CHAPTER V

GOVERNMENT RESPONSES TO COMMISSION REPORTS
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This chapter would reflect on governments’ response to judicial inquiry commissions once the report is submitted. The chapter will primarily inquire into some of the actions taken by the government after the Nanavati and Srikrishna Commissions submitted their reports and reflect on the steps taken to determine the nature of justice for the victims of communal riots. The general perception remains that commissions of inquiry serve no purpose as their recommendations are rarely followed up. Since judicial commissions are recommendatory in character and their reports are not binding on the government, they are considered to be a waste of time and public money. In the past, suggestions have been made to amend the commissions of inquiry act to ensure that the government implements the recommendations of judicial commissions.¹ Such conclusions are arrived at from an understanding of inquiry commissions where their findings and reports are expected to lead to prosecution of those held guilty in the findings. But, the fact remains that inquiry commission reports have not resulted in prosecution not just in India but even in other countries.² Perhaps the only commission of inquiry which resulted in the prosecution of Haridas Mundra, a businessman who was named by the Chagla Commission to have master minded the illegal transactions of the LIC funds. Soon, after the findings of the Chagla Commission were made public, the Union Finance Minister, T.T. Krishnamachari resigned and the Special Police Establishment indicted Haridas Mundra to a 22 year prison term.³

The record of other inquiries once the report is submitted has not been this convincing. For instance, after the appointment of a number of commissions and committees on anti-Sikh riots, it was only in 1993 that with regard to Jain-Aggrawal committee’s recommendations, of the 333 cases filed, reinvestigation was ordered of 129 cases. 136 persons were convicted,

¹ Vinay Kumar, “Home Ministry to study Report,” The Hindu, 1 July 2009.
the Congress MP Sajjan Kumar was sent on trial and Congress leaders HKL Bhagat was sent to jail and later released on bail. Therefore, the perception that commissions do not yield results is largely based on the fact that there is no follow up on the actions taken on the recommendations and findings of the commissions. While there is some truth to this understanding of commissions and their reports, the chapter would argue that there are other parameters to measure the relevance of inquiry commissions and they need not be restricted to prosecution of the perpetrators.

The 1960s witnessed a sudden upsurge of communal riots in the country which has been discussed in the third chapter as well. The official reports of the Ministry of Home Affairs suggested that there were 367 incidents of communal violence in the country between 1954 and 1959, whereas between 1960 and 1969 there were 2,398 such instances. The general communal situation in the country and particularly in Gujarat deteriorated. Most of incidents of communal rioting in this period occurred during Moharram or Ramnavmi festivals and Ahmedabad witnessed some 29 such incidents between 1963 and 1968. After the riots in Ahmedabad in 1969, there were no serious riots until 1973. There had been only a few communal clashes during the period 1970-1972. There was none in 1970, three in 1971 and one in 1972. The city police had been vigilant since 1969 and it took precautionary measures in time to avert communal clashes. Also, between 1971 and 1978, the number of deaths because of communal riots also went down drastically throughout the country. There are scant records to suggest that these precautionary measures were taken based on the recommendations of the Reddy Commission. Nevertheless, there was a serious attempt to ensure that there was no encore of the 1969 riots for the next few years. The Reddy Commission did not make observations against any one particular police official and rather had given a general picture of how the police performed during the time of riots and what were the problem areas in relation to the decisions taken that resulted in their failure to curb

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4 ibid
5 The official reports prepared by the Ministry of Home Affairs on incidents of communal violence in the 1950s and 1960, New Delhi: Ministry of Home Affairs, Government of India.
violence. Though, time and again it has been pointed out that the Reddy Commission’s work was a futile exercise and that the government had not implemented its recommendations, the Judge himself did not share this view point. According to Justice Reddy, communal riots did not occur in Gujarat for a number of years because the government had implemented the recommendations of his commission.8

In the 1970s, most States based on the reports of different riot commissions expanded the police wireless network so that the news of a communal riot in remote areas reached the Ministry of Home Affairs within a few hours. This made widespread and long-lasting communal rioting even in communally sensitive areas like Rourkela, Ranchi-Hatia and Ahmedabad almost impossible.9 There was also an expansion of the Central Reserve Police Force where it became possible to send reinforcements within a day. Eight new battalions and three new group centers of the CRPF were raised between 1972 and 1974.10 These steps ensured that riots did not occur and even if they did they were curbed in the initial stages and the damage was kept to the bare minimum. In these eight years there seemed to be a genuine effort to implement some of the recommendations of the inquiry commission reports that were submitted on riots which occurred in the 1960s. But, the problem was with regard to the prosecution of those indicted in the reports for having played a decisive role in instigating the riots or had directly participated in violence against a particular community. There was a reluctance to take steps that would lead to punishment of those responsible for the riots and against whom inquiry commissions had found credible evidence to initiate a criminal case. For instance, followed by the Madon Commission’s report the Shiv Jayanti procession was banned in Bhiwandi and there were no riots which occurred in the town until 1984 when the administration allowed the procession to take place.11 But, the banning of the procession did not lead to action on other recommendations and findings against policemen and leaders of the Shiv Sena. Some of the police officials named in the report for dereliction of duty during the riots were suspended but beyond that no prosecution was carried out against them.

