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BHAGALPUR

BHAGALPUR

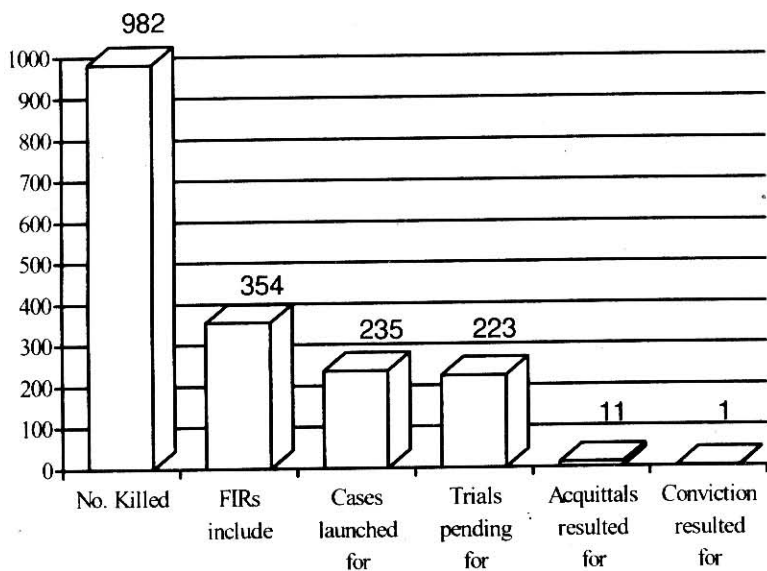
*a report on the aftermath
of the 1989 riots*

TV.A.2.b

People's Union for Democratic Rights
Delhi

February 1996

*... to the dead one owes nothing
but the truth.*



In 1989 Bhagalpur, experienced one of the worst communal riots since Independence. The police and district administration directly connived with the communal forces. 982 persons were killed and 259 seriously injured. Over 1,500 houses were damaged in 195 villages. About 48,000 people were affected in these riots, which began on 24 October 1989, and continued for well over a month. A second round of killings took place in March 1990.

Bhagalpur has a history of communal clashes (1924, 1936, 1946 and 1967). But the October 1989 riots were exceptional. For the first time riots spread to the rural areas of the district. And 88 per cent of Bhagalpur's total population lives in its rural areas. Some of the worst massacres took place in the villages. Led by ASI Ramchander Singh of Jagdishpur thana and other policemen in uniform, a 4000-strong mob attacked Logain village at 7 o'clock on the morning of 27 October. 115 people are estimated to have been killed. The bodies of the victims were at first thrown into a pokhar in the Muslim mohalla. Then they were pulled out and thrown into a well. Finally the corpses were pulled out again, buried in two fields whereon cauliflower was planted. 108 bodies were gradually recovered, only after 8 December.

Two months before the riots, between 12 and 22 August 1989 on the occasion of Muharram and Bisheri Puja in the town, communal tensions had already escalated sharply. However, the state administration did not act. Lok Sabha elections were scheduled the next year and by-elections two months later, in November that year. In October the Vishwa Hindu Parishad (VHP) in Bhagalpur undertook a five-day Ramshila programme as part of a wider nation-wide campaign. Ramshila processions were to pass through the rural areas of Bhagalpur and converge on the 24th in the town. One such procession passing through Fatehpur village on 22 October provoked heavy brickbattling and arson. On 24 October when the procession was to pass through the town itself, Muslims decided not to let it pass through Tatarpur, a Muslim dominated area. Tatarpur was also not on the route sanctioned by the official licence issued to the procession (a requirement under Section 30(2) of the Police Act). Violating this, it moved through the mohalla, escorted by the police. A bomb blast occurred at the chowk. Its source is not clear and no one was killed. It triggered off the riots that lasted till the end of

November. Though communal tensions were evident two days earlier, the District Magistrate (DM) imposed curfew only on 24 October, after the riots had started. Police was seen moving with mobs, looting and destroying shops. They did not control the rioting mobs which flouted curfew orders with impunity. Worse still, the police itself violated curfew orders, as they demonstrated on 26 October to protest against the transfer of the Superintendent of Police, K.S. Dwivedi. They were joined by Bharatiya Janata Party (BJP) and VHP leaders. The then Prime Minister Rajiv Gandhi who was touring the riot-struck district, acceded to their demand that the transfer orders be revoked. Many of the worst atrocities took place after this. Order was restored only gradually, after the army and the paramilitary reached Bhagalpur on 27 October. Even then the district administration did not hand over charge immediately leading to the further extension of the riots.

