission ultimately suggests that it does not see the necessity of taking any action against them as actions were already initiated based on the reports of earlier commissions. Moreover, the commission is of the view that a number of police officials against whom allegations were made had already retired and therefore there was no point in the commission recommending action against such officials.

The inquiry into the conduct of police during the anti-Sikh riots reveals certain characteristics of a post-riot stage. The preparation to face an inquiry after the riots begins during the stage when the riots are occurring. The police were aware that they would be subject to inquiry immediately after the riots and therefore certain wireless messages were not recorded. Inquiries into Bhiwandi and Ahmedabad riots did not witness this aspect where some aspects of the riots were deliberately not recorded in an attempt to shield evidence. This aspect never came before the previous commission inquiring into the same riots because cross examination of key witnesses was not allowed and there were new sets of evidence that were produced before the Nanavati Commission. The evidence even when tampered proves an important asset while inquiring into police conduct during communal riots. Few number of FIR, arrests of members of a particular community or negligible number of arrests in police stations which witnessed rampant rioting have been used to decipher how the police conducted themselves during the riots. There are always records on how the police performed in maintaining law and order during a communal riot.
Evidence on the Involvement of Political Parties and the Government

The role of the Congress party and some of its leaders has time and again been the subject of speculation and every inquiry appointed on the anti-Sikh riots had to face the vital question related to the involvement Congress (I) members in instigating the riots. The Nanavati Commission also had to address the role of individual leaders of the Congress and the party in the violence against the Sikhs. There were already several views based both on facts and perception that existed on the involvement of the Congress and its leaders in the anti-Sikh riots. The civil society independent reports held the Congress (I) responsible for the riots and called it state sponsored. Contrary to this Rangannath Mishra Commission’s report concluded that some of the local level leaders of the Congress had participated in violence against the Sikhs which did not make the entire party responsible for the incidents. More importantly, all the important leaders of the Congress, Jagdish Tytler, Kamal Nath, HKL Bhagath and Sajjan Kumar according to the Rangannath Mishra Commission did not have any role in instigating the riots.

In the previous chapter it was argued that commissions of inquiry assign a role to themselves based on how the evidence is produced before the commission, the circumstances under which they are appointed and the arguments emerging during the proceedings. Some commissions realize that there is a potential danger of different groups diverting the inquiry into a particular matter and any conclusion of the commission on the matter could be attached different meanings. Since, there were already certain conclusions that existed with regard to the participation of prominent Congress (I) leaders in the anti-Sikh riots a majority of the commission’s proceedings were utilized by those representing the victims to produce witnesses and arguments against these leaders. While the evidence that came before the commission on the conduct of the police was full of facts and records that proved inaction and deliberate lapse in carrying out the responsibility of maintaining law and order, similar evidence did not emerge when it came to proving the involvement of prominent members of the Congress (I). Among the affidavits that were submitted only one or two affidavits that
were accounts of the involvement of Jagdish Tytler, HKL Bhagat and Sajjan Kumar during the riots.\(^80\)

Shammi Bai, in the affidavit filed before the Nanavati Commission said, “On 1.11.84 at about 10.00 or 11.00 PM when I reached the Chowk of Block No. 32, I saw white car parked there. Mr.H.K.L.Bhagat was sitting in that car. A small crowd of 10 to 15 persons near that car. Mr. H.K.L.Bhagat has enquired from them whether they had finished the job. When they replied that they had completed the job, Mr.Bhagat again asked them if any male child of Sikh was left alive, then those should be killed otherwise they would one day raise again. Four or five days thereafter Mr. Bhagat had come again to the camp at Farsh Bazar. He had come with food and cloths. We refused to accept the food and cloths as he was responsible for killing Sikhs. Some persons in the camp had thrown stones at him. He was thereafter saved by the police and left that place.”\(^81\)

Of these accounts, certain witnesses were filing their affidavits for the first time before a commission since the riots. There were allegations that witnesses were threatened by some of the leaders for giving evidence against them. Ganpat Singh, one of the witnesses of anti-Sikh riots, claimed in his statement before the Nanavati Commission, “I received summons from the Karkardooma Courts to appear as witness. I had gone to that court but I was threatened by Shri Ashok Ram Path, Mr.Kesri, Shri Sukh Lal Sud and Bira Gujjar. They had told me that if I give witness I will be killed. Dr. Ashok and Sukh Lal Sud belong to Congress Party. Because of the threat I did not give any evidence in the court and said that I had not seen anything. I had not lodged any report in the police also because of those the threat.”\(^82\)

Since, commissions cannot ensure witness protection evidence against prominent leaders in a post-riot inquiry is a formidable challenge. While victims spoke about the involvement of these leaders to members of civil society inquiries, when it came to filing affidavits on the involvement of the Congress (I) leaders before an official inquiry, only a handful of them

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80 Statement made by Mrs. Shammi Bai, witness No 37 before the Commission on 1 August 2001. Statement made by Witness No. 40, Mrs. Surinder Kaur on 2 August 2001. Similar statements were made by Witness No. 62, Gurmeet Singh 30 August 2001
81 The affidavit filed by witness no. 37, Shammi Bai before the Nanavati Commission of Inquiry on 1 August 2001.
82 Statement made by Ganpat Singh before the Nanavati Commission as witness No. 33 on 30 July 2001.
came forward. Though whatever is said in front of a judicial commission cannot be used as evidence in a court of law, nevertheless, the legality of filing affidavits and the atmosphere created during the judicial inquiry, makes it a serious affair and one of the reasons for victims not coming forward to give their evidence especially if it is against a high profile person. The commission concluded that Mr. Dharam Dass Shastri and Ashok Gupta played an active role in instigating the mob to indulge in violence against the Sikhs and on certain occasions even participated with the mob. But, the commission could not find conclusive evidence against Jagdish Tytler and therefore was of the view that he was “very probably involved in the riots. Lack of evidence or in the absence of better evidence the commission prompted the commission to make these observations with regard to the involvement of certain Congress (I) leaders.84

The Nanavati Commission said that there was credible evidence against Jagdish Tytler but for ascertaining the truth on the extent of his involvement, it was important to have another investigation.85 Also, considering the already existing views on the involvement of Congress (I) leaders, the commission was well aware that its conclusions on the subject would be perhaps the most anticipated aspect carrying certain expectations. Justice Nanavati had suggested in an interview on the inquiry that justice should be based on the evidence and should not be “motivated”.86 commissions are in danger of reaching motivated conclusions which already exist on the matter, a fact that did not escape Justice Nanavati. Both in the case of Reddy and Madon Commission conclusions regarding the involvement of leaders were based on the analysis of public speeches made by them before the riots and the Madon Commission went a step further by inquiring into the activities of the political parties against whom allegations were made. In the inquiry into anti-Sikh riots, the details of the public meetings and speeches made by the Congress (I) leaders just before the riots were not available. There were allegations that meetings were held by some of the leaders on 31 October 1984 but what transpired in the meetings was not available. Again, the Rangannath Mishra Commission did not probe into the activities of the Congress (I) workers, public

83 The Statement made by Mohan Singh before the commission on 31 July 2001. Similar evidence was given against Dr. Ashok Gupta by Witness No. 36 Parsa Singh on 1 August 2001.
85 “Evidence sufficient for further enquiry, says Nanavati,” The Hindu, 9 August 2005
86 Op. cit 50

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meeting conferred and the movements of the party workers just days before the riots began. For the Nanavati Commission to get this kind of information after sixteen years would have been a futile exercise. The conclusions that the Nanavati Commission made on the involvement of the Congress leaders were based on the quality of evidence which it received and unlike the Madon and Reddy Commission, this commission was appointed under different circumstances and therefore working under the limitation of probing events which occurred more than a decade back, it could not go beyond certain parameters to unearth new evidence. Clarifying his conclusion on two of the Congress leaders Jagdish Tytler and Sajjan Kumar, Justice Nanavati said, "While there was no reason to disbelieve two witnesses who deposed against Tytler, the commission did not find the evidence conclusive and therefore recommended further inquiry."  

Cause and Nature of the Riots

The Nanavati Commission is of the view that the riots in Delhi on October-November 1984 started because of the assassination of Mrs. Indira Gandhi by her Sikh bodyguards. It triggered a massive onslaught on the lives and properties of Sikhs in Delhi. The commission clearly states, "The cause for the events which had happened on 31.10.1984 can be stated to be the spontaneous reaction and anger of the public because their popular leader and Prime Minister of the country was killed." But, the cause for the attacks on Sikhs from 1 November 1984 had not been spontaneous. The commission further goes on to say that other forces had moved in to take advantage of the situation. "But for the backing and help of influential and resourceful persons, killing of Sikhs so swiftly and in large numbers could not have happened." The attacks were made in a systematic manner and without any fear of the Police; almost suggesting that the rioters were sure they would not be harmed while committing those heinous crimes and even thereafter. "Thus what had initially started as an angry outburst became an organized carnage." The commission concludes that the manner in which Police had taken away arms from the Sikhs with which they could have defended themselves, shows that it could not have been a spontaneous reaction of the mobs. The Rangannath Mishra Commission on the contrary had concluded that the 1984 riots were a

87 "ATR not to my satisfaction, says Nanavati" Tribune (Chandigarh Edition), 9 August 2005.
spontaneous reaction to the assassination of a popular leader and the Prime Minister of the country, Mrs. Indira Gandhi which soon transformed into riotous activity with the participation of anti-socials due to passivity of the Delhi police.