10 ibid
This chapter analyses the pattern of government response to judicial commission reports. Do governments never respond to commission reports or are there instances when governments respond to certain recommendations while not to others? What are the circumstances that have prompted governments to respond positively to post-riot reports? What are the debates that the commission reports kindle in the parliament and legislative assemblies? More importantly what understanding of justice emerges from the report of judicial commissions on communal riots? Do commission reports lead to nothing as is often claimed? What are the other variables based on which the outcome of the report of a commission of inquiry can be assessed?

Commission Reports: Tabling and Debates

When Jaganmohan Reddy Commission on Ahmedabad riots and D.P. Madon Commission on Bhiwandi-Jalgaon-Mahad riots were appointed and came out with their reports, it was not mandatory for governments to table the report in the Parliament or Legislative Assembly within six months of submission and take out an ATR along with it. Therefore there was no ATR tabled though these reports were made public. The Gujarat government released a 20 page summary of the Reddy Commission’s report in March 1971 though there was nothing to suggest what action would be taken on the report. The report of the commission on Ahmedabad riots was not tabled in the Gujarat Assembly immediately after its submission. The Speaker of the Gujarat Legislative Assembly had to direct the government to table the report within three days. This came only after the Speaker directed the government to table the report after a demand for the same came from the opposition. The tabling of the report should be an automatic decision of the government given the fact that the very purpose of inquiry commission is to initiate a debate on the subject where the findings and recommendations are discussed to decide a suitable course of action. But, because governments were shying away from this responsibility of tabling and publishing inquiry commission reports that the joint committee of the Parliament recommended inclusion of a provision in the Commissions of Inquiry Act making it obligatory for the government to table

reports and publish them. The *Commissions of Inquiry Act*, 1972 was passed in the Parliament with this important provision after the Law Commission also recommended the same.

After the amendment of this Act, it became mandatory for governments to table the report of a commission and to prepare an ATR based on the findings and recommendations of the commission within six months of submission of the report. There have been occasions when governments have not acted accordingly but eventually they have had to make the report public after the courts have directed them to do so. One, such occasion was when the Rajiv Gandhi government did not table the Thakkar Commission report on the assassination on Indira Gandhi in 1986, till a case under Public Interest Litigation was filed in the Supreme Court.\(^\text{14}\) Similarly, Lentin Commission’s report on the death of 14 persons in Bombay’s J.J. Hospital was made public by the Maharashtra government after a court’s directive.\(^\text{15}\) Therefore, sooner or later the government has to make the report of a commission public, followed by a debate on the same in the Legislative Assembly or the Parliament depending on who had appointed the inquiry commission.

**What Does Tabling of Report Guarantee?**

Once, the government decides to place the report of any inquiry commission on the floor of the house, it immediately opens the door for public scrutiny into government action which is an important instrument to make the government accountable. Through the report of a judicial commission, the government of the day is made answerable to important questions related to a matter of public importance. The tabling of the report and a debate on the recommendations and findings is the first logical step towards making the people aware of the true facts related to a matter of public importance. How the government responds to the report is closely watched by different sections and particularly by the victims of a communal riot. For instance, the Maharashtra government’s decision to reject the Srikrishna Commission’s report in the Legislative Assembly was viewed as a decision of poor

governance by a government which did not guarantee any action on a matter of public importance. Chief Minister, Manohar Joshi while speaking on the Report in Maharashtra Assembly called it one sided and ruled out any action on the findings and recommendations of the commission. The Chief Minister said that the Report was “anti Hindu and pro Muslim and biased”, where “one community and its leadership has been held responsible for the riots.” 16 This remark was viewed as a blatant communal argument while rejecting the report of a commission of inquiry and made in the context of Assembly elections in Maharashtra that were round the corner. 17 The initial reaction of the government was to postpone the tabling of report based on the argument that it would amount to reopening of “old wounds” leading to riots between the two communities. This argument was rejected by the High Court when the plea for postponement reached the Court and directed the government to make the report public. 18

The debate in the Maharashtra Assembly revolved around the government’s ATR and the comments made by Chief Minister Manohar Joshi on the Report. The Samajwadi Party leaders burnt the ATR outside the legislative Assembly to show their disapproval of the government’s position on the Report. 19 Even the BJP which was the Shiv Sena’s coalition partner was not comfortable with the government’s response to the Srikrishna Commission’s report and there were visible problems between the two parties particularly after the speech made by the Chief Minister stating that the Report was biased. 20 The Maharashtra government had to face criticism from all fronts for rejecting the Srikrishna Commission’s report and there were a number of questions raised with regard to the legitimacy of the Shiv Sena-BJP government that was clearly speaking for the majority community. 21