The majority of those killed or those whose means of livelihood were destroyed were agricultural labourers, rickshaw-pullers, bangle sellers and weavers. 93 per cent of those killed were Muslims. A total of 595 incidents of rioting, arson, loot and killing were recorded in FIRs by the police.

PUDR's intervention in Bhagalpur began in January 1990 when a factfinding team went to investigate the first phase of the riots. A report, "Bhagalpur Riots", was published a few months later.

PUDR submitted this report to the Inquiry Commission and filed a petition on 18 August 1990 "seeking permission to assist the Commission" and to make its representation "at the time of argument." Permission was denied. This present report attempts to tell what happened after the riot.

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Introduction

The Bhagalpur riots which claimed the lives of nearly 1000 persons are one of the worst instances of communal riots in the recent past. Ever since the locks of the Babri Masjid were opened in 1986, communal disturbances were on the rise. In 1989 itself 1174 people died in different parts of the country in riots that followed the passage of Ramshila processions through the states. The Bhagalpur riots followed in the wake of one such procession, carrying "consecrated" bricks to Ayodhya for the construction of the Ram temple. A year later during the course of the rath yatra, 693 people were killed. And two years later, following the demolition of the masjid, 226 places were affected and 1801 people died. In the seven years between 1986 and 1993, the toll of the Bhagalpur riots stands the highest. For the survivors of the riot the years after have meant innumerable visits to the law courts, police station, welfare officers and so on. Whether justice will be done remains to be seen.

What happens after a riot is seldom available for public scrutiny. Information regarding registration of FIRs, filing of charges and trial proceedings rarely gets known. In the process what remains unexamined is the further communalization in the aftermath of a riot. Filing of FIRs and framing of charges is the task of the police. But when the police which had participated in the riots returns as investigating authority, the result is wilful delay and incomplete investigation. Compounded as usual by the inefficiency of the courts so that trials begin in very few cases. So far, in Bhagalpur, only one person has been convicted in a murder case.

Precisely because this breakdown of the normal process of law in a communal riot is well recognised, a Commission of Inquiry is also routinely instituted to inquire into the riots. In Bhagalpur, on 8 December 1989 a Commission of Inquiry was appointed to examine the first phase of killings. But the history of the Bhagalpur Riots Inquiry Commission which submitted two reports in February 1995 five years after the riot, is a history which confirms that the battles that were initially fought on the streets extend into the institutions which are meant to serve as checks and balances. This is evident from the way in which the Commission was repeatedly reconstituted, the manner in which the Courts intervened and granted stays and the fact

that two diametrically opposed sets of findings emerged.

This outcome of the Commission and the state government's lack of interest in implementing its recommendations even after a lapse of six years has ensured the delegitimisation of the criminal justice system. And this seems to bother neither the political parties, nor the legislature, the government or even the judiciary. Those at the receiving end continue to do the rounds of the courts seeking justice for the killing of a family member or the loss of a dwelling place. The apathy of all our democratic institutions will ensure that they carry on in this manner for quite a long time.

Commissions of Inquiry

Commissions of Inquiry can be instituted either by the Central or State government, to inquire into "any definite matter of public importance." (Commissions of Inquiry Act 1952, Section 3). Such Commissions are meant to conduct an impartial inquiry particularly when the normal investigational agencies are accused of communal biases. That Commissions of Inquiry are routinely appointed after communal riots in itself points to the routine collapse, or even active collusion, of the administration and police during those riots. The Act addresses precisely such systemic failures. While the government has the discretionary power to appoint a Commission, it must necessarily appoint such a Commission when the legislature passes a resolution

The argument that the criminal justice proceedings cannot be initiated till the Commission of Inquiry finishes its task is completely fallacious. A Commission of Inquiry is not a substitute for the functioning of the criminal justice system. For it is within the ambit of the Indian Penal Code and the Criminal Procedure Code that the criminals are prosecuted and justice is meted out in the courts. Thus the Commission is an aid and a corrective to the functioning of this normal system of criminal justice. For, it "may, after recording the facts constituting the offence and the statement of the accused . . . forward the case to a Magistrate having jurisdiction to try the same" (Commissions of Inquiry Act, Section 5(4)). And the evidence gathered by a commission can be "sufficient . . . to enable the government to proceed" against those indicted "both administrative-

ly and under the criminal law of the country". The Members' Report in Bhagalpur urged this most strongly (p.115). The Bhagalpur Commission has recorded ample evidence about the causes leading to the disturbances, and about action taken by the administration. The Commission of Inquiry did not concern itself with "the actual culprits taking part in the incident", a task left "for the investigating agency and for the Court" (Members' Report, p.3). However, the Members Report has indicted the officials who were directly responsible for the riots.