The Nanavati Commission's conclusions on the nature of the riots were based on the pattern of attacks on the Sikh community. The mobs came in DTC buses or vehicles and were armed with weapons and inflammable materials like kerosene and petrol. There was enough evidence, according to the commission, to show that meetings were held or the persons who could organize these attacks were contacted and given instructions to kill Sikhs and loot their houses and shops. The commission observes that the attacks were made in a systematic manner and without any fear of the authorities suggesting that they were assured of not being harmed while committing these acts of violence. The shops were identified, looted and then burnt in a systematic manner. The Carnage Justice Committee while making their case before the commission argued that there was a specific method followed while killing the Sikhs during the time of the riots irrespective of the area in which they were killed.

The riotous mob included both outsiders and local people of the area. Outsiders in large numbers could not have been brought by ordinary persons from the public and required an organized effort of influential people. Kuldip Singh Bhopal, a witness to the violence has stated before the Nanavati Commission that police from the Madhuban Training Centre near Karnal were sent to Delhi to create chaos, lawlessness and destruction. He further stated that he along with some other Sikhs managed to catch one of them and his identity card revealed that he belonged to the Training Centre.” The commission says that a large number of affidavits indicate that local Congress (I) leaders and workers had either incited or helped the mobs in attacking the Sikhs. Then the commission also suggests that the situation was exploited by the anti-social elements and the poorer sections of the society got an opportunity to loot and plunder the houses of Sikhs. Several writings on anti-Sikh riots also illustrate this point that most of the killings during the riots were in comparatively poorer areas and not so much in the affluent regions. The commission does not just explain the riots as state sponsored but is of the view that certain sections of the ruling Congress did participate in the
riots and the police in particular chose to be inactive which led to further killings by the riotous mob. But, there were other elements which took advantage of the situation and indulged in looting along with settling personal, economic and political scores. Considering the organized nature of the attacks on Sikhs, the commission analyzes the alleged role of the various individuals and the agencies of the State in giving shape to these attacks.

**Nanavati Commission on the Role of Government**

Post-riot commissions have to at some point address whether the government performed its task of protecting the life and property of its citizens to its utmost ability or were there deliberate lapses at the highest level of government offices. Commissions have not been uniform in their approach while addressing this question. In the absence of evidence against any deliberate attempt of a government to protect the rights of a particular community, some commissions decide to completely absolve the government machinery from any responsibility. These commissions strictly work within the paradigm of facts and evidence while making their conclusions. There are others as was seen in the case of Reddy Commission which in the absence of evidence do not hold the government guilty of a deliberate lapse but neither absolve them for failing to perform the task of protecting the lives and property of the citizens. Such commissions go beyond the scope of facts while making their conclusions as they do not view a judicial inquiry as performing the task of a criminal court where the verdict is clearly dependent on the evidence that is produced. The scope that these commissions assign to themselves is that of a body which performs the role of strengthening the principles of democratic governance. The Nanavati Commission can be viewed as falling in the former category of judicial commissions who strictly follow the evidence to arrive at any conclusion.

The evidence before the Nanavati Commission against the Home Ministry was given by eminent writers, journalists, serving and retired civil servants, judges and politicians perception of how the government was not performing its role during the days of the riots. There were affidavits stating the government’s neglect to persistent requests for protection of Sikhs which came from some of these members of civil society. Many of them indicated in
their statements about the lack of concern for the lives of the Sikhs which trickled down from the level of the Home Minister to a Police officer. In an affidavit filed by Patwant Singh, an eminent writer, he and a few Army officials had a conversation with the President on the situation in the city after the assassination of Mrs. Gandhi. He has stated that the President Giani Zail Singh was not able to give convincing answers regarding the protection of Sikhs and said that he was not in touch with the Home Minister. Further in a statement before the commission on 17 April 2001, Mr. Patwant Singh said that during his visit to the Home Minister’s residence, he noticed that there was no activity in his house to suggest that meetings were being conducted to overcome the crisis situation following the assassination of Mrs. Gandhi. Mr. I K Gujral gave his evidence before the commission where he stated that the Home Minister did not have vital details about the violence that was brewing in the city and when asked about this the Home Minister said that he was busy making arrangements for the foreign dignitaries who were likely to attend the funeral of Mrs. Gandhi. The government’s complacency came forward in a number of other statements made in front of the commission by prominent citizens of the country who had direct contact with the officials of the government during the time of riots. In his statement, Mr. Nayyar had stated that the commission needs to examine the nexus between the bureaucrats and politicians as the bureaucrats and policemen do not commit an act of omission on their own but on the behest of politicians. A number of affidavits were filed against the Prime Minister alleging that some of his statements indicated his approval of the killing of the Sikhs. Rajiv Gandhi’s controversial statements on the anti-Sikh riots and his statement in one of the public meetings after being elected the Prime Minister he declared that when a giant tree falls the earth is bound to tremble. Statements like these which he made after the riots and some like “We must teach them a lesson,” which he made during the riots were interpreted as the killings after the assassination were a natural outcome and need not be deplored or castigated. Some of the affidavits filed against Rajiv Gandhi also echoed similar allegations.

88 Affidavit No. 2148 filed by Mr. Patwant Sigh before the Nanavati Commission.
89 Statement of Mr. Patwant Singh before the G.T. Nanavati Commission on 17 April 2001.
But, these could not be viewed as concrete evidence that suggested that there was a deliberate lapse from the Home Minister, Narasimha Rao or the Prime Minister in protecting the Sikhs from the riots. The records of the messages passed between the Home Ministry and other branches of the government during the time of riots and the records of orders passed at different levels of the hierarchy in the government were not available to the commission and in the absence of such records the Nanavati Commission decided to absolve the Congress (I) government.

The Nanavati Commission said that “there was no delay or indifference at the level of Home Minister. Though some prominent members who had met the Home Minister during those days carried an impression that the Home Minister was not responsive and sensitive as demanded by the situation, it appears that they carried that impression because of the style of functioning of the Home Minister.”\(^{91}\) The commission held that there was a lapse at the level of Lt. Governor Mr. P.G. Gavai and the explanation given by him does not convince the commission of his ignorance regarding the events that were unfolding in Delhi.

Other than the fact that the commission went strictly by evidence, it did not consider that by failing to protect the lives of citizens who belonged to a particular community, the government lapsed in taking appropriate action and therefore should be held responsible whether such a lapse was deliberate or not. Previously, as was seen in the case of Reddy Commission, in the absence of concrete evidence, the commission had concluded that it was difficult to say if the Gujarat government had prior knowledge from intelligence sources on the occurrence of communal in the State and had failed to take action but a cursory reading of the situation in Ahmedabad should have alerted the police and the government of the deteriorating condition and anticipatory action was something that both failed to take. Therefore what commission’s understand by governance, accountability and functions of a government vis-à-vis its citizens has a bearing in what they have to say in their reports. For instance, Nanavati Commission concluded that the lapse was at the level of Lt. Governor but perhaps did not ask a vital question as to why the Home Ministry did not have itself informed on what was happening at the lower levels and whether the decisions being taken were in the

best interest of a community that was being targeted. To arrive at conclusions on allegations against individual members of the Government required concrete evidence and the Nanavati Commission did not have such evidence particularly against the Prime Minister and the Home Minister. It was based on facts and evidence that Justice Jaganmohan Reddy had concluded probing into the Nagarwala case that there was no evidence to suggest that the a considerable amount of money taken out of the State Bank of India (Parliament Street Branch) belonged to Mrs. Indira Gandhi as was alleged. There were a number of lacunas in the case and suspicions were there as the money was taken out mimicking her voice and great deal of questions were raised for which concrete answers were not available. But, based on certain concrete facts like Mrs. Gandhi did not have an account in the Branch, the commission concluded that there was no evidence to suggest that the money was Mrs. Gandhi’s and it had to arrive at this conclusion based on facts and not on suspicion and speculation. Therefore, the argument being made is that when it came to individual members facts and evidence have always been important but on occasions when the question has been of holding the government responsible for its inability to protect the lives and property of its citizens, commissions have not been uniform in their verdict and their conclusions have largely depended on what they understand from government responsibility during situations of riots.

Army’s Role during Anti-Sikh Riots

The government did not bring in the Army for three days when the violence was at its peak and the police forces were unable to curb the spread of violence. Even after the army was installed its role was confined to flag marches and did not come forward to save the Sikhs as they were waiting for orders from a civilian magistrate which never came. An essential ingredient for successful joint army - civilian administration operation is the setting up of a joint control room. During 1947 riots, when Lord Mountbatten was requested by Jawaharlal Nehru to control the communal situation, the former set up a joint control room at

93 ibid
Rashtrapati Bhavan in order to coordinate the efforts of the civil administration and the armed forces. This precedent was quoted to Narasimha Rao - by an elderly resident of Delhi, who is well-versed in army operations. Yet from October 31 to November 4 (the peak period of the riots which according to old timers were reminiscent of the 1947 riots in Delhi) no effort was made to set up a joint control room. In his statement Mr. Kuldeep Nayyar, a leading journalist and Member of Parliament stated that he had a conversation with Lt. Gen. Jamwal after the riots and Gen. Jamwal clearly said that the army was purposely not called during the riots and they kept waiting for orders which never came. Statements by several police officials also revealed that there was no system of joint patrolling by the Army and the Police even after the deployment of the armed forces. There was a general confusion prevalent among the lower ranks of the police regarding who will direct the army and whether a duty officer was to accompany the army battalion during the flag marches to familiarize them with the places where the incidents of violence were occurring. Evidence brought before the commission revealed that the Army Commander in Delhi was more interested in receiving the foreign dignitaries than about the violent situation in the city.

