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National Commission for Minorities

Report

on

Communal Riots : Prevention & Cure

by

Iqbal A. Ansari

National Commission For Minorities
Committee on Communal Riots

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Ref. :

Dated : 5.3.99

Members :

Professor (Dr.) Tahir Mahmood
Chairman,
National Commission For Minorities
5th Floor, Lok Nayak Bhavan, Khan Market
NEW DELHI-110003.

Mr. Zafar Ali Naqvi
Mr. N.D. Pancholi

Convener :

Iqbal A. Ansari

Ref.: Your letters Nos. CH/82/97 dt. 7 Dec.'98
and CH/3/98 dt. 12 Feb.'99.

Dear Professor Tahir Mahmood Sahib,

The National Commission For Minorities appointed the Committee on Communal Riots to propose effective legislative and administrative measures for the prevention and cure of the evil of communal riots in the country (vide Notification No.CH/39/97/NCM dated 10 Dec.'97 with Justice V.M. Tarkunde as the Chairman and myself as its Convener.

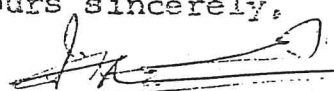
The reasons for dissociation of two distinguished members Mr. Rajeev Dhavan and Mr. Soli J. Sorabjee from the Committee are known to you. Even the depleted Committee could not function as a team.

In your letter of 7 December 1998 you asked me to submit the Report by 15 Feb./8 March 1999 incorporating the written suggestions, if any, sent to me by other former and present members to whom you addressed letters in this regard.

I deem it a privilege to submit to the Commission the enclosed Report on my own behalf in which legal and administrative measures have been suggested on all aspects of communal riots i.e. i) prevention ii) control iii) accountability and prosecution and iv) compensation.

With regards,

Yours sincerely,


(IQBAL A. ANSARI) 8/3/99

INTRODUCTION

Communal Riots cannot be treated as merely law and order problem. They are manifestation of collective behavioural disorders which can be ultimately traced to minds and hearts of people. But while existence of inter-group prejudice, rivalry and even animosity within tolerable limits may be taken to be not so abnormal as to become incorrigible by any educative process, the outbreak and spread on inter-group violence causing loss of tens or hundreds of lives and destruction of property should be treated as resulting from failure of governance.

In this Report we have confined ourselves to suggesting legal and administrative measures for i) prevention and ii) control of riots; and for iii) fixing official responsibility of failure and speedily bringing to justice the guilty, and lastly to iv) provision of adequate compensation under law to all victims of riots.

The proposed statutory Community Relations Commission, along with the media and educational institutions, can be expected to undertake the work of removing inter-group prejudices, suspicion and distrust and also making communities resolve their disputes peacefully. But all the reforms can be brought about and become effective when social, political and cultural milieu in the country treats peace with justice as of paramount importance. We are, however, convinced that if the measures suggested in this Report are adopted they will succeed even under existing conditions in preventing riots and stopping ^{them} within a short period in case violence breaks-out.


(IQBAL A. ANSARI)

NCM COMMITTEE
COMMUNAL RIOTS : PREVENTION & CURE

HIGHLIGHTS OF THE REPORT

I. Prevention

1. Statutory Community Relations Commission (CRC) entrusted with the responsibility of study, monitoring, prediction, and peaceful resolution of inter-group conflicts, having powers to initiate legal proceedings against mediapersons and leaders u/s 153A, 295 & 505 etc. Lawcourts to give priority to speedy disposal of such cases.

1.1 Mohalla & District peace committees to function under the supervision of CRC.

2. Special Intelligence Units (SIU) at national and state levels for collection of intelligence related to communal disputes. The SIU to have adequate representation of minorities and weaker sections and to be specially trained. The SIU to be made attractive for competent persons having special aptitude for the work.

3. Enactment of Central Political Activities (Regulation) Act prohibiting political activities based on seeking dominance of any religion or culture.

4. Right to take out procession to be strictly regulated and restricted.

5. The Press Council to have powers to initiate legal proceedings against papers responsible for aggravating communal situation leading to violence.