Bhagalpur Riots Inquiry Commission

Following the first phase of the riots, a Commission of Inquiry was set up under the 1952 Act, to investigate the incidents between 22 October and 8 December. The terms of the Bhagalpur Riots Inquiry Commission were:

1. to find the causes for the communal riots that started in Bhagalpur on 24 October 1989.
2. to investigate whether or not these were pre-planned and if so who was responsible.
3. to examine whether or not the district administration tried sufficiently to prevent the riots. In case members of the administration had failed in their duties, then the guilty were to be named.
4. to try to suggest methods to prevent riots from recurring.
5. to look into other matters relating to the communal riots and also make general suggestions for the future.

The Commission was to submit its Inquiry report to the government within three months, that is by March 1990.

The Two Reports: Divergent Findings

The Members Report of the Bhagalpur Riots Inquiry Commission presented their conclusions in 128 pages with 423 pages of annexures. It gives a clear chronological account of the riots in 1989, and this account is supported by independent witnesses and fact-findings of civil rights groups. The report traces the history of communalism in India, blaming both Hindu and Muslim fanaticism for the hostile relations between the communities. It also condemns the role of communal organizations and irresponsible sections of the media in spreading rumours. It indicts the district administration and the police for:

- a. allowing the Ramshila procession to pass through the sensitive Tatarpur area even though it was not mentioned in the licence issued for the procession.
- b. indifference and incompetence in not anticipating the riots.
- c. failure to scotch rumours that were provoking communal violence.
- d. failure to maintain curfew and their own active violation of the curfew orders, to protest against the transfer of the SP on 26 October 1989.

Apart from general censure of officials and government agencies on grounds of anti-Muslim bias, the Members Report names certain officials directly responsible for the happenings:

1. The Superintendent of Police K.S. Dwivedi is held "wholly responsible for the riots that occurred." According to the Report the fact that VHP and BJP members along with the police protested against his transfer, exposes the communal links of key police officials.
2. Navin Kumar (Deputy SP) and K.C.Dubey (Officer-in-charge, Kotwali PS), are both indicted for assisting the SP and being

Of Police and Riots

Police excesses during riots are the most visible and obvious signs of communalization of the most prominent agency of the State. In Delhi in the Sikh massacres, allegations were levelled against as many as 143 police officials. In the 1987 Meerut riots, after the initial phase of confrontation between Hindus and Muslims, it became the violence of the Provincial Armed Constabulary against the Muslims. On 23 May, 10 km. west of Meerut in Maliana, the PAC shot dead as many as 30 people. Indeed, the police have a long tradition of communalism as corroborated by the strictures passed on them by several judicial commissions set up in the wake of communal riots. The National Police Commission in its Sixth Report in March 1981, noted several instances where "police officers and men appear to have shown unmistakable bias against a particular community while dealing with communal situations," and referred in this connection to the composition of the police, "which is heavily weighted in favour of the majority community."

“spectator to loot, arson” in the Sujaganj and Parbatti areas of Bhagalpur town (p.114).

3. The IG Police G.P.Dohre is held to be equally responsible along with the SP. The report notes that “his communal bias was apparent ... during Muharram, when he said that he would make Bhagalpur another Karbala” (where Husain, son of Ali and grandson of the Prophet, and his Muslim troops were slaughtered by the Caliphate’s army near Baghdad).
4. Officers-in-charge of police stations Nathnagar and Mojahidpur are indicted on counts of “loot, arson, murder or abetting or deliberately failing to prevent it” (p.115). ASI Ramchander Singh (PS Jagdishpur) is charged with personally directing the Logain massacre, along with several others mentioned by name.

District administration officials specifically accused in this report are the DM Arun Jha and the ADM in-charge (Control Room), Executive Magistrate Bhagalpur, the Block Development Officers of Nathnagar and others. The charges made against them are similar to those against the police in the report.

The dissenting minority report of the Chairman, Justice Prasad (see box “A Five Year Chronicle”), is in sharp contrast to the majority Members Report. Originally the sole member of the commission, he had consistently disagreed with the other members. Thus he was opposed to the notices issued to the district and police officials by the then IAS officer members. Justice Prasad had not seen the need to inquire into the conduct of these officials, who had held responsible posts in Bhagalpur at the time of the riots and had failed to control the riots and had connived with the rioters.

From the opening paragraph onwards, the Chairman’s Report betrays the same communal perceptions which were cultivated and exploited during the riots. In the chapter on the Background, the Chairman instructs Indian Muslims to avoid contact with “ISI agents ... if they want restoration of trust in them.” He is of the opinion that the incidents at Fatehpur definitely had nothing to do with the riots, and officials could not be blamed for not taking precautions. About the Tatarpur incident which sparked off the riots in Bhagalpur town, he squarely blames the Muslims for throwing bombs upon a completely peaceful Ramshila procession. He ignores the fact that it is by no means clear as to who threw the bombs.