The Army had also produced before the commission the relevant records with regard to the deployment of the armed forces and the subsequent steps taken to quell violence. The records and explanations produced by the army before the commission state that the troops were alerted 10.30 in the night of 31 October 1984 for Internal Security Scheme under the code name Operation SHANTI. The report by the Army suggests that Gen. Jamwal who was the General Officer Commanding, Delhi area had spoken to the Lt. Governor of Delhi and said that on 31 October 1984, the Army did not have sufficient forces to cover the entire area of Delhi but the most sensitive and affected regions could certainly be covered. The Lt. Governor had suggested that directions would be given to the army for deployment of its forces after a discussion with the Home Ministry but as per the report, the directions were delayed in spite of the armed forces being ready for action.
Justice as Interpreted by Nanavati Commission

The term 'justice' for the victims seems to have been deliberately added to the terms of reference of the Nanavati Commission so that it addresses the need to provide adequate compensation to the victims of the anti-Sikh riots. Previous commissions of inquiry on communal disturbances have not interpreted the terms of reference given to them uniformly when it came to recommending compensations to the victims of communal disturbances.94 Some commissions have recommended compensations though their mandate clearly did not refer this aspect to them and there have been others that remained silent on the subject of compensation if the mandate did not expect them to do so. Even the record of justice in the form of relief and compensation for the victims of communal riots has not been very good. For most communal riots that have occurred and where a judicial inquiry has been appointed, the details of compensation and relief provided to victims is not available. Even for major incidents of communal riots like that of the Bhagalpur riots, there are no details available for what was the relief provided to the victims and the compensation given to them.95 Previous cases of compensation provided for the victims were miniscule compared to what was installed for many victims after the death of the main earning member of the family. For instance, the Ranganath Mishra Commission recommended Rupees 20,000 each to the kin of every deceased person in Delhi but only 10,000 each to the kin of deceased in Bokaro and Kanpur. The rehabilitation grant provided to 1386 victims of the Ranchi-Hatia riots which occurred in 1967 was Rupees 4,98,544.96

By including “justice” for the victims of anti-Sikh riots as part of the mandate, the government was perhaps trying to address this folly. The mention of “Justice” in the terms of reference of the Nanavati Commission of inquiry did have a significant impact on the final recommendations of the commission. It was clear that justice would be addressed in compensatory terms but the Carnage Justice Committee decided to argue for maximum

96 ibid
compensation for the victims and succeeded in getting the victims of anti-Sikh riots the maximum compensation ever recommended for victims of any communal riot in India.

Overall, the issues that came before the Nanavati Commission were not very different from those addressed by previous riot commissions. But, there was a difference in the approach that the commission adopted in addressing the issues related to the inquiry. There was also a change in the pattern of appointment of commissions of inquiry in this phase. While the allegations against the police and members of political parties still remained an important concern in a post-riot stage, what came out from the inquiry into anti-Sikh riots was the preparation to face the inquiry that happens both on the side of the victims, perpetrators and those in the administration against whom allegations are made. The professional and legal experience that was provided to the victims of the anti-Sikh riots was a new trend in the post-riots stage. Also, the civil society organizations emerged as a formidable force and took upon themselves to inquire into a riot in the absence of an official inquiry. There was a definite shift in what was anticipated from an inquiry and this could be gauged from the coverage of a post-riot inquiry in the media.

These reports in a number of ways form the opinion of the people and more importantly of the victims on the commission’s recommendations and findings. While the media reported almost all the proceedings of the Madon and Reddy Commission as well, but they were straightforward descriptions of what transpired in the commission’s sittings and there was very little room for any kind of negative reporting considering the fact that these commissions had been extremely open about their proceedings and made them completely open for a public inquiry. While, the same was true of the Nanavati and Srikrishna Commissions which did make their inquiries public, yet there were constant speculations on what the commissions would eventually arrive at going by the direction that the inquiry was taking. For instance, even before the Nanavati Commission submitted its report to the government there were reports that the Congress party had been indicted and that the then Home Minister Narasimha Rao has been held responsible for his inability to protect the Sikhs during the time of the riots. With the coming to age of the electronic media, there is virtually nothing that seems to escape which eventually provides space for different theories to emerge.
even before a commission officially hands over its report to the government. Therefore, judicial commissions that have been appointed after the 1980s, particularly on matters related to communal riots have had to undergo this constant scrutiny and deal with speculative reports that emerge on their inquiry and findings, something that the earlier commission never had to face. 97

Mumbai Riots and Srikrishna Commission of Inquiry

Facts about Mumbai riots and Establishment of the Commission

A number of cities and towns in North and West India witnessed communal violence after the demolition of the Babri Masjid in Ayodhya on 6 December 1992 and Bombay witnessed a similar account of communal riots, perhaps the worst violence that the city had ever witnessed in many years. The riots left more than 1000 persons dead, many more wounded and more than 150,000 persons displaced. 98 The riots that followed after the demolition of the Masjid happened from 6 December 1992 till 10th December 1992 and later for fifteen days from 6 to 20th January 1993. Questions were raised immediately after the riots on how the riots began, who was responsible for them and what was the administration doing? There was no consensus when it came to answering these questions. Some believed that riots started as a result of the murder of two Mathadi workers in Dongri and the Muslims were alleged to have killed these workers. The other theory was that these workers were killed in workers union rivalry which was later confirmed by the police. Yet another version suggested that the riots began in Bhendi Bazar, Null Bazar and Mohammad Ali Road as a result of rumors that the Muslim Dargah in Mahim had been demolished by the Hindus. 99 These different interpretations on how the riots began were not giving concrete answers

97 There were a number of articles published in various newspapers on the appointment and proceedings of the Nanavati Commission. Manoj Mitta, “The day India killed its own- Anti-Sikh riots of 1984,” Indian Express, 31 October, 2004. The Indian express published several such articles which were not just details on the proceedings but also a certain opinion about a judicial commission that was still inquiring into the matter. All these articles shaped the opinion of people on the commission.
further giving rise to speculation. Then there were so many questions with regard to Shiv Sena’s role during the riots and before the incidents of rioting. It was alleged that the Shiv Sena and its grassroots members were actively involved in spreading the word to Hindus that their life was threatened, their temples would be destroyed and that the Muslims had brought sophisticated weapons into the city. The Shiv Sena leader Madhukar Sarpoddar was arrested during the riots by the Army for carrying a revolver when there was curfew situation in city.

There was also along with these speculations, at stake the image of the State as a protector of a certain social order and guarantor of justice which was constantly being questioned after the riots in Bombay. Given these different theories circulating and the necessity to restore the confidence of people on the State and its agencies, the Congress government in Maharashtra at the instance of the then Prime Minister, P. V. Narasimha Rao decided to appoint a one man Commission of Inquiry headed Justice Srikrishna on 25 January 1993. It was not that the government of Maharashtra immediately decided to appoint a Commission of inquiry into the riots. There was considerable pressure from the government at the Center which was followed by human rights and public interest groups starting their own investigation into the riots. This investigation soon started revealing that the government had lapsed in performing the task of maintaining law and order and the police had not just lapsed but its actions during the riots were biased against a particular community.

Justice Srikrishna was nominated by the Chief Justice of the High Court of Maharashtra and appointed by the Congress government in Maharashtra to head the Commission of Inquiry after three other high court judges turned down the offer. The refusal by three sitting judges of the Bombay High Court to head a Commission of Inquiry raised questions on whether sitting judges should be considered at all to inquire into such matters of public importance. Judges have been reluctant to take up the responsibility of judicial commissions

as often commissions are dragged into matters that undermine the stature of the judge and the institution of the commission of inquiry.\textsuperscript{104} After the Srikrishna Commission, sitting judges have not been appointed to head judicial commissions and a detailed understanding of the challenges faced by this commission later in the chapter would explain why sitting judges were not spared since then. The Srkrishna Commission submitted a report in 1998, five years after it was appointed and it took the commission 526 sittings, 10 extensions to come out with an 800 page report that has been divided in two volumes. The commission examined more than 500 witnesses over 470 days between April 1993 and August 1997.\textsuperscript{105}

**Mandate of the Commission**

The commission was mandated to investigate the circumstances, events and immediate causes of the two phases of communal riots which occurred in Bombay Police Commissionerate area. The commission was also required to inquire into the alleged role of any individual or group of individuals or any other organization in the events which occurred in Bombay during that time. The adequacy of the preventive measures and steps taken in controlling the riots along with the police firing incidents were a subject of inquiry by the commission. It was expected to recommend long and short term measures required to be taken by the administration to avoid recurrence of such incidents, to secure communal harmony and also suggest improvements in law and order machinery. This mandate was not very different from the one given to several other post-riot judicial commissions, but, it is significant to understand the approach adopted by the Srikrishna Commission vis-à-vis its mandate.