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18 “Srikrishna Panel report, ATR to be tabled today, The Hindu, 6 August 1998  
21 “Srikrishna may mar CM’s hope of peace in House,” Indian Express, 19 July 1998
The rejection of Srikrishna report also stirred a heated debate on the relevance of an inquiry commission. The ATR presented by the government said that the commission failed to come out with “suitable directions” and did not take a “comprehensive view of facets and elements responsible for the riots and this has led to one sided conclusions.” This study would like to argue that while the respect and dignity of a commission of inquiry was severely compromised by this decision, it did not question the relevance of a commission of inquiry. It was important that the government came out with an official response on the Mumbai riots and a discussion on the report of the Srikrishna Commission forced the government to take a stand. The tabling of the report guarantees a certain level of transparency with regard to the actions that the government would eventually take. Whether these actions would be in accordance with the recommendations of the commission or not cannot be guaranteed but the least the tabling of the report can ensure is that the government will have to make its intentions clear. The rejection of the report did not undermine the relevance of the commission of inquiry. The inquiry was important to know the true facts with regard to the incidents of communal rioting in Mumbai and the commission provided the government and the people the correct facts about the matter under inquiry. The government by rejecting the report threatened the scope for a discussion and debate on the conclusions of the official commission.

Both in the case of Srikrishna and Nanavati Commission, those identified to have participated in the riots were part of the government and members of the ruling political party when the reports were submitted. While the Shiv Sena-BJP government rejected the Srikrishna Commission, the Congress led UPA government was forced to take action based on the recommendation after the debate that was initiated on the Nanavati Commission report. The tabling of the Nanavati Commission report in August 2005 was also followed by an ATR prepared by the government. The discussion in the floor of the house on the report forced the government to change its stand on the course of action to be taken subsequently. The ATR suggested legal difficulties in initiating any action against the retired policemen

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22 Interview with Manohar Joshi titled, “The report was one sided,” Frontline, Vol. 15, No. 18, 29 August-11 September 1998, p. 27.
whose actions during the riots were an indication of dereliction of duty.\textsuperscript{24} Perhaps the most anticipated aspect of the ATR was the government's stand on Jagdish Tytler who was then a Cabinet Minister and against whom the commission had stated that in all probability, he had a hand in organizing attacks on Sikhs in 1984. The ATR prepared by the government stated that action cannot be taken against any individual based on their probable involvement in the riots.\textsuperscript{25} There was a debate in the Parliament on both Nanavati Commissions report and the ATR on 10 August 2005. The government's decision not to take any action against Jagdish Tytler was criticized by not only the members of the opposition but also by its coalition partner who refused to support the course of action decided by the Cabinet.\textsuperscript{26} The argument being made is that the tabling of the report and the ATR provides the opportunity for an exchange of views between the government and the opposition on the report of the commission. The government as a result of this debate was compelled to change its stand and it eventually led to the resignation of Cabinet Minister, Jagdish Tytler and Sajjan Kumar.\textsuperscript{27}

Public Apology

A public apology is a significant response that the report of a commission can invoke from a government. The expression of regret by a head of state or by high-ranking officials is another way of responding to the findings of a post-riot inquiry. While in India such apologies have not been common, public apology as a form of responding to past crimes has been made by heads of State in other countries. Tony Blair, for instance, apologized for British responsibility for the Irish famine in the 19th Century, Jacques Chirac for France's responsibility in the deportation of Jews, Gerhardt Schroder for Germany's Nazi past and closer to home, Pervez Musharraf apologized to the people of Bangladesh for the atrocities committed against people of East Pakistan.\textsuperscript{28} By apologizing publicly for certain events, the

\textsuperscript{24} Memorandum of Action Taken on the Report (ATR) of Nanavati Commission of Inquiry set up to Inquire into Riots of 1984, New Delhi: Ministry of Home Affairs, Government of India, 2005.
\textsuperscript{25} ibid
\textsuperscript{26} Lok Sabha Debate on Failure of the Government to take action against persons indicted by the Nanavati Commission of Inquiry, 10 August 2005.
government accepts the responsibility of the State for actions that could have been avoided or better handled. The acceptance and taking responsibility is perhaps the first step towards acknowledging the wrong and an assurance that steps would be taken to rectify the past mistakes. Apologies are also instrumental in improving the relationship with the victim community. In India, as said earlier inquiry commission reports have rarely resulted in this kind of an apology. One such rare acknowledgement of past mistake in the form of apology came from Prime Minister Manmohan Singh during the debate on the report of Nanavati Commission of Inquiry on anti-Sikh riots. The Prime Minister said that what happened in 1984 was a "national shame". Apologizing to the entire nation and particularly to the Sikh community, the Prime Minister said, "I am not standing on my false prestige. I bow my head in shame. Let us do anything that would reverse the trend.....Let us also do nothing to weaken its spirit....Though we cannot rewrite the past, we should have the ability to write a better future for all of us."

While the response through apology is an important form of reconstituting the lost confidence of the people, in particular the affected community, the impact of the apology really depends on the sincerity of the act. It should not be considered as a routine and trivial gesture. In this case, people did notice the apology made by Manmohan Singh as it is not often that a head of a State in India apologizes for past actions in the floor of the house. Acceptance of the crime helps in pressurizing the government for further action on the matter. Therefore, the second indicator that a government is serious and willing to take action and rectify the earlier mistakes is when it accepts the government’s inability to protect the lives and property of its citizens during the riots.