Kafila Luta Kaise: A

The chronology of the Bhagalpur riots and their aftermath only indicates the series of delays at every stage. The delays are the first step in the subversion of justice. Reports of the commissions appointed under the Commissions of Inquiry Act (1952) in the last forty years reveal how well recognized is the importance of such subversion at the very first stage. The methods practised are equally well recognized. Hence it is of some moment to see how obstructions were placed so that instead of the three stipulated months the report took five years. For these obstructions were neither haphazard nor innocent.

The riots occurred between 24 October to late November in 1989, in rural and urban Bhagalpur.

On 26 October transfer orders of the SP, K.S Dwivedi reached Bhagalpur. The police demonstrated to demand withdrawal of the orders. Local BJP and VHP members joined the protest. The then Prime Minister Rajiv Gandhi on a survey of the riot hit district withdrew the order. The worst massacres occurred in the next two days.

By S.O 1220 dated 8/12/89, a single member Inquiry Commission was instituted by the Bihar State Government. Retired judge of the Patna High Court, Justice R.N.Prasad was the Chairman and sole member. The Commission was due to submit its report in three months, that is by March 1990.

On 17 January 1990 R.N.Prasad assumed charge of office. Public notices were issued calling for written statements by 17 March regarding the facts and circumstances of the riots. The date was extended to 16 April upon the request of some individuals. Two more petitions succeeded in postponing the date to 1 May, 1990.

On 5 and 7 May 1990, the first sitting of the Commission was postponed to 21 and 22 May 1990.

On 21 May 1990, 481 written statements were received by the Commission. Out of these, 13 were selected for hearing by the Commission. Thus hearing began two months after the report was due for submission.

Until 1 October 1991, 12 witnesses were examined.

Considerable protests had taken place regarding the reliability of the sole member. Responding to these the state government reconstituted the Commission by adding two members, retired IAS officers Mr. Patankar and Mr. S.Q.Rizvi, by S.O 1226 dated 1/10/91. The life of the Commission was extended to 31 October 1991.

Immediately, the Ramshila Pujan Samiti and the Shri Ram Mahayagna Samiti petitioned the Patna High Court for removal of the two new members (CWJC No. 7461 of 1991). On 17 December 1991 the Patna High Court

Five Year Chronicle

dismissed the petition

They filed a Special Leave to Appeal (136/92) in the Supreme Court. The Supreme Court granted this prayer on 20/9/93. It ordered the state government to appoint two retired judges to replace the two earlier members.

On 16 October 1993 the new members appointed by the Bihar government, Justice R.C.P. Sinha and Justice S. Shamsul Hasan, retired judges of the Patna High Court, took over from the earlier members.

In 1993, during the tenure of the two IAS officers, notices were issued by Members of the Commission to seven officials of the district administration and police to inquire into their conduct under Section 8(B) of the Act. These officials were: Arun Jha, then DM, K.S. Dwivedi, the SP, K.C. Dubey, K.B. Choudhary, Ajai Singh, officers in-charge of Kotwali, Sabour and Isak police stations respectively, Ramchandra Singh, SI Jagdishpur police station, (held responsible in the Logain massacre), and Jagjit Singh, BDO Sabour (responsible along with the police in-charge of Sabour for the Chanderi killings).

Section 8(B) allows persons whose reputation is likely to be prejudicially affected by the inquiry, a reasonable opportunity to be heard. The Chairman did not agree to the decision to send notices to these officials.

The validity of the notices issued was questioned by K.S. Dwivedi, Arun Jha (CWJC 5652 of 1993) and K.C. Dubey (CWJC 5203 of 1993), in the High Court. The High Court stayed the notices. The stay is still in operation. The other officials filed a civil writ application challenging the notices issued to them. This is still pending for admission in the High Court. Those Commission members who had issued notices to the officials were removed. The officials, on the other hand have a stay on the notices and continue to operate.

The period of the Commission was extended to 15 February 1995.

On 15 February 1995 the Members submitted their report to the Chief Minister.

On 28 February 1995 the Chairman who disagreed with the Members' findings, submitted a separate report.

On 30 June 1995 the state government placed the report in the state Legislative Assembly. The majority report was accepted. The Memorandum of action taken was due to be submitted by the government in August.

By late November 1995 show cause notices were issued to concerned officials and one police officer, then IG Bhagalpur, and in 1995, DGP Bihar, Ganga Prasad Dohre was transferred.