There is a provision within the Commissions of Inquiry Act through which the government can change the mandate or expand it during the course of the inquiry. The initial mandate of the Srikrishna Commission was given by the Congress government which was in power during the appointment of the commission. The Bharatiya Janata Party, Shiv Sena and the


Hindu Ekjoot were of the view that the commission needs to investigate whether the bomb blasts in Bombay and later the riots were part of the same design and conspiracy which was hatched by the Muslims. The Lawyers’ Collective, Communist Party of India and Bar Association were of the view that there was nothing to suggest that the two were linked and therefore the main concern of the commission should be with the riots and a different investigation needs to be carried out on the blasts. Given this line of argument taken by the BJP and Shiv Sena, the mandate of the commission was expanded on 15 May 1995 when these two parties came to power in Maharashtra, by adding ‘the circumstances and the immediate cause of’ the bomb blasts, whether they had any ‘common link with’ with the riots, and whether ‘the circumstances, events and immediate causes’ of the riots ‘were part of the common design.’ The commission was half way through its proceedings and had already started recording evidence when this order was issued. Expanding the mandate under such a situation meant that the commission had to collect more evidence related to the new terms of reference and this was one of the reasons for the delay in the report. Not only did the commission’s work get delayed but later it was accused of concentrating more on the riots than on the blasts. The expansion of the mandate when the commission was in the middle of recording evidence and had already covered a lot of ground created problems during the inquiry and at a later stage once the report was made public. This mandate provided was also exploited at a later stage for accusing that the commission was unfair in its treatment to the terms of reference and the entire inquiry. The change in the mandate and the time in which it was made changed the course of the inquiry and had further consequences when the findings of the commission were debated in the State Legislative Assembly.

Response to Appointment of Srikrishna Commission

The first sign of the State government and the police getting prepared for an inquiry was visible when the Maharashtra government transferred the Police Commissioner Shrikant Bapat and in his place A.S. Samra was brought in as the Police Commissioner. This transfer

108 Radha Basu, “Srikrishna Panel focused more on riots than blasts,” Times of India, 7 July 1997
was made with an intention of sending across a certain message as Samra was a Sikh and belonged to the minority community which the government felt might work in reinstating the confidence of the people on the police force. This move was in anticipation that the police force would be held responsible for mishandling the riots. This eventually resulted in many of the police officers in command of police stations preparing lengthy affidavits explaining their actions to the commission. The defense for their actions began to be prepared by all the policemen who were involved in different capacities during the riots.

Post-riot inquiries produce different types of responses from the State agencies, the victims and the civil society organizations. The appointment of the commission in the early days was viewed as just another way through which the government wanted sometime and that subsequently the commission would not get any cooperation from the government to make a smooth inquiry into the riots. But, the initial response from the state government irrespective of popular perception was positive where the required support and resources for an inquiry was provided to the commission. The space required for the inquiry was provided along with cooperation from the police to furnish the documents that were requested by the commission. The commission began its work on time and even the proceedings started on time without any hindrance. It was after the BJP-Shiv Sena combined came to power that the relationship between the government and the commission became strained to the extent that Justice Srikrishna never personally submitted the report to the State Home Minister but sent his Secretary to do this job.

The next section on the proceedings of the commission and the challenges before it would reflect on this aspect in detail by arguing that when the evidence before a judicial commission is poised for apportioning responsibility for the riots on a political party that occupies a central position in the government then the chances of conducting a fair and neutral inquiry is threatened. This is essentially because the vital distinction between the perpetrators of law and order and those who protect them shrinks and the boundary between the two seems to get blurred. Under such circumstances what are the chances that a post-riot

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110 Jyoti Punwani, "Will Truth Prevail?" The Hindu, 23 February 1998

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judicial inquiry would survive and conduct and free and fair inquiry is what the next section probes into. How did the judicial commission respond to hostile circumstances created by the state government?

Also, of importance is the relationship between the civil society organizations and a post-riot judicial commission. Since the anti-Sikh riots the civil society inquiry reports on communal riots have had a detrimental role in garnering public perception on the riots. While, post-riots civil society organizations have been known to conduct their own independent inquiry in the past, their inquiries and findings did not have a considerable impact on the proceedings of the official commission. But, this seemed to change since the anti-Sikh riots and acquired a new dimension during the inquiry into Bombay riots. In this scenario, how does a commission interact with these organizations during the course of the inquiry becomes importance in giving the commission the required acceptance by those affected by the riots. The next section in bringing out the challenges before the Srikrishna Commission describes in detail the different facets of the response that the commission received from the civil society and vice versa.

**Srikrishna Commission: Proceedings and Challenges**

The Srikrishna Commission also decided to have a public inquiry and issued public notices on 15 February 1993 calling upon all persons having knowledge about the facts touching the terms of reference to come forth and file affidavits before the commission. The commission also called upon the government and the Police to file detailed affidavits which described their perspective.

The initial challenge before the commission was to get a response for the public notices and in the initial days the victims of the riots hardly came forward to file affidavits before the commission as the victims were not ready to speak before an official commission. Contrary to this, the Indian People’s Human Rights Commission (IPHRC) announced the setting up of a People’s Tribunal comprising of Justice S.N Daud and Justice H. Suresh of the Bombay High Court to inquire into the Bombay riots and this Committee received by the end of
February, 1000 statements submitted by the people who had knowledge about the riots.\textsuperscript{111} The response of the people to the Citizens' Tribunal and the lack of confidence expressed in the official Commission of Inquiry, resulted in Justice Srikrishna sending out show cause notices to Justice Daud and Justice Suresh as to why a complaint should not be lodged against them under Section 10A of the Commissions of Inquiry Act.\textsuperscript{112} Justice Srikrishna called the parallel inquiry as "officious and meddlesome."\textsuperscript{113} It opened a debate on whether citizens have a right to inquire into a matter of public importance once the government has already appointed a judicial commission. A judicial commission would take around five years to complete an inquiry and not allowing citizens to conduct an inquiry during that time would mean that the freedom of expression would remain curbed for so many years on an important matter.\textsuperscript{114}

The IPHRC upon receiving two notices from the Srikrishna Commission filed a writ petition and when it came to a hearing at the Bombay Bar Association, its President Iqbal Chagla pointed out that it would serve nobody's purpose if the official commission and the Citizens' Tribunal locked horns and an agreement there by was reached between the two. While the Citizens' Tribunal was able to get an overwhelming response from the victims, it could not examine police officers, the highest government officials and get documents produced. This was a privilege and power that only an official commission enjoyed and therefore it was only logical for both these different forms of inquiry to work in cooperation.\textsuperscript{115} After this incident the Bombay Bar Association decided to co-operate with the official commission and called upon all the people to make their representations before the Srikrishna Commission. A group of advocates was set up to run free legal aid and advice to riot victims as well as prepare their affidavits to be submitted to the commission.\textsuperscript{116} The Bombay Bar council grasped the

\textsuperscript{112} Section 10 A of the Commissions of Inquiry Act empowers a Commission of Inquiry to move to Court and authorizes penalty for acts calculated to bring the Commission or members thereof to disrepute.
\textsuperscript{113} Meena Baghel, "Justice above all," \textit{Indian Express}, 22 February 1997
\textsuperscript{115} "The Srikrishna Commission - Making the State Accountable," \textit{The Lawyers}, Vol. 8, No. 1August 1993, pp. 4-5
\textsuperscript{116} Op. cit 111
different tasks that these two bodies perform and suggested either cannot be replaced by the other.

The effort from both the commission and the Bombay Bar Council lawyers made it easier for getting a response particularly from the victims and the commission later decided to go through those filed before the Citizens' Tribunal as well. The civil society investigation had also organized a people’s tribunal presided over by two retired judges of the Bombay High Court Justice Daud and Justice Suresh. The tribunal held hearings in most of riot-affected areas of Bombay and collected first-hand accounts from the victims.117 Once the Srikrishna commission decided to use this information collected by the civil society organizations it helped the commission to reinforce its understanding of the riots during the course of the proceedings.

The time for filing of affidavits was restricted till 7 June 1993 and in all 2126 affidavits was filed before the commission, of which 2 were by Government, 549 by Police and 1575 by members of public.118 The commission began the recording of evidence from 29 June 1993 and decided to examine the incidents of riots and violence in 26 Police Stations where large number of serious incidents had occurred. The commission conducted its proceedings in public and it was like a public tribunal. A public inquiry as has been argued in this work make the persons in authority accountable for their actions as their actions come under public scrutiny and wide range of media reporting happens during the course of these proceedings.119

The Srikrishna Commission like other post-riot commissions faced a similar predicament where during the proceedings two contrasting positions emerged leading to the participants getting polarized into two different camps. Shiv Sena, BJP and the Hindu Ekjoot represented one camp and throughout the proceedings occupied a particular corner and the Lawyers

119 "The Srikrishna Commission – Making the State Accountable," The Lawyers, Vol. 8, No. 1 August 1993, pp. 4-5
Collective, the Communist Party of India and the All India Milli Council represented another camp and both these camps were arguing completely opposing views on the riots raising doubts on whether they were talking of the same set of events. This is to suggest that judicial commission’s proceedings are witness to completely opposing views and the Chairman of the commission has to give space to all the views whether it belongs to victim or to the perpetrator. In fact, the seating arrangements before the commission during the proceedings reflected the different positions of the various parties. The CPI, CPDR, the Bar Association and Lawyers’ Collective were seated on the left side of Justice Srikrishna while the BJP, Shiv Sena and Hindu Ekjoot were seated on his right.