Resignation of Ministers

Making the report of a judicial inquiry public can cause embarrassment for the government when the commission has credible proof against any Minister of the government. The usual

30 Op. cit 26
31 "Manmohan apologizes to Sikhs for 1984," Times of India, 12 August 2005
course of action under such circumstances should be for the Minister to resign from the position he occupies or the government should ask for the resignation of the concerned Minister. In certain circumstances when several leaders of a political party are found to have played a role in instigating riots or if the political party as a whole is blamed for its actions during the riots, then the government is expected to resign. But, the response of government and its members has often not been based on the principle of moral obligation. The Srikrishna Commission found the Shiv Sena as a political party to have played an active role in the 1993 Mumbai riots and in cognizance of this finding the Shiv Sena should have resigned from government. While the Shiv Sena completely rejected the Srikrishna report, the UPA government’s initial response to the Nanavati Commission was also not impressive. The concerned Minister was forced to resign after the Nanavati Commission report was made public because of the presence of a formidable coalition partner and some scathing criticism from the opposition and civil society. The Srikrishna Commission report could not gather this outcome because its coalition partner, the Bharatiya Janata Party though had differences with the Shiv Sena on the, it did not pressurize the government to taken steps towards implementation of the Srikrishna Report. The response of the opposition was also measured for fear of a backlash from the Shiv Sena.  

Contrary to this, after the debate in the Parliament on the Nanavati Commission’s report, Union Cabinet Minister, Jagdish Tytler resigned from his position as a Cabinet Minister along with Sajjan Kumar as Chairman of the Delhi Rural Development Board. The report had recommended further inquiry on these two leaders of the Congress (I) and the resignation was a step towards accepting moral responsibility. Followed by their resignation, the Central Bureau of Investigation reopened inquiry against these leaders and after four years concluded that there is not enough evidence to suggest that Jagdish Tytler was involved in instigating the mob to indulge in violence against the Sikhs. Once again, lack of evidence provided the opportunity to these leaders to rejuvenate their political career. But, this time when Jagdish Tytler and Sajjan Kumar were given party tickets by the Congress (I) to contest

33 “No longer in denial: Is our history of abdicating responsibility for riots finally coming to an end?” *Indian Express*, 12 August 2005 and “Sajjan Resigns as DRDB Chairman,” *National Herald*, 12 August 2005
34 “CBI Chief gave Tytler a clean chit, his officers had said prosecute him,” *Indian Express*, 11 August 2009.
2009 Parliamentary elections, the civil society stepped in to protest and the party was forced to withdraw the candidature of these two ensuring a virtual end to their political career. The acceptance of responsibility and accountability in this case was made possible through a combination of factors. The public sentiment against these leaders was made clear by protests where the media provided a voice to these sentiments and the government in view of the public outcry decided its course of action. Therefore to what extent a commission’s report is able to make those in power accountable for their actions is dependent on multiple factors that need to work towards implementation of the report. In the case of Jagdish Tytler and Sajjan Kumar, both the criminal justice system and inquiries were not able to gather enough evidence to suggest their participation in the riots, but the conviction of the civil society and the victim community ensured that they were held accountable for their actions.

**Action Against Government Servants**

Most post-riot inquiries have found credible evidence against policemen where they were found to have deliberated abdicated their duty to protect the lives and property of people during the riots. Both in the case of anti-Sikh and Mumbai riots, inquiry commission found a deliberate lapse of duty by certain policemen and the commissions recommended strict action against them. But, these observations of the commission had not resulted in prosecution of the concerned policemen. While in certain cases the concerned official was suspended from service or an arrest warrant was taken against them, these steps never culminated in the prosecution of the officials. Based on an RTI filed by social activist Teesta Setalvad, the status report on implementation of the Srikrishna Commission was made public in 2007. The status report revealed that in most cases the trial was pending or the concerned officer was discharged from service and in one particular case, and five policemen of constable rank were dismissed from service 20 August, 2003. In 2001, when the Congress led coalition was in power, the process of taking action against the policemen indicted by the Srikrishna commission was started. There was a Special Task Force constituted to implement the report of the commission and a FIR was filed against the Joint Commissioner, R.D. Tyagi. The

35 Mark Magnier, “Shoe throwing: India’s passionate fling,” Los Angeles Times, 20 April 2009
Mumbai police called this the “darkest chapter” in its history. FIRs were filed against Inspector Wahule who was with the Byculla police station during the riots and six other policemen for failing to perform their duty.

The government of Maharashtra was forced to take legal action against these police officers when the Supreme Court, hearing a case on the status of the implementation of the Srikrishna Commission, specifically directed the government to take action against those police official against whom the commission had found credible evidence. This directive resulted in warrants being issued against sixteen policemen and except for Tyagi who was taken under notional custody, the rest were granted anticipatory bails. In 2003, Tyagi was granted bail and there has been no further action initiated against him.