Despite the ample evidence presented to the Commission, the Chairman finds that, "neither the police nor the administration had a communal bias". They failed in controlling the riots "for which they must be held accountable and if necessary punished" (Chairman's Report, p.98). Significantly the report omits all mention of the worst massacres at Logain, Chanderi, and Bhikanpur in which witnesses allege that the police were actively involved. No attempt is made to fix responsibility for the riots. In fact, A.K Singh, ADM, Law and Order, Bhagalpur, responsible for uncovering the Logain massacre has been criticised for publishing an article exposing the collusion of the district administration with rioters.

As is more than apparent, the findings of the two reports are completely divergent. While the findings of the Members Report ought to be welcomed, it is nonetheless significant that neither of the reports attempts to ascertain the death toll during the riots. As per its terms of reference, the Commission was supposed to investigate the incidents and fix responsibility. But if the death toll is not ascertained, the facts of arson and looting are not established responsibility cannot be fixed nor the guilty identified. The Members Report does comment upon the delays in the trial courts, and the large number of acquittals. They attribute these to the possible intimidation of witnesses. But the obstruction of justice starts much earlier, in the deliberately shoddy work (not filing FIRs, failing to identify the assailants) done by the police in the first place. The Members thus recognise that "CBI inquiry may be required in some cases" (p.121)

What is disturbing is their suggestion that a Rapid Action Force headed by the army and under the direct control of the Central Government be deployed all over India. Further, that it should have intelligence and prosecution wings which should take over investigation and criminal proceedings in special courts. Institutions exist in our democratic system with sufficient powers to tackle such situations. When they fail, their malfunctioning must be checked. The Members' recommendation of an entire parallel system with extraordinary powers may seem a reasonable proposal in the context of such malfunction, except that it further weakens those democratic institutions.

The Members Report was accepted by the legislature by virtue

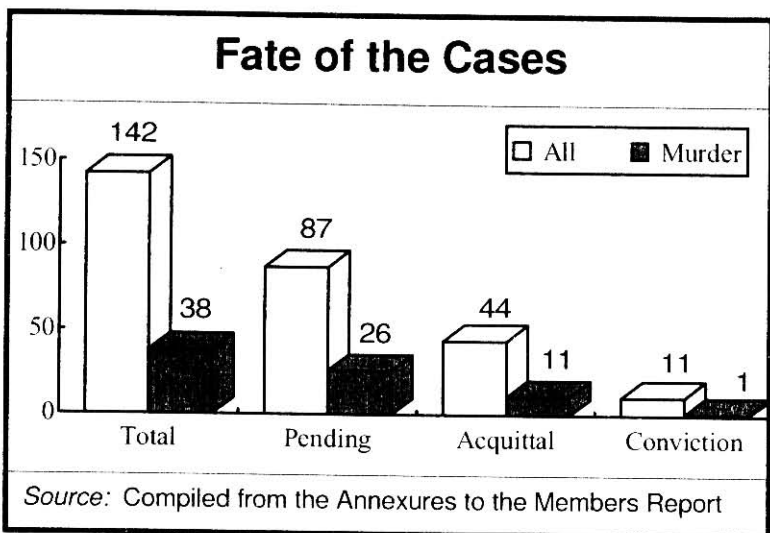
of being a majority report. The appointing government is required to lay great stress on the composition of the Commission to ensure that it is unbiased. When, as in the case of the Bhagalpur Commission, one member was quite definitely biased, the integrity of the very institution of Commissions of Inquiry gets eroded, and along with it, the ability of the state to prevent further communalization. The fact that the composition of the Commission could change so frequently and that two reports could be brought out with diametrically opposed conclusions indicates a deeper problem: the susceptibility of Commissions of Inquiry to the inclinations of the government in power and interventions by the judiciary.

The history of the Commission bears this out. For the delays that occur appear to be strategic and intentional. The Commission was set up in 1989 by the Congress I, then in power in the state. Elections were due soon and it made good electoral sense to appoint the one member commission. After almost two years (till 1991) during which the sole member heard the evidence alone, the composition of the Commission was changed. Objections against the single member were raised not only by Muslim fundamentalist organisations but also by the democratic sections. This change was brought about by the state government, this time the Janata Dal, which had come to power in the state in the 1990 elections.

In 1993, the Supreme Court intervened upon a petition by two organisations, Ramshila Pujan Samiti, and Shri Ram Mahayagna Samiti (see box "A Five Year Chronicle"). They demanded that the composition of the Commission be altered again. This was now done at the behest of the judiciary. The period of the Commission was extended by two more years. The same stratagem of delay was used by the state government after the report was tabled in 1995 and a report of the action taken against the guilty had to be submitted.