6. The NCERT & the UGC to have Standing Committees to review all teaching-reading material from primary to undergraduate levels to remove communal prejudices.

II. Control

1. Statutory State Security-cum-Administration Commission (SAC) for i) laying down policies ii) periodic review of administrative and police performance iii) controlling appointment, posting, promotion, transfer, suspension etc. of senior officials.

1.1 Statutory district-level watchdog bodies to ensure transparency and accountability in the functioning of the administration and the police.

1.2 DM and SP to be held responsible for failure to prevent and stop riots. Service rules to be amended providing for disciplinary action against erring officials for serious dereliction of duty.

2. Inquiry Commissions appointed by the SAC in the event of casualties being 3 to 20 and by the panel of Chairmen of NHRC, NCM and SAC when casualties exceed 20. The IC to fix official responsibility for failure and to determine the loss of life and destruction of property and the amount and kind of compensation to be paid to sufferers of riots.

2.1 The governments shall not have the power to reject the findings and recommendations of the IC.

3. Training of the police officials and men and other law-enforcement personnel in human rights, with a special course on removing prejudices and negative stereotypes; periodic training of police officers for riot control.

3.1 Police & other agencies involved in law-enforcement to have 25% representation of members of minorities.

4. Use of firearms for mob controlling the police not to be encouraged especially at the initial stage for deterrence.

III. Prosecution

1. Apart from constituting special Investigation Squads, Special Prosecutors and Special Courts for trial of riot related cases, special trial procedures to be provided for keeping in view the circumstances of rioting in which cases of killings, loot and arson occur.

IV. Compensation

1. All those killed in riots after 1984 in any part of the country to be paid uniform compensation of Rs. 2 lakhs with interest according to the Delhi High Court judgment of 5 July 1996.

2. A Central law on riots to provide for, among others, restitution and payment of compensation to all victims of riots for loss of life, property ^{and} or injuries caused during riots.

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Summary of Recommendations on Prevention and
Control of Communal Riots and on Punishing the Guilty
and Compensating the Victims.

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Mr. Zafar Ali Naqvi

Mr. N.D. Pancholi

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Section I

Preventive Measures

We recommend the following measures for prevention
—of riots :

1. Setting up a Statutory Community Relations Commission (CRC) at the national level comprising jurists, sociologists, historians and specialists in ethnic conflict resolution for i) study and research on sources of inter-group conflicts ii) monitoring of current inter-group relations iii) prediction, warning and management and peaceful resolution of conflicts iv) initiating legal action against those involved in fomenting communal hatred, illwill and disharmony.

1.1 The CRC to have regional units and units in selected districts and to work in liaison with NGOs and district officials.

1.2 District Peace/Ekta Committees as well as Mohalla Committees (as experimented by IPS officer Shri S.A. Khopade in Bhiwandi since 1989) to function under the supervision of the CRC.

1.3 The CRC to be provided with the services of Special Public Prosecutors to initiate legal proceedings under Sections 153A, 295 & 505 and other provisions of the IPC & Cr.P.C.

2. Constituting Special Intelligence Units at the national and State levels, as recommended by the NIC, for collection of intelligence specially related to communal disputes and tensions.

2.1 A specially trained cadre of intelligence personnel to be raised comprising persons drawn from all communities, with adequate representation of minorities.

2.2 Personnel involved in collection of intelligence to be given due recognition and status to make the service attractive for competent persons with special aptitude for the work.

2.3 The law courts to dispose of cases u/s 153A, 295, 505 etc. expeditiously on a day-by-day basis..

2.4 Enactment of a Central Political Activities (Regulation) Act prohibiting any political activity that engenders or aggravates communal tension, especially such activities that seek dominance of one religion or culture over others. The law to provide for a Commissioner of Political Parties and empower the Election Commission to disqualify parties promoting communal disharmony, on the report of the Commissioner.