The follow up action against policemen who were found to have lapsed in performing their duty by several committees and commission is indicative of a similar record. A number of police officials who were indicted by inquiries into anti-Sikh riots were given promotion during the course of their service. In all, various committees and commissions indicted 147 police officials for their role in anti-Sikh riots. The SHO of Trilokpuri police station, Shoorveer Singh Tyagi was later promoted to the rank of Assistant Commissioner of Police. Sewa Dass, DCP, East Delhi was promoted as a Special Commissioner.

Compensation and Relief Measures

Based on the nature of affidavits and also the mandate, inquiries into communal riots have recommended adequate compensation to the victims of riots under inquiry. Governments have been relatively more forthcoming in implementing recommendations related to relief and compensation.

In the case of anti-Sikh riots, most of the affidavits which came before the Nanavati Commission were statements which talked about the incidents and the losses which the victims had to procure as a result of the violence. A number of affidavits stated that they had received a compensation of Rupees (Rs) 20,000 in two installments and considering the losses suffered by them the amount was very less.42 Some of the victims stated before the commission that they had not been given any compensation for the losses procured by them.43 Representing the victims of the anti-Sikh riots, the Citizens' Justice Committee had also filed an application before the Nanavati Commission requesting the commission to recommend a uniform compensation of Rs. 3.5 lacs for each person killed anywhere in the country during the riots and directing the government to disperse these funds within a span of 6 months.44 The Justice Committee through its application had requested the commission to direct the insurance companies to pass the claims of the victims which have been rejected and give orders to the bank to provide interest rebates to the victims. The Nanavati Commission of Inquiry tried addressing these grievances by recommending that the affected persons of the 1984 anti-Sikh riots should all be provided with a uniform compensation of Rs. 3,50,000 and recommends the government to consider providing employment opportunities to one member of those families which have lost all its male members and has no sufficient means of livelihood.

The central government based on the recommendations of the Nanavati Commission report had released in the beginning of 2005, an economic package 735 crores to be distributed to the riot victims. The package was divided into five sections where Rupees five lacs each was to be distributed to 3500 families who lost a family member, rupees two lacs each for 32,000 Sikh families who had to relocate because of the riots, a monthly pension of rupees 2500 for widows, 25 times more compensation for people who lost their homes and business and employment preference for one child in every family where the only earning member was

42 Affidavit No.1 filed by Surinderpal Singh to the Nanavati Commission. Also see, Affidavits No. 140 filed by Ranjit Kaur, Affidavit No. 141 filed by Jeet Kaur, Affidavit No. 3 filed by Sajjan Singh and many such affidavits wanting more compensation than the amount of 20,000 given by the government.
43 Affidavit No. 5 filed by Sher Singh before the Nanavati Commission of inquiry on anti-Sikh riots
44 Application for granting uniform compensation in all cases of death in November 1984 riots filed by the Citizens' Justice Committee to the Nanavati Commission of Inquiry.
killed during the riots. Similar packages were disbursed by the centre for the victims of the Bhagalpur riots that occurred in 1988 and the 2002 Gujarat riots. Based on the recommendations of the Nanavati Commission, the Bihar government distributed a compensation of 99 lacs to 55 victim families in 2007 and 45 lacs to 35 victims of anti-Sikh riots in a second phase of the rehabilitation process in 2009. Even the Shiv Sena-BJP government which rejected the Srikrishna Commission report distributed compensation to 35 victims’ families of the 1993 Mumbai riots. Governments have been forthcoming while sanctioning compensatory benefits to the victims even when they do not agree with the post-riot inquiry report and have rejected its recommendations. The sanctioning of funds though has not always guaranteed that victims have received the money and rehabilitation aid as even to avail these benefits they have to undergo legal entanglements. But, record of governments has been better while dealing with recommendations related to compensations that with those that include action against government officials.

Overall the response to post-riot inquiry commission report indicates that apportioning of responsibility and accountability is limited to tabling of the report where the government is forced to answer some uncomfortable questions. In certain cases post-riot reports have been able to reach the next level of accepting responsibility where a public apology is delivered to the victim community or a Minister or member of the Parliament against whom commissions have found credible evidence has resigned. The acceptance of responsibility though hardly gets translated to the next level which entails concrete action in the form of prosecution against the guilty or perpetrators whether they belong to political parties or are government officials. Governments have been relatively more generous while accepting recommendations that include relief and rehabilitation for the victims and providing compensation based on the recommendations of post-riot inquiry reports.