Crime and Punishment

Governments in power routinely cite the appointment of Commissions of Inquiry after communal riots, as proof of their renewed resolve to battle such violence. This emphasis leads to the popular misperception that a Commission is a post-riot replacement for normal investigative procedures. It is not. The due process of law



does and must continue to operate simultaneously. And this is where the victims and their relatives have to struggle hardest to even set the process rolling at all.

The fact finding by PUDR into the riots concluded that around one thousand people had been killed. The report of the Commission does not contain any mention of the number of people killed. The report by the ADM, Relief and Rehabilitation provides an estimate of 982 deaths. This is included in the volume of Annexures with the Members Report. The police however have supplied no figure in their submissions included in the Annexures.

However as far as punishment to the guilty and justice for the survivors is concerned, it is not the Commission of Inquiry but the scribbled contents of the FIRs filed in far flung thanas of the 15 affected blocks of the district that are crucial. For, judicial action starts from this point.

Lists of these FIRs, are attached to the Members Report. The story of police indifference that they tell is aptly displayed by the figures given. A total of 595 FIRs were registered by the police during and after the riots, each pertaining to a separate incident of arson, killing and looting. But these FIRs cover only 354 of the recorded 982 deaths. Over 500 deaths are simply not recorded as crimes. Either dead bodies could not be recovered or the victims were

killed in police firing. In communal riots where police is guilty of connivance, police firing takes on a different complexion altogether than simply control of rioting mobs. In either event an FIR was not recorded.

The problem arising from the lack of a dead body is compounded by the fear of the people in approaching the police, for many policemen are known to have directly participated in the rioting. Since it is upto the police to register an FIR, intimidation, deliberate obstruction at the thana or even refusal to file complaint are only to be expected. In such a situation, the mere filing of an FIR is a substantial gain for the victim. Thus the delay in filing of the FIRs was on an average two weeks. In the case of the Logain massacre where 108 bodies were buried in the fields with the connivance of the police, the FIR was filed 41 days after the incident. The delay typically weakens the criminal charges and gives to the accused ample time to destroy evidence.

Chanderi village: Whither Justice?

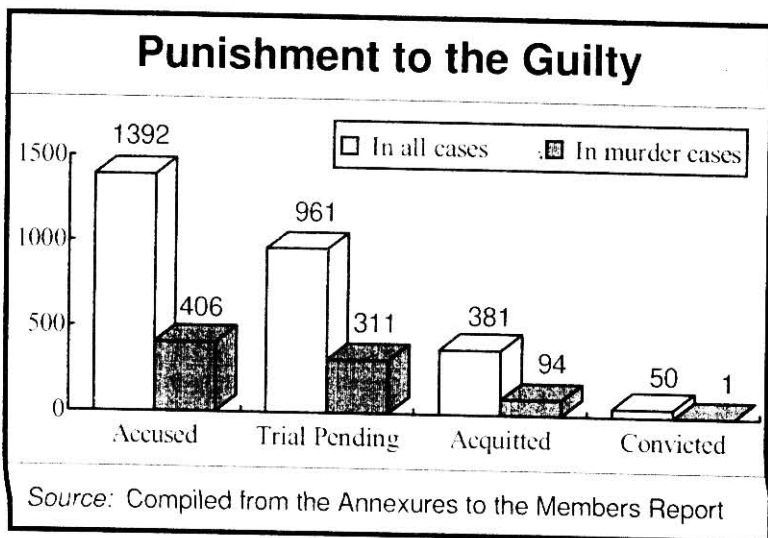
One of the instances of large scale massacre with active connivance of the police occurred at Chanderi village under Sabour P.S. on 28 October 1989. An army contingent had come to the village on 27 October after an attack in which two Muslims were killed and a number of houses burnt. The Muslims of the village numbering 70-80 were handed over by the army officer, Major Virk to the Incharge of the Sabour P.S. at night on the assurance of providing them food and protection. Next morning police brought out the Muslims on the pretext of shifting them to another village. Within the village the Muslims were attacked and 60 dead bodies were thrown into a pond. One woman survived and was rescued by Major Virk later in the day. She narrated the happenings before the High Court which held the police responsible.

An FIR was lodged at the Sabour P.S. (No. 180/89). The administration ordered an enquiry into allegations of police connivance. Those conducting the enquiry were none other than the S.P., Mr. Dwivedi and the D.M., Mr. Arun Kumar Jha. Both have been indicted by the Commission. They concluded negligence by the army and the police. Two cases are currently pending in the Sessions Court (S/T 736/92 and 342/91) in which a total of 39 people are named accused.