Between 1993 and 1997 a number of parties and organizations were represented before the commission. These primarily included the Shiv Sena, BJP, the All India Milli Council, the Jamiyat-E-Ulema, the Communist Party of India, the Hindu Ekjoot and a variety of human rights associations, such as the Lawyers’ Collective and the Committee for the Protection of Human Rights. The BJP, Shiv Sena and Hindu Ekjoot said that the December riots were outbursts instigated by the Muslim leaders who misled the Muslims using the excuse of the demolition of the Babri Masjid. The police controlled the situations by beating back the Muslim mobs but since the Police were criticized for this behavior, it eventually resulted in the demoralization of the forces. Therefore when the Muslims undertook a systematic attack in January, the police refused to take action, as a result of which the Hindu masses had to take the situation under their control. The riots were thus a result of logical behavior of the Muslim fanatic teaching and preaching of their religion. The CPI, the Bar Association, Lawyers’ Collective on the other hand explained before the commission that the riots were a result of the State and police forces joining hands with the fascist forces like the BJP and the Shiv Sena. Vicious rumors were allowed to circulate by the State against the Muslims creating an atmosphere which could be exploited by those who engineered the riots. The challenge before the Srikrishna Commission was to ensure that both the camps received equal opportunity to represent their views and that their opposing claims about the different understanding of riots was substantiated with evidence.

120 Op. cit 106
121 ibid
122 ibid
In a post-riot situation, a number of allegations and claims are made by people who have knowledge about the incidents which occurred during the riots. Of the different claims that are made on the riots, there are some which shed light on the decisions taken by the government and what transpired in the government circles during the days of the riots providing an insight into what the key members of the government were giving priority to while making their decisions. Such claims as was seen in the case of the proceedings of anti-Sikh inquiry come from prominent members of the civil society who had previously occupied important positions and moved in the circles of power. While such information is always helpful as it provides a new insight into the riots, it also sometimes leads to false accusations and allegations. For instance, Justice Srikrishna summoned Mr. J.B. D'Souza, the former Municipal Commissioner of Bombay based on his claim in one of the newspapers articles that Mr. Ratan Tata who met the Chief Minister Mr. Suddhakar Rao Naik had asked the CM to arrest Mr. Bal Thakheray because of the Shiv Sena’s involvement in the riots. To this, Mr. Naik had responded that the city would be in flames if Mr. Thakeray was arrested and he instead suggested Mr. Tata and Mr. Keshub Mahindra to meet Mr. Thakeray and use his influence to stop the riots. This claim was rejected by Mr. Tata in his written statement to the commission.123

Two issues emerge from this part of the proceedings of the inquiry. One, that in this case the judicial commission did not just depend on the evidence that was produced before it in the form of affidavits but went beyond to summon witnesses if it thought that there was some substance in a particular claim that was being made and that summoning the witness before the commission would either bring a new insight or the least it would do is to falsify the claim. The challenge before the commission is to decide whom it should summon and whom it does not require to summon for further evidence as different claims and allegations keep featuring after the communal riots. The second issue that emerged from this part of the proceeding gave a negative color to the deposition and summoning of Mr. D'Souza as it provided an opportunity to certain organizations to argue over the political orientation of the

witness and therefore make the proceedings digress from the real purpose.\textsuperscript{124} A number of questions were asked by the Shiv Sena counsel to Mr. D'Souza that had nothing to do with the key issues related to the riots and it meant that a considerable time of the inquiry was wasted. The involvement of so many prominent citizens resulted in wide media coverage and reportage of these particular sessions of the commission, giving it a political color. What course that the decision of a judicial commission to summon a certain witness would take is something that the Chairman of the commission also cannot predict. While such decisions sometimes provide scope for criticism against a judicial commission, they are often a method of trial and error applied by the commission that has look for different sets of evidence to arrive at the truth.

The wide range of interest in the deposition of important members of the civil society also provided space for negative reporting on the proceedings and the manner in which the commission was conducting the inquiry. One such negative report came in the form of the Amnesty International that was sharply critical of the commission and its functioning. The statement of Amnesty was based on its attendance of some of the sessions of the Srikrishna Commission. The Amnesty in its report recorded that the commission expressed strong opinion in favor of prosecution of certain officers and rarely interfered with the lengthy and irrelevant cross examination. Moreover, the commission was unaided by experts or investigative teams and the slow process of the commission would result in delaying its report by three to four years.\textsuperscript{125} The Amnesty Report also stated that the commission was a cover up and it gave the State and its agencies an excuse not to proceed against individual policemen alleged to have taken no action against the riotous mob.

Justice Srikrishna followed by this report offered to resign and stated that the commissions proceedings in no way stopped the State in taking action against the police officers or other administrative officials against whom allegations were made during the riots.\textsuperscript{126} Contrary to Amnesty's claim, the commission had also appointed experts and investigative Committees to examine the different aspects involved with the riots. It appointed, on June 24, 1993, a

\textsuperscript{124} ibid
\textsuperscript{125} Asghar Ali Engineer, "Amnesty and Bombay Riots,"\textit{ The Hindu}, 30 August 1994.
\textsuperscript{126} Iqbal Masud, "Amnesty Report on Bombay is a damning indictment,\textit{ Pioneer}, 20 August 1994
Committee of Assessors comprising senior and retired police officials to study the policing system in Mumbai which submitted a report on June 23, 1994. The commission appointed, on September 13, 1993, a Committee of Expert Assessors from the Tata Institute of Social Sciences to "study the political, socio-economic, demographic and other factors contributing to the riots." In between the proceedings of the commission, there was a request made by a group of citizens before Justice Srikrishna to come out with an interim report since the proceedings were taking a long time and the State Government was deferring from any legal action. But, this request was refused by Justice Srikrishna as even a decision for an interim report and a request for the same comes from the Government. The criticism and different expectations that come in the way require a mixture of tact, firmness and measured response from the commission. The chairman of a commission has to decide which kind of criticism needs a response as it can bring disrepute to the inquiry and question its fair and neutral character. More significantly, he needs to decide how to respond to such criticism so that it does not hamper the confidence of those participating in the inquiry.

A number of difficult and challenging situations emerged before the commission after the BJP-Shiv Sena coalition assumed power in Maharashtra in 1995 threatening the existence of the commission resulting in its temporary disbanding. Problems between the commission and the BJP-Shiv Sena coalition started from the beginning as there was deliberate delay and sometimes no response from the State government regarding the documents asked by the commission to be produced before it. After assumption of power the government also started talking about the futility of the probe. On 6 July 1993, six Sena leaders led by Mr. Manohar Joshi had demanded expansion of the scope of the inquiry to cover the bomb blasts in Bombay, on 12 March 1993. This argument made by the government was given a decisive platform when the commission was dissolved in January 1996 under Section 7 of the Commissions of Inquiry Act. The commission was dissolved on grounds of delay in the proceedings and its findings not being useful. The manner in which the commission was dissolved also suggests the lack of respect that the government had shown to this public institution raising several concerns related to the functioning of judicial commissions and

128 Kalpana Sharma, "Exacerbating the Wounds?," The Hindu, 22 November 1994.
their appointment. The commission had applied for an extension in December 1995 and till the last minute there was no response to this application by the government. Just a day before the commission’s term was to expire, Justice Srikrishna was informed by the Principal Secretary of the government that the commission would be disbanded ending the probe into the riots.\(^\text{130}\) The commission which was working with a team of four counsel and 21 members of the staff had already worked for 372 days and examined 402 witnesses including 160 policemen and 2119 affidavits had been filed before it. The response of Justice Srikrishna to this decision was justified when he said precious years of his judicial career had been wasted, including the public money and time to go with it.\(^\text{131}\)

After assuming office the Sena-BJP government had widened the terms of reference of the commission which now included an investigation of the reasons for the bomb blasts in March and the link between the riots and the blasts. Therefore when the same government dissolved the commission on the ground of delay in findings, it was only logical that it received widespread criticism for its action.\(^\text{132}\) When the inquiry was stalled, a senior leader of the Shiv Sena, Mr. Madhukar Sarpotdar was being cross examined by the commission at the time of its dissolution order. There was a lot of protest by the Shiv Sena on the summoning of Mr. Sarpotdar and its counsel making a case before the commission against his cross examination which was finally rejected.\(^\text{133}\) Mr. Sarpotdar, a Member of the State Legislative Assembly at the time of riots, was arrested for carrying arms. Justice Srikrishna had said that the change in government had somewhat slowed down the pace of the commission’s work. In an interview with Blitz (Bombay), Justice Srikrishna said, “Had the commission gone about its work uninterruptedly, it would have finished its work by now. If anything, four months of painstaking work have gone waste.”\(^\text{134}\)

Not only did the dissolution of the commission by the Maharashtra government receive widespread criticism and protest but two writ petitions were filed in the Bombay High Court

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\(^\text{131}\) ibid


\(^\text{134}\) T. N. Ragu Natha, “Face to Face with Justice B.N.Srikrishna, Presiding Judge, Srikrishna Commission,” Blitz (Bombay), 15 January 1996
seeking to revive the commission. The petitions were filed by the CPI, the Bombay Bar Association and several Human Rights Organizations. The Bombay High Court Division Bench headed by Chief Justice Shah, in its ruling on May 30, 1996, castigated the Joshi government for dissolving the commission. It said that the government had not bothered to inform the High Court before disbanding the commission. The Court ruling said, “Considering the enormous work of examining a number of witnesses, the delay in submitting the commissions report would hardly be a basis for winding up the commission. It is to be noted that such commissions cannot function effectively without the cooperation of the government and concerned parties.”135 The commission was revived by the State Government on 28 May, 1996, two days before the High Court ruling on the advice of the former Prime Minister, Atal Behari Vajpayee.136 It was essentially civil society activism and the petition in the High Court which helped in the reconstitution of the commission giving another dimension to the unique association that this commission had with different civil society organizations. An association which began with the commission sending a notice to certain human rights groups for running a parallel inquiry eventually saw the two cooperating so that the official commission was able to get the required response. The next phase was when some strong criticism was levied on the commission by the Amnesty, a prominent civil society organization on its functioning. Again the two saw each other on opposite corners. But, the support that the commission received from the media and various human rights groups that rallied for its revival meant that both the commission and the pro active civil society groups were working for the single cause, which was unearthing the truth behind the riots in Mumbai.