The five variables, tabling of the report, apology, resignation of ministers, action against government officials and compensatory benefits suggest that based on the post-riot inquiry reports the State is willing to take responsibility for the riots only till a certain level. The

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45 Vinay Kumar, “Higher Compensation likely for 1984 anti-Sikh riot victims,” The Hindu, 21 October 2005
46 “Government gives Rupees 29.81 crore package for Bhagalpur riot victims,” Outlook, 12 June 2008
extent to which the State agencies can be made accountable is dependent on multiple factors that include the civil society's response to a commission report and its constant pressure on the government for the implementation of the report. In the case of Srikrishna Commission, the demand for the implementation of the report on Mumbai riots was time and again revived and though such demands have not resulted in prosecution of the guilty, action has been initiated in the form of arrest warrants of some of the senior police officers. The conclusion that inquiry commission reports and post-riot investigations have not resulted in punishment of those who were found responsible for the riots leads to the question, what understanding of justice therefore emerges from a post-riot judicial inquiry? In an attempt to answer this vital question, the study would reflect on the difficulties within the Criminal Justice system and its ability to provide justice for the victims of communal riots and whether alternate forms of justice could be explored to initiate justice mechanisms in a post-riot stage.

Post-Riot Commissions and Justice

The experience with the post-riot inquiry reports suggests that there is a certain level to which the principle of accountability is implemented by governments and most often it does not reach the level of punishment for the perpetrators of riots. Given this understanding, the general conclusion has been that post-riot commissions of inquiry and their reports are not mechanisms through which justice can be sought for riot victims. This study would instead argue that both the reports of the commissions and their implementation suggest that reparation and in certain cases retributive justice is delivered for the victims of communal riots. It is important at this stage to distinguish between reparative, retributive and restorative forms of justice and then elaborate the understanding of justice which emerges from the reports of post-riot judicial inquiry commissions.

The "core idea" behind reparations is compensatory justice, the view that "wrong doers should pay victims for losses."\(^{47}\) The understanding behind compensating the victims of historical injustices or mass scale violence is to rectify the wrong which was done to them.

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and do some sort of repair relations that was damaged due to the injustices committed. In the case of communal riots, victims are often compensated by the government for the loss suffered and in a number of senses this compensation is a token acknowledgement of the fact that the victim was wronged. While this acknowledgement is important for the victim, in situations where the loss is that of a loved one or something whose value goes beyond material replacement, monetary compensation under such circumstances does not correct or repair the damage in the long run. Compensation ensures that the immediate problems of the victims are taken care off but without respectful acknowledgement, responsibility and concern, compensation can be insulting and can have dismissive meanings. It is often claimed that compensatory reparations have not addressed justice for the victims of communal riots because it is not followed by punishment for the perpetrators which would eventually mean retribution. Retributive justice is based on the idea that people deserve to be treated in the same way they treat others. The understanding behind retribution or punishment is that the perpetrator or the offender has to go through the same suffering which was committed against the victim.

When justice is understood in the retributive sense “where punishment to the perpetrators for committing a crime is the logical and moral argument for giving victims their due, then it can be concluded that commissions of inquiry and their findings have rarely been an agency for this form of justice. The retributive justice being heavily dependent on the criminal justice process to punish the perpetrators focuses on the offense with the aim to punish the offender. While punishment through criminal justice process cannot be replaced as it is the main activity of State’s response to crimes, it is important, nevertheless to understand the shortcomings of this system while dealing with cases related to communal riots. The next

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49 ibid
50 Scholars writing on retributive justice have given both moral and logical justifications in support of retributive justice. For the logical justification on retributive justice see, James P. Streba, “Retributive Justice,” Political Theory, Vol. 5, No. 3, August 1977, pp. 349-362. In the traditional view, retributivism is a moral and not simply a logical doctrine. This view was advocated by Kant in The Philosophy of Law, Edinburgh, 1887, p. 198.
few paragraphs would argue that judicial commissions and their recommendations have not resulted in punishment for those who participated in the riots. Punishing those responsible for organizing and participating in riots has been difficult essentially because this form of justice is heavily dependent on the criminal justice system where serious issues emerge while tackling riot cases.

Based on the recommendations of the inquiry commission on anti-Sikh and Mumbai riots there were criminal cases filed against whom the commissions found credible evidence to initiate further action. But, the process of delivering justice was a) time consuming and b) victims and those having information on the case either refused to come forward and give evidence before the court or changed their statement at the last minute which resulted in several acquittals on cases related to anti-Sikh and Mumbai riots. Reservations on the ability of the criminal justice procedure to address problems related to communal riots have been raised by Judges while giving their judgments on violence related to anti-Sikh riots. While giving his judgment on State vs. Ram Pal Saroj, the Judge stated, "The trial of this case started in Nov. 1995 after 11 years of the commission of crime. The criminal law justice system in this country totally failed the justice. While the criminal law justice system moved at the snail’s pace and had no calendar to keep, the death kept its calendar and Santosh Singh, whose three sons were brutally murdered by the rioters, died in May 1992. In fact, the inordinate delay in trial of the rioters had legitimized violence and criminality. A system which permits the legitimized violence and criminals through the instrumentalities of the State to stifle the investigation, cannot be relied upon to dispense justice uniformly to the people. It amounts to the total wiping of the rule of law."52

Similar pronouncements were made by Judges during the trial of several cases related to anti-Sikh riots. In State vs. Amir Chand, the Judge observed, "what happened after the riots was still worse and the justice itself has been slaughtered by sheer non investigation and total absence of concern. In the name of investigation only an eye-wash has been done. The