In a riot situation the form of attack is typically a mob of strangers. Where some of those part of the mob are identified, victims are unwilling to state the names fearing further attacks. Therefore of the 595 FIRs registered, in 416 FIRs no accused is named.

The sorry tale of investigations performed by the police is clear from the fact that in only 140 FIRs chargesheets were filed by the police. These FIRs transformed themselves into 142 cases in the Sessions Court. In the rest of the cases the police filed the final report indicating that no accused could be identified and thus cases were closed. In this way prosecution was thwarted for 119 killings among other crimes, for which FIRs were lodged. For the FIRs in which police closed the case after investigation, the courts accepted the final reports given by the police. No attempt was made to hand over investigation to any other agency given that over 400 FIRs were being closed.

The 142 cases filed in the court accused 1392 people of participating in incidents of violence and looting. Six years later 87 cases against 901 accused are still pending. Of the 55 cases decided, 11 have ended in convictions in which 50 people have been awarded punishment. Of the 142 cases 38 cases relate to murder. 12 of these cases have been decided and one has resulted in conviction. Of the 406 people accused in murder cases, the court has decided on 95 people, of whom 94 have been acquitted.



Tabling the Report and What Followed After

In August 1995 after the Members Report was tabled, certain questions were raised about it by the Patna High Court. The court responded to a petition of slander and misrepresentation filed by Mr. L.K.Advani (BJP President) regarding the criticism levelled at him in the report. Mr. Advani is accused of resorting to the threat of rioting unless the Muslims 'identify with Hindutva' (quoted in *Panchjanya*, the official mouthpiece of the RSS, and the *Times of India*, 30 January 1993). On 14 September 1995 the court ruled in Mr. Advani's favour and directed the Members to give an explanation. The BJP's dissatisfaction with the Members Report which condemns the party as communal is obvious.

After the long awaited report was finally brought out, executive action upon its recommendations continued to contribute to the process by which the entire institution is reduced to farce. Bihar Chief Minister Laloo Prasad Yadav had stated categorically on 30 June 1995, "The government will spare no one who has been indicted by the majority of the Commission. My government will ensure severest punishment within three months of those who have been found guilty of aiding and abetting the worst ever riot in Bihar." Eleven months have gone by and the government has still not tabled its Memorandum of Action Taken. So far the action has been minimal and piecemeal. Show cause notices have been issued to some of the indicted officials, and G.P.Dohre, one of the main accused in the Report, then IG Bhagalpur and later Director General of Police Bihar, has been transferred. The punitive capacity of transfers is dubious to say the least. This much was done by the third week of November, three months after the Memorandum of Action Taken was due. Compared to the fanfare with which the Commission was announced, the elaborate prolonged ritual of maintaining it, and the positive report that did emerge, the action taken appears to be rather like a joke in bad taste.

Conclusion

Official response in the aftermath of a riot thus follows a two-pronged channel. One, through the criminal justice system and two, through the Commission of Inquiry. It is to prevent possible biases in the normal process of prosecuting the cases- through filing a police report, framing charges and going to the courts- that a Commission of Inquiry is instituted. For, as in the case of Bhagalpur, state representatives are often directly involved in the rioting. Then those guilty of abetment, connivance, dereliction of duty and negligence are not likely to charge themselves or prosecute others responsible. The data collated from the annexures stands testimony to the fact that intentional dereliction of duty and negligence by police continue in the aftermath of the riot.

Time bound commissions of inquiry are appointed to perform two tasks. (1) to identify the guilty officials so that they can be charged and that the administration can be reorganised to prevent the guilty persons from hampering the process of justice; and (2) to suggest measures to prevent such occurrences in the future.

The failure of the state government to initially appoint an impartial inquiry prepared the way for delays in the Commission. The play of communal politics and an insensitive judiciary furthered these delays. Consequently, while five years of reconstitution dragged on the same administration, which was later indicted by the Commission for connivance with the rioters, continued to register, investigate and prosecute the crimes committed during the riots. Necessarily this resulted in non-registration of crimes, cursory investigation and weak prosecution.

Hence, the Members Report apart from making suggestions and fixing responsibility also points to the need for proper investigation and prosecution of crimes which had occurred five years ago. And this aspect of the recommendations of the Commission has neither been publicised nor any action taken or promised regarding it. The Bihar government has not yet even submitted the Memorandum of Action Taken, violating the legal stipulation of six months.