The tussle between the commission and the Government did not end after the reconstitution of the commission. In fact, the commission faced constant difficulty in retrieving relevant documents from the government. The commission had directed the government to produce before it the Thackeray files. The files relate to the withdrawal of a number of cases against the Sena leader Bal Thackeray which had been registered for making communally inflammatory statements during the time of riots. The withdrawals were made after the

135 ibid
136 ibid

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Manohar Joshi government came to power without reference to any court or the judicial commission inquiring into the riots.\textsuperscript{137} After a protracted legal tussle the state government agreed to hand over the files of three or four cases to the commission.\textsuperscript{138} The government had claimed that the four prosecutions against Bal Thackeray were withdrawn as it contained privileged information that could not be made public. Justice Srikrishna on the basis of the observations of the Supreme Court in S.P. Gupta and others v/s the President of India and others, had sent an order to the government stating that even if the government felt that the documents were of that class which if made public would affect the security of the nation, it is for the Court or the commission to examine those documents and arrive at a decision of such a privilege.\textsuperscript{139} While the commission was issuing this order well within the legal parameters, this was a unique situation where previously judicial commission never had to resort to such measures to retrieve any document from the government.\textsuperscript{140}

Both in the case of Reddy Commission and the Nanavati Commission, the government was not able to make certain documents available because in the first case, they were sensitive documents and in the second case, the government was not able to locate them. In both cases the commission had to be content with the explanation as it could not have made the government share those documents. But, the circumstance under which the Srikrishna Commission was refused to share the Thackeray files was different and there was a visible confrontation going on between the commission and the government. By this time of the proceedings, it was quite clear that there was enough evidence already present to apportion responsibility on the Shiv Sena for the riots. Therefore, the government by not sharing these documents was trying to shield the Shiv Sena and the commission under such circumstances realized that it had to take an exceptional stand and through an order ensure that the relevant documents were produced before it. The struggle between the commission and the government suggested that the two did not share the same view on what should be the end product of the inquiry.

\textsuperscript{137} "Not Viable," Deccan Herald, 20 March 1997
\textsuperscript{139} AIR 1982, SC 149
\textsuperscript{140} It ought to be mentioned here that as per the Commissions of Inquiry Act, 1952, any proceeding before a Commission of inquiry is a judicial proceeding where the Commissions' functions like a civil court and can summon individuals and demand documents related to the subject under inquiry.
The recording of evidence by the commission came to an end on 4 July 1997, during the course of which the commission has recorded the evidence of 502 witnesses and took on record 2903 documents as Exhibits and 536 orders were passed. The Srikrishna Commission stages a new chapter in the post judicial riot inquiry where the challenges that this commission faced were not just related to important decisions and procedures adopted that make a difference in the direction that an inquiry takes as was witnessed by the other three commissions of this work, but once the Shiv Sena-BJP government was established, the challenge really was of everyday survival, one where the commission had to come out with new mechanisms to ensure that it can reach the evidence that could guide the inquiry towards correct facts.

The challenges before the Srikrishna Commission, its proceedings, the response of Justice Srikrishna to the different challenging situation brings to the forefront even more authoritatively that it became increasingly difficult for judicial commissions to function in a politically free environment. Even while taking decisions that would reiterate their neutrality to the subject under inquiry, the Srikrishna commission was constantly dragged within a political environment which demonstrated open hostility to the functioning of the commission.

What understanding of communal riots emerges from the report of this commission? What were the evidences based on which the commission made the conclusions on key elements of the riots? Both in the case of anti-Sikh riots and Bombay riots, allegations were made against the members of a single political party for participating in the riots and instigating the mob to take up violence. But, the final findings of the Srikrishna Commission are very different from those of the Nanavati Commission or previous judicial commission on anti-Sikh riots. The Srikrishna Commission not only found individual members of the Shiv Sena guilty of participating in the riots but the commission found the entire political party responsible for aggravating the situation in Bombay. What was it that made the Srikrishna Commission

141 Op. cit 107, p. 21
arrive at this conclusion? Was it to do with the fact that the Srikrishna Commission was fair and neutral in arriving at this conclusion while the Nanavati Commission was not? Or was their a difference in the evidence that came before these two commission or the circumstances under which they were appointed or the political environment within which they were functioning? More significantly, was there a difference in the way the Srikrishna Commission approached the inquiry into the involvement of a political party in fomenting riots to the way in which Nanavati Commission approached the same question? These are some of the questions that the next section would try and answer while dealing with key findings and recommendations of the Srikrishna Commission.

Findings of Srikrishna Commission

The report of the Srikrishna Commission was submitted to the Government of Maharashtra on 16 February 1998, five years after the appointment of the commission. The report was in two volumes; the first volume consisted of the general conclusions on the terms of reference directed to the commission and the second volume is a detailed account of the evidences divided on the basis of police stations where accounts of each police station is provided starting from the Agripada police station and ending with the V. P. police station. After a number of delays by the Shiv Sena – BJP government, the report along with the of the Government was tabled in Maharashtra Legislative Assembly five months after the submission by Justice Srikrishna. The report of the commission primarily looks into certain vital aspects of communal riots in general with particular reference to the riots in Mumbai which it was inquiring.

Before analyzing in detail some of the findings of the Srikrishna Commission which are of relevance to this study, it would be significant to highlight the key conclusions of the commission. The Srikrishna Commission concluded that the December 1992 riots caused by demolition of the Babri Masjid and aggravation Muslim sentiments by Hindus. The insensitive approach of the police further worsened the situation leading to spontaneous reaction of the leaderless Muslim mobs. On the contrary, the January 1993 riots were caused by communal Hindu organizations with the Shiv Sena leading organized attacks on the
Muslim life and property. The commission specifically named the Shiv Sena chief, Bal Thackeray to have commanded the Shiv Sainiks to attack the Muslims. The precautionary and preventive measures taken by the police according to the commission were inadequate and the built in bias of the police against the Muslims was clearly apparent in these riots. The commission recommended “strict action” against 32 officers, including R.D Tyagi, the joint police commissioner during the riots for delinquency.  

Causes and Circumstances of Mumbai Riots

The Srikrishna Commission appointed an expert committee from the Tata Institute of Social Sciences to understand to understand the social-political and economic reasons for the occurrence of communal riots in Bombay. The commission concluded that the immediate causes of the 1992 riots in Bombay were mainly the changing political discourse within the country since the 1980s. According to the commission the dominant discourse of public versus private during the early years of Parliamentary democracy was taken over by a communal discourse. Hindutva which was originally confined to the middle and upper caste, has now cut across the caste and linguistic divisions and the appeasement of Muslims has increasingly helped the acceptance of Hindutva among the Hindus. The insufficient political clout of the Muslims within Maharashtra contributed to the Hindutva idiom gaining ground. The immediate causes according to Justice Srikrishna for the riots of 6th December 1992, were the demolition of the Babri Masjid, the aggravation of Muslim sentiments by the Hindus with their celebration rallies and the insensitive and harsh approach of the police while handling the protesting mobs which initially were not violent. The commission does not give importance to the theory of class conflict and economic rivalries as reasons for the riots which occurred in 1992-93 in Bombay, though it feels that decline in employment opportunities in organized sector and growth of informal sector could have been one of the circumstances for the riots.

142 Op. cit 107, p.21
143 ibid, p.3
144 ibid, p. 21
The riots in January 1993 phase did not occur as a backlash of the Hindus because of the stabbing, Mathadi murders incidents and Radhabai Chawl incident as had been the popular belief and was argued by the counsel for Shiv Sena, Adhik Shirodkar. The commission concluded that in these cases the attacks were not organized against the Hindus and the majority of the victims just happened to be Hindus. The Counsel for the Shiv Sena had argued before the commission that the majority community violence in December was “retaliation” to news of violence by the minority community. But, later based on these three incidents, the communal passions of the Hindu mobs were instigated by writings in the print media in which ‘Saamna’ and ‘Navakal’ played a leading role. From 8 January, 1993, concludes the commission, that there was no doubt regarding the leading role played by the Shiv Sena and its members in organizing attacks against the Muslims under the guidance of the Shiv Sena pramukh, Bal Thackeray and Shakha pramukhs.

**Role of the Police during Mumbai Riots**

The Srikrishna Commission felt that the problem with the police handling of riot like situations is threefold. One lack of resources and proper guidelines makes them ill equipped to deal with these situations. Second there is certainly an internal bias within a particular section of the police against the Muslims, which gets reflected and manifested in different forms during the time of communal violence. Sometimes the policeman projects the bias by not giving a proper response to the call of a Muslim victim or at times it gets reflected in the form of inaction. The commission particularly felt that this bias was more at the junior level and it was evident in their treatment of the suspected Muslims and Muslim victims of riots. The bias of policemen was also seen in the active connivance of police constables with the rioting Hindu mobs on occasions, with their adopting the role of passive onlookers and their lack of enthusiasm in registering offences against Hindus. In the area under Ghatkopar police station, the commission observed, there were a number of cases where the Muslims were at the receiving end from the Police.