52 State vs. Raj Pal Saroj (Karkardooma Court, Delhi, S.C No. 57/95)
manner in which the prosecution has proceeded and the trial in these cases has proceeded speaks volumes about the health of criminal justice system. It was important for the courts to have conclusive evidence against the perpetrators to convict them and decide the term of punishment. But, credible evidence became difficult to find as victims making allegations against political leaders for their involvement in riots in the affidavits, backed out when the police came forward to record their statements. A number of victims were vague about alleged complicity of political leaders and admitted that they had not themselves seen any leader during the riots. In the case against Sajjan Kumar, the witness, Anwar Kaur, at the last minute turned hostile in court which resulted in the acquittal of the leader.

The process of taking action against those indicted by the Srikrishna Commission in the Mumbai riots also witnessed a similar experience. During the inquiry, the Srikrishna Commission pointed out that as many as 1,358 cases, almost 60 percent of all the cases filed during the riots, were closed by the police although credible evidence existed to arrest the rioters. Even when eye witnesses were ready to give evidence against Bal Thackeray, they were threatened and most of them eventually backed out. For riots that occurred in 1993, only 2 people have been convicted while 40 acquitted primarily because of lack of evidence against them. On 9 May 2008, the court acquitted six members of the Shiv Sena charged of unlawful assembly and instigating violence during the 1993 Mumbai riots again because of lack of credible evidence against them.

The problems within the criminal justice system in delivering justice to the victims of communal riots are apparent. Given the shortcomings of the criminal justice process, retributive justice has been a distant proposition for the victims of communal riots even when commissions of inquiry have identified the perpetrators. Given the track record of the criminal justice system in punishing the perpetrators of the anti-Sikh riots, the Delhi Sikh

\[\text{State vs. Amir Chand (Karkardooma, Delhi, S.C. No. 39/95)}\]

\[\text{Manoj Mitta and H S Phoolka, When A Tree Shook Delhi, Delhi: Roli Books, 2007, p. 169}\]

\[\text{ibid, p.188}\]

\[\text{Jyoti Punwani, "Against All Odds," The Hindu, 24 August 2001}\]

\[\text{Jyoti Punwani, "Shameful State," Times of India, 6 December 2004}\]

186
Gurudwara Management Committee (DSGMC), the arbitrator of the Sikh community’s affairs in the city, has evolved a formula for “justice” that seeks compensation as a form of redress. Moving away from punishment as the only form of justice for the victims of riots, it is important to explore if alternate ways of justice gets delivered in the process of inquiry into riots by commissions of inquiry.

Truth and the telling of truth during the process of inquiry by commissions of inquiry is perhaps the first step towards justice. The attempt by commissions to make sense of different testimonies and interpretations, an understanding of what could have been the motives of the perpetrators that emerge from both the proceedings and the report of a commission could be viewed as the beginning of the process of justice for the victims of communal riots. The unfolding of the truth before the commission is the first official acknowledgment that there were wrongs committed during the riots and a public acknowledgement of the crimes committed against the victims of riots could be seen as the first sign of justice.

When a commissions report and a debate on its findings leads to a public apology by the Head of the State as witnessed in the case of Nanavati Commission’s report on anti-Sikh riots or when steps are taken to compensate the victims of riots or to ensure that perpetrators would be denied from contesting for public office, then these could be seen as reparation for the victims of communal riots. These responses to judicial commission reports and selective implementation of their recommendations have meant that reparative notions of justice are delivered as a result of post-riot inquiries.

Overall, it can be said that inquiries by commissions are viewed as agencies through which reparative and retributive justice could be attained for the victims of the communal riots. But, experience suggests that findings of commissions on communal riots have not resulted in retributive justice in the form of punishment for the perpetrators. The reparation of victims has happened is some cases where they have been given material compensation or there has been an acknowledgement through apology that wrongs were committed against one

particular community where agencies of the State also participated in different capacities in the violence against the victims.

The narratives of some of the victims of anti-Sikh and Mumbai riots would suggest that when it comes to justice, there are more concrete issues that need to be taken into account that move beyond punishment for the perpetrators and compensation for the victims. Retribution in the form of punishing the perpetrators remains an important form of justice but there are other concerns before the victims that need to be flagged and in the next few paragraphs this work would argue that a restorative understanding of justice can provide long term justice to the victims of riots.

The anti-Sikh riots, Mumbai riots and the recent riots in Gujarat suggest that in the aftermath of the violence, the victims are left to grapple with multiple levels of trauma, displacement and a complete loss of faith not just on the system but also on people in general given that they are attacked by neighbors and friends during the riots. In the context of the anti-Sikh riots, the victims had to face the repercussions of getting relocated to a colony called “Widows’ Colony”. While writing on the anti-Sikh riots, Yasmeen Arif argues that naming of such a colony as a Widows’ Colony not only signifies exclusion for these women but has a different “import attached to widowhood that emerges from community violence.”