The real problem lies in the failure of the state to safeguard the lives and property of its citizens both during the riots and in their aftermath. That the Commission of Inquiry is properly constituted,

allowed to function, and justice done according to its recommendations depends on the political will of the government. This will is singularly lacking. For it inherently follows from the lack of political will to prevent riots in the first place. So, first, representatives of the state allow, if not actively instigate communal riots. Then they shield those who have perpetrated the arson, loot, and killings through formal measures like departmental inquiries. The state sets up a Commission of Inquiry, whose functioning can be thwarted by vested interests in the state itself. The circle is complete, and the subversion of rule of law, total.

The fate of the Srikrishna Inquiry Commission probing into the Bombay communal riots in December 1992 and January 1993 is the worst example of this process. On 23 January, 1996, the Shiv Sena-Bharatiya Janata Party government in the state decided to wind up the Commission. The reason provided was that the government has spent Rs. 1.7 crore on the Commission and that its term had been extended five times since its inception. Worse still the government defended its decision by saying that the Commission "had become an exercise in futility". And that ever since the new government took charge "Maharashtra has been witnessing complete communal harmony. The Commission's proceedings would have unwittingly vitiated this atmosphere" (Times of India, January 24, 1996). Masked by these arguments for efficiency is the original reason for setting up the Commission. The deaths of over a thousand people and large scale destruction of property three years ago which the Commission had been investigating hang in the balance.

The gradual dilution of this democratic institution today has reached a point where it has been explicitly debunked on grounds of futility and expenditure. What becomes evident from the aftermath of the 1989 Bhagalpur riots is the deliberate nature of the delays and attempts at rendering the institution of the Commission futile.

The arbitrariness of this decision of the Maharashtra government has ominous implications for democracy. The NHRC has now taken over the inquiry into the Bombay riots. After one institution is made hollow from within and its working obstructed at every step, the work is taken over by another newly created institution. Exposed in this is an absence of commitment to the rule of law by ruling and opposition parties. In Bhagalpur the Congress was in

power when the riots occurred, the BJP provided the immediate occasion for the riots, and the Janata Dal that came to power after the riots has failed to prosecute guilty officials even after half a decade.

The fundamental principles of the Constitution-the right to life and equality before the law - holds little meaning for the political parties, the government, the administration, and the police. It has little meaning for the general public itself, except when various sections suffer the consequences of the deliberate flouting of the constitutional guarantees by the state and its institutions.

And for some of the victims of this failure, such as the families of the 628 killed in Bhagalpur for whose murder no FIR has been filed, the hope for redressal is faint. Thus for many of those who died in these riots, there is inequality not only in life but in death.

Thus rule of law, the mainstay of the Constitution, gets subverted not only during the functioning of the Commission of Inquiry, but more insidiously and dangerously, because of its very invisibility, in the subversion of the normal procedures of the Cr.P.C. and the I.P.C.. The sad chronicle of the Bhagalpur riots and its aftermath is a pointer to the erosion of the Constitution from within by those very authorities who have pledged themselves to obey and preserve it. Our hope lies in that small minority which hearkens to the dangerous portents of our times and are willing to struggle for the right to life and equality for all our people.

continued from back cover

Police claim that most of these unidentified bodies were of persons killed in encounters. The Punjab Police Rules, section 25.38 provide mandatory procedures for unidentified bodies. Violating all the procedures, without informing the families, the police hurriedly carry out the cremations to destroy evidence. This is given in a petition to the Supreme Court [W.P. (Crl.) No. 449 of 1995].

But in more than a hundred entries in the Durgiana Mandir cremation register, the name has been recorded. At least 41 bodies are listed as dead from bullet injuries. There are witnesses to these arrests and cremations, who are willing to testify if they are given protection by the courts.

Jaswan Singh Khalra worked tirelessly to retrieve the identity of those cremated at the Durgiana Mandir and Patti cremation grounds. He had collected evidence that the police did not record or misrecorded information about these dead bodies.

For this work he was threatened by the Taran Taran police that he would himself become another unidentified body to be cremated.

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“Disappeared”

Punjab Police Abducts Civil Rights Activist

Jaswant Singh Khalra (43) general secretary of the Human Rights Wing of the Shiromani Akali Dal was abducted from outside his house in Amritsar on 6 September 1995. He was last reported to have been seen on 22 September in Sarhali police station near Taran Taran. A habeas corpus petition was moved in the Supreme Court. Over four months have passed but to date there is no news of him.

Between 1991 and 1994, 538 dead bodies were cremated at Patti Municipal grounds in Amritsar district. In 1992 itself, 300 unidentified and unclaimed bodies were cremated at the Durgiana Mandir cremation grounds in Amritsar city. The figure could be higher given the fact that the police at times burnt more than one body at a pyre.

continued on reverse

Produce J.S.Khalra in Court

We Want J.S.Khalra Alive