The third problem was more due to the orders given to the police from higher officials and even the politicians which were often confusing. This became evident with the government’s
decision in calling the army but not taking active help from the army when such use was imperative. Political dithering delayed a clear-cut order to the Commissioner of Police on using the Army for operational purpose. This order created a lot of confusion among the policemen and they didn’t know in a number of situations whether to fire or not to fire at the violent mobs. Even after it became apparent that the leaders of the Shiv Sena were active in inducing the mob, the police did not take any steps to arrest the leaders on the exaggerated assumption that if such leaders are arrested then the communal situation would further flare up. The other problem related to not only the police but with the administration in general related to the delay in handling of cases and the attitude of postponing the cases till their relevance was lost.

The inaction of the police became apparent to the commission during the proceedings when several of the police officers were cross examined including the Police Commissioner of Bombay during the time of riots, Shreekant Bapat. For example: Mr. Madhukar Ghorpode in charge of the Gandhinagar Police Station informed the commission during his disposition that within a radius of 6.6 sq km covered by his police station, 19 cases of arson, violence and looting affecting 80 to 85 premises were recorded. He admitted on being questioned that on three specific cases the police had not been able to make any arrests and in all cases of arson and looting the police could not reach the scene of crime in time. He conceded that although the Maha artis were conducted by the Shiv Sena in the area under the jurisdiction of the Gandhi Nagar Police Station, which were in violation of prohibitory orders, no action was taken against any of the organizers except one and even in that single case, charge sheet was not filed.

Similar accounts of ineffectiveness and deliberate inaction came forward in the cross examination of many police officials. When asked, why Mr. Bapat had not mentioned the Shiv Sena even once during his 175 page affidavit, he said, “In the investigation of criminal offences, the police were concerned only with the offence and not with the political affiliations.” At this point Justice Srikrishna asked Bapat as to why the issue of

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146 Radha Basu, “Srikrishna Panel focused more on the riots than blasts,” The Times of India, 7 July 1997
organizational involvement in the riots was omitted by him. There was no convincing answer which came from the former Commissioner of Bombay and the commission had enough evidence to sense a bias in the activities of the police against the minority community during the riots. Not only the Commissioner of Police, but many of the other junior level police officers in their affidavits had indicated they had to resort to firing in December because they were under attack by violent mobs belonging to the minority community who were armed with sophisticated weapons. But during the cross examination none of these officials could prove a single incident of private firing by anyone from the minority community.\textsuperscript{147}

Therefore the idea was to project the policemen as victims rather than as protectors of law and order before the commission. They were victims in the hands of the rioters who stoned the police vans and attacked the police and that the violence often broke out between the two communities after the police van was forced to leave the area.\textsuperscript{148} It was interesting how the police viewed themselves during times of communal riots and some of the affidavits were a reflection of this. Naturally, with this perception it was extremely difficult to expect that law and order could have been restored by the police and that they were capable of handling the situation. The Srikrishna Commission in its report relates to the nexus between the police and the politicians which often debars the policemen from exercising his duty efficiently without any bias during situations of communal rioting.

In one of the interviews to a newspaper, Justice Srikrishna said that some of the toughest moments while writing the report were related to the lack of information or wrong information recorded by the police. He said; "If the police does some fair documenting, that serves as a useful tool, and can be taken as the authentic account of what has happened. But if the protector himself is biased, then it becomes very difficult. You have to go for other witnesses. Now if a police document says X, but witnesses all say Y, and I know X is a doctored document, it becomes a difficult choice for me. When all the way from the CM to a

\textsuperscript{147} "Evidence before the Commission belies beliefs," Editorial, \textit{News Time}, 1 June 1996.

\textsuperscript{148} Op. cit 98
police constable, there is heavy bias. But what happened, and my observations are there, is in black and white for all to see."149

The unreliability in police records became apparent to the commission when there appeared differences in what was recorded and the eye witness accounts of some of the incidents of violence. In a number of cases the police refused to write down the information provided by the victims or manipulated the statement according to their convenience.150 Similar eyewitness accounts of the passivity of the police and in some cases even abetting with the rioters were made in all the police stations investigated by the commission. For example, in the Gamdevi Police station area there were nine Maha artis organized by the Shiv Sena but the Senior Police Inspector of the area when inquired by the commission did not want to accept that they were conducted by the Sena with the motive of instigating the masses. There were 86 incidents of violence against the Muslims in the area while only 18 were recorded and except for 2 cases, the police did not resort to firing during these attacks on the minorities.151

Based on the evidences and the documents recorded by the police, the Srikrishna Commission concluded that there was certainly passivity in the handling of the incidents of violence by the Police during the Bombay riots. The report recommended action against 32 police officers for their deliberate attempt to not discharge their duty during the time of riots. The recommendations of the Srikrishna Commission to improve the conditions of functioning of the city police were based on a study conducted by a Committee appointed by the commission to study and make recommendations to improve the efficacy of the police system. Most of the recommendations made by the Srikrishna Commission had to do with the day to day working environment of the administration. The commission felt that in order to make the policemen more accountable it was essential to have more strict and frequent inspection by the senior police officers to ensure that the discretion to register and investigate offences exercisable by the Station House Officer (SHO) is used strictly in accordance with

149 Seema Chisti, “Ensure no Govt can reject inconvenient report: Srikrishna,” Indian Express, 19 August 2007
150 Statement given by Sarwari Begum from BIT, Chawl No. 8 against the police. The Report of the Srikrishna Commission, Volume II, p. 3
151 Op. cit 107, p. 74
law and to safeguard the liberty of the citizens. The registration of offences appears to be almost arbitrary and based solely on the caprice of external influences on the Station Officer which gives a wrong picture to the Senior Officers affecting the nature of the policies they make. According to the commission this tendency needs to be strongly discouraged. The Police Control Room and their Records have to be maintained in a precise manner where information must be recorded with sufficient clarity as to: the name or indication of the spot where the incident took place, the date and time of the incident, the time at which the control operation started and ended and the nature of the operation in case of firing, the number of rounds fired and the number of casualties.152 This information would enable the blame to be pinned on the erring officers and avoid general tarring of the image of the entire system. The commission gives specific recommendations on the mode of operation during religious processions, conditions of work to be followed in police stations and the ways to reduce political interference in the police work during periods of riot. But, the judge is even more critical of the lack of commitment and moral outlook that he detects in leading police officers and many political figures. According to the commission a sense of duty towards the nation and an ethical view of life should be basis for action by the representatives of the State during the time of riots.

Role of the State Government and Political Parties

The Srikrishna Commission while inquiring into the Bombay riots deals specifically with cases of lapses from the State government and the police forces in handling the riots. The commission in its findings states that the riots in January were organized against the Muslims and the Shiv Sena had a significant role in organizing this. The commission dispelled the theory that riots were irrational excesses spontaneously committed equally by faceless Hindu and Muslim communities. While the commission named individual members of the Shiv Sena like Darpodar and even the Sena chief Bal Thackeray to have played a specific role in instigating and leading the mob, it does not stop with individual names and concludes that Shiv Sena as a political party was responsible for the January riots. How did the commission

152 Op. cit 107, p.102
arrive at this conclusion? Again, there was enough evidence for the commission to have arrived at this conclusion. Madhukar Sarpodar was arrested with weapons during the time of the riots by the Army and during the cross examination he defended the Shiv Sena’s participation as an attempt to retaliate against the Muslims and a way of self defense. There were eye witness accounts against the Sena leaders. The commission went through the articles written by Bal Thackeray in the Sena mouthpiece Saamana and these writings were highly inflammatory where the Hindus were asked to take up violence against the Muslims. As a political party, the Shiv Sena had organized number of Maha-artis in different temples and these were more than religious gatherings something which the police failed to wither understand or act upon. A number of members of the Shiv Sena did not have any hesitation in accepting that they had participated in the violence and it was a way of retaliation. Such evidence was sufficient in reaching a conclusion with regard to the participation of a particular political organization in the riots. The deliberate attempt by the government to not submit the Thackeray files which had all the registered cases against him during the riots and the government’s initiative to withdraw these cases on behalf of the police were all such indicative of the role that the Sena and its key members played during the riots.

The commission suggested that the Shiv Sena as a political party was responsible for the riots as its activities were clearly under those threatening situations which were stated in the ‘Guidelines to handle communal riots’ issued by the Maharashtra government. This position taken by the commission during the cross examination of the police gave rise to an important debate on whether crimes were committed by individuals or were political parties to which these individuals belonged can be held responsible. The police commissioner, A S Samra, who was appointed as the Commissioner of Mumbai during the time of riots tried to make a specific distinction between the individual members of the Shiv Sena who participated in the riots but refused to accept that according to legal parameters the entire party can be held responsible. He said that in the eyes of the police, individuals commit crime while political parties indulge in politics and therefore the police had acted according to this understanding of the situation.
Similarly, the police and the State’s agencies were not well equipped to handle these mobs. In a number of cases biases did seem to have played an important role in controlling mobs. There were enough provisions laid down under the current administrative set up which gave the police forces the power to tackle situations of communal riots. But, surprisingly according to the Srikrishna Commission these mechanisms were not followed and the commission talks at length on the lack of clarity among the top leadership while making decisions and implementing those decisions during communal riots. There was an inherent bias against the minority community within the police forces and this bias according to the Srikrishna Commission was at the junior levels and did not exist among the senior officials. With respect to providing justice to the victims the commission is of the view that any process of justice starts from the early stages when the First Information Report of the victim is registered. Therefore according to the commission right from this stage justice needs to be taken seriously and it would become more convenient to provide justice to the victims of riots if panchanamas, statement of witnesses, holding of identification parades are held with care and as important information for further investigation.