Similar experiences of the victims of Mumbai and anti-Sikh riots have been narrated through a number of anthropological studies on the riots and the victims. These narratives bring forward the everyday fear and insecurities that the victims are not able to come to terms and make compromises which they otherwise would not have done. For a number of rape victims it became difficult to come before a judicial commission or a court and give evidence and therefore silence became the next best course of action for women who were raped during

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anti-Sikh riots. Jassi Bai, in her affidavit filed before the Mishra Commission stated, ‘........the mob did not spare the women also. They seemed to have all the time with them, selected their prey and assaulted them. The women are afraid of telling their stories.’63 There have been accounts by women who lost their husbands during the anti-Sikh riots where their narrations depict not just monetary loss but even after so many years some of these women have not been able to come to terms with the lack of support that they and their children have and how it has also had an affect on children who lost their fathers.64

The trauma, anger and in some cases even a sense of revenge is apparent from most accounts given by victims whenever they speak of the violence against their community and people, whether it is with regard to the anti-Sikh riots or Mumbai riots.65 Every victim of communal riot has a story to tell which reveals much more than loss of loved one’s which can be compensated by money. Harbans Kaur, one of the victims of the anti-Sikh riots was just seventeen when her husband was killed in the riots. She gave birth to a daughter, Manpreet, who is now 21. She says, “I have lost all hope of getting justice. Money won’t compensate the trauma I have undergone all these years. My daughter did not even see her father’s face. Even now, the culprits are roaming free. Whatever the government does will be too little to fill the emotional void in my daughter’s life.”66

Judicial Commissions and the retributive understanding of justice that emerges from it, is clearly not equipped to address some of these concerns of the victims. This study would argue that the long term issues of survival, trauma and the urge for revenge can be addressed by a more restorative understanding of justice. Restorative justice functions on the premise that crime is a violation of people and of interpersonal relationships. Secondly, this violation of people and relationships creates obligations of putting right the wrongs. Overall restorative

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63 Affidavit Reference number 2719, Mishra Commission.
64 Op. cit 62, p. 90-103, See, the account of violence and afterlife given by Kuldeep Kaur, a resident of Tilak Nagar, in her interview to the author Jyoti Grewal.
65 The need for revenge and the cycle of violence that it can create has been documented in R. Barry Ruback and Purnima Singh’s, ‘Ingroup Bias, Intergroup Contact and the Attribution of Blame for Riots,’ Psychology Developing Societies, Vol. 19, No. 2, 2007, pp. 249-265.
justice requires, at minimum, that we address victims’ harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders and communities in this process.67 Approaching justice as a violation of relationships implies a concern for healing of those involved – victims but also offenders and communities. This concept of justice provides an opportunity for the offenders and the victims to come together and focus on the harms done to people and communities. This vision of justice could perhaps be applied to situations of communal violence and explore at options that are perhaps not imposed from outside authority who are not involved in the conflict but from those who have been a part of it. This concept is better equipped to deal with the needs of the victims by making justice more a healing and transformative process.

A restorative approach to justice is not a mechanism to replace the legal process which is carried out by judicial inquiry commissions and the criminal courts after a communal riot but can be implemented along side the constitution of judicial inquiry commissions. The new concept that the restorative justice framework brings is that the its principles do not just view violence as a law and order problem but looks at it as a transgression against persons, relationships and community.68 This form of justice is best practiced at the level of civil society where some of the organizations that are formed after a major communal riot help the victims to deal with the trauma, fear and also evolve community programs involving the victims of communal riots. While, the principles of restorative justice subscribe to community based programs where both the victims and perpetrators are involved at the same time, such initiatives have been rare in the Indian context after communal riots whether it is the case of Gujarat or anti-Sikh riots.

One such initiative which came close to the above pattern was the Mohalla committee established in Mumbai after the 1993 riots. Mohalla committees were formed in every police beat in Mumbai and were headed by a beat officer and a ‘facilitator’ from the citizens’ side.69 Among the different functions that these committees were expected to perform, one of them

68 ibid, p. 25
was maintaining communal harmony. For example, in Dharavi, the committee tried to reduce the tension between the two communities and encouraged the participation of Muslims in Ganesh Chaturthi processions and Hindus in Moharram processions. These committees worked the best in areas which had an active set of non governmental organizations functioning. Mohalla committees are not without their short comings, but the larger argument being made here is that initiatives such as these give the scope for a wider understanding of justice for the victims of communal riots.

The governments’ response to the findings and recommendations of inquiry commissions suggest that there remains a constant need for the agencies of the State to be viewed as neutral and some of the steps taken to implement the recommendations of post-riot commissions are with the aim to bring forward the neutral character of the State. But, these measures do not address the long term concerns of justice for the victims because even while aiming retribution, concrete measures are often not taken to punish the perpetrators and punishment to the perpetrators have not resolved the everyday struggles of most of the victims. It is at this level where everyday lives of people get transformed because of violence that the Restorative justice framework can be brought through civil society initiatives, so that alternate channels for justice which are not completely dependent on the State can be conceptualized.

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