For the Srikrishna Commission there was a lapse at almost all the levels of administration during the riots in Bombay and it clearly holds the Congress government responsible for its inability to provide proper directions and call the Army during the initial stages of rioting. The government perhaps also interfered more than what was required with the activities of the police which ultimately led to the mishandling of a delicate situation. Indicting the Shiv Sena as the communal organization responsible for the riots in Bombay and submitting the report to the Shiv Sena-BJP government is a proof of the independent views held by Justice Srikrishna while inquiring into the 1992 riots.

The Srikrishna Commission’s critique of the state is not completely juridical in character but has a moralistic tone attached to it.\textsuperscript{153} For instance, the commission states, ‘Despite knowledge of the fact that the force had been infected by communal virus, no effective curative steps were taken over a large period of time as a result of which communal violence

\textsuperscript{153} This view is also voiced in Roma Chatterjee and Deepak Mehta’s, \textit{Living with Violence: An Anthropology of Events and Everyday Life}, London: Routledge, 2007, p. 44.
became chronic and its virulent symptoms showed up during the two riot periods.” In another instance the report of the commission says that a vicious communal violence in such a large scale should occur in the land of Gandhi, only goes on to suggest that the message of love and brotherhood preached by apostles is not internalized.\(^{154}\) Therefore the commission gave the view that the agencies of the State should not only act on the basis of a legal duty but a sense of moral and ethical duty if problems like communal violence are to be addressed.

**Deployment of Army during Mumbai Riots**

The Srikrishna Commission notes that the Chief Minister “lost four precious days” in issuing orders for the “effective use of Army for controlling the riots.”\(^{155}\) The Commission also felt that the Army was under used and deployed only for flag marches “when rioters were long past the stage of psychological fear.”\(^{156}\) There was no impact and rioters even became bold enough to attack the Army columns. The confusion with regard to the effective use of Army columns was not just within the rank and file of the police forces but even the Chief Minister’s deposition before the Commission confirms this confusion in the highest ranks of State administration.

While deposing before the commission, Sudhakarrao Naik attributed the non-utilization of Army columns for operational duties to resistance by the Army authorities until January 10, 1993. The commission says that the Chief Minister displayed ignorance about the appropriate authority for issuing orders to an Army unit called in aid of civil authority. The deposition of Sharad Pawar, who was Defence Minister at the time of the riots, throws an equally unflattering light on Sudhakarrao Naik’s understanding of the situation.

At a meeting at the Chief Minister’s residence on January 8 or 9, 1993, said Sharad Pawar, Sudhakarrao Naik made the point that his Government had already requisitioned the Army. Lt.-Gen. A.S. Kalkat, General Officer Commanding in Chief (GOC-in-C), said that the Army

\(^{154}\) Op. cit 107, p. 63
\(^{155}\) ibid, p. 41
\(^{156}\) ibid
units were willing to do the needful if a police officer familiar with the terrain accompanied each Army unit; and secondly, if a District Magistrate accompanied each Army column and gave written instructions. The commission blames the police, too, for failure to utilize the Army effectively, which it says led to an avoidable loss of life and limb and property. The police "overestimated their ability to control the... riots, or were reluctant to requisition the aid of Army to disperse unlawful assemblies," the report says.

Judicial Inquiry Commissions as viewed in the case of Nanavati and Srikrishna Commissions touch upon vital aspects related to communal riots. Most judicial inquiry commissions on riot related cases have specifically dealt with the problem of police behavior during the time of communal riots. Similarly, the complicity of State in violence against a particular community has also been raised by many commissions time and again. They have dealt with each aspect of communal riots and have made recommendations to deal with violence during riots. The difference perhaps is the level of independence that each commission is able to exercise during the course of its inquiry and the amount of political interference it faces in the appointment of its members, while deciding the scope of the commission and particularly when it is in the process of investigation of the incidents of violence.

From an investigation of the evidences that are made available to the two commissions, it is clear that the most important documents like First Information Report, the Log Books and the Daily Dairies either have inadequate information recorded by the police or their information is tampered with. Irrespective of the Home Ministries assurances that its intention was to provide all the information to the Nanavati Commission, the documents were delayed and some never reached the commission for whatever reasons stated by the Ministry. The Srikrishna Commission had to deal with an open confrontation with the Government of Maharashtra after the Sena-BJP alliance came to power.

Commissions of Inquiry arrive at conclusions and make recommendations based on the evidences which are present before them and in a situation where there is a deliberate attempt to tamper the evidence; it becomes very difficult for commissions to reach conclusions based on true facts. The second problem faced by perhaps both the commissions and in a
pronounced manner by the Srikrishna Commission was the refusal by the public to initially come forward and give their accounts before the two commissions. This reluctance as was stated above is primarily due to the fear of being threatened by those who had indulged in violence. Therefore the recording of evidence itself is a time taking process for the Commissions of Inquiry where confidence has to be instilled among the victims that their statements would not be leaked and a fair judgment would be provided. The judicial inquiry commissions are slowly being inducted within what Paul Brass calls the "institutionalized riot system" where commissions become instrumental in the construction and reconstruction of the truth which occurs after a communal violence within the country.

Based on the evidence which was made available to the Srikrishna Commission, it has come out with conclusions which clearly suggest that the Shiv Sena was the party which instigated the mobs and the role of its various leaders along with the Shiv Sena Pramukh, Bal Thackeray and various local party workers cannot be neglected while analyzing the riots in Bombay in 1992-1993. But, the Nanavati Commission on the basis of the evidence available chose to distinguish between the Congress party, its senior members, local level leaders and the government ruled by the Congress while making its final conclusions and recommendations. The Nanavati Commission blames the police for its inaction but unlike the Srikrishna Commission does not believe that the Police ultimately follow the orders and instructions of the government. The Nanavati Commission and the Ranganath Mishra Commission investigated the same riots and the evidences produced before them were almost similar but the conclusions at which both the commission arrived were completely different particularly with respect to the nature of violence during the anti-Sikh riots.

These differences in the recommendations and conclusions of the commissions are not only because of the facts presented before them but also because of who gets appointed to head these commissions of Inquiry. The political affiliations of Justice Ranganath became apparent and clear when after the inquiry on anti-Sikh riots he was appointed as the Chairman of National Human Rights Commission and later nominated as the Member of Rajya Sabha. This raises the question of accountability of the commissions themselves while investigating communal riots and other matters of public importance.
Similarly, there has been a constant debate on the status and authority of the report of an inquiry commission. The report is not only viewed as an expert's opinion on a matter of public interest, but is inevitably an authoritative piece of statement on the matter under scrutiny. But, the government at the same time is not compelled by law to accept the findings and implement the recommendations of the commission. Most often these commissions are not able to move away from the political compulsions as there is a constant threat of completely suspending the inquiry. The judicial inquiry commissions in India are important mechanisms for inquiring into State functioning during the time of communal riots and addressing issues of justice for the victims. But, often commissions become mechanisms to reassert the authority and retrieve "the myth of the State" without which perhaps no democratic government can function. The inquiry commissions are appointed with objectives and scope decided by the same government whose functions the commission has to probe into during the time of communal riots. Thus on number of occasions as in the case of Srikrishna Commission, terms of reference are added by the government only to delay the work of the commission.

Commissions witness different types of challenges based on the circumstances of their appointment, their relationship with the government which appoints them and prevalent political situation. What makes the individual post-riot inquiries different from one another is the approach that they adapt while making the inquiry and how they tackle the challenges which comes before them whether they are related to appointment, proceedings or with regard to getting a response from riot victims. The anti-Sikh riot and Mumbai riot inquiries witnessed on the one hand some of the most blatant attempts by government to subvert justice after the occurrence of large scale violence. On the other hand the judicial inquiries into these two riots were conducted alongside civil society inquiries whose reports were brought in the public domain to inform the people on the key aspects of communal riots. These civil society reports while bringing forth their conclusions on the riots ensured that there was already a pre conceived understanding on the riots before the judicial commission concluded its inquiry. This factor proved to have implications in both the official inquiry into both anti-Sikh and Mumbai riots. Also, with the active participation of some organizations in
the proceedings of official inquiries, what transpired during the proceedings was readily available in the public domain and this had both negative and positive impact on the manner in which the official inquiry was perceived.

The argument made in the second chapter that a combination of factors operate simultaneously for any judicial commission to be viewed as neutral and fair gets further reiterated in the last two chapters. How the appointment is made and for what reasons alongside who gets appointed is vital. But, what is more important is how the commission tackles the mandate, the procedure it adopts and how it tackles the various challenges during the proceedings are significant for any judicial commission to be seen as fair and neutral. Also, the circumstances to the appointment of each commission is different and after the appointment, how the commission understands this aspect and operates accordingly also becomes an important aspect in ensuring that the inquiry leads to restoring the confidence of the people. Another vital aspect of a post-riot stage is the response that a government gives to the report of the judicial commission. The final substantial chapter deals with this stage of the post-riot judicial inquiry and the understanding of justice that emerges from a post-riot inquiry.