2.5 Right to procession ----- religious, social or political ----- to be strictly regulated; licencing of processions to be subject to following prescribed route, slogans and placards and use of loudspeakers/musical instruments, and videography of processions.

2.6 Regular monitoring and periodic review of the writings in the press, especially in local and regional

newspapers and certain political organs, by a special committee at State and district levels.

2.7 Amending the Press Council Act to empower it to initiate legal proceedings against erring newspapers, periodicals in the event of serious offences especially publication of false stories during riots arousing communal passions.

2.8 The National Council of Educational Research and Training (NCERT) and the University Grants Commission may be required by law to appoint Standing Review Committees to examine all reading-teaching material used at primary, secondary and undergraduate levels to ensure that they help remove inter-community prejudices and inculcate values of tolerance and peaceful coexistence of various religious and cultures.

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Section II

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Measures for Prompt Control of Riots

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1 State Security-cum-Administration Commission

(SAC) : To make the DM and SP responsible for prevention and timely control of riots, the officials and the police must be ensured independence from political interference, for which we recommend setting up of a statutory Security-cum-Administration Commission (SAC) in every State.

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1.1 The Commission (SAC) besides laying down policies for transparent functioning of the police and the district administration as impartial enforcer of law and reviewing their performance on a monthly, quarterly and yearly basis will control and review appointments, postings, transfer and suspensions and other penal actions or promotions of senior administrative and police officers.

1.2 Statutory Watchdog district level bodies comprising DM, SP, and some retired judges, administrators, academics and social workers resident in the district to function to ensure transparency and accountability.

1.3 The State Security-cum-Administration Commission to suitably amend service rules of civil servants and police personnel providing for necessary penal action in the event of any serious dereliction of duty during communal riots.

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1.4 The SAC in consultation with Human Rights and Minorities Commissions of the State concerned to appoint an Inquiry Commission headed by/sitting or retired High Court judge to determine the failure of the DM and the SP and other officials and to fix responsibility in the event of a riot continuing for more than 24 hours and casualties exceeding three.

1.5 In the event of casualties exceeding twenty the Inquiry Commission to be appointed by a panel of Chairmen of NHRC, the NCM and SAC of the State.

1.6 The Governments shall not have the power to reject the findings and recommendations of the Inquiry Commission.

1.7 On the basis of the Inquiry Commission's report the SAC will take disciplinary action including criminal legal proceedings against erring officials.

2 Screening and Training of Police Personnel :

Screening of all personnel of police and paramilitary forces and other law-enforcement agencies for ensuring secular/non-communal attitude and outlook.

2.1 Training programmes of all law-enforcement personnel to include general courses in human rights and special course components on removal of prejudices and negative stereotypes of Muslims and other minorities and vice-versa.

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2.2 Police officers to attend periodic seminars on community relations and intergroup conflicts resolution and also on studies based on previous major riots wherein causes of failure have been objectively analysed for future use.

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3 Adequate Representation of Minorities in the Police System : To achieve the objective of making the social composition of police system diverse wherein minorities get adequate representation so that the likely biases in the police personnel get neutralised and the minorities feel reassured and repose confidence in the law-enforcing agencies, it is imperative that a quota of 25% is fixed for minorities in all wings of the law-enforcement machinery till a balance is restored.

3.1 It must be kept in mind that desirability of giving adequate representation to minorities in the police system has been expressed by the E NPC, the MHA PM's Fifteen Point Programmes on Minorities and also by official Inquiry Commission Reports^{and} by Justice V.M.Tarkunde and V.N. Rai, IPS, among others.

4 Use of Firearms by the Police :

We recommend use of non-lethal methods for crowd/riot control. Firearms to be used only when there is serious imminent threat to life (and not to property) and when all other methods have been exhausted.

4.1 State Manuals on use of Force and Riot Control Schemes to be amended in accordance with the UN Basic Principles on the use of Force and Firearms (1990).

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4.2 The direction to the police for vigorous use of firearms at the initial stage of a riot to shoot to kill substantial number of persons for deterrence is unlawful and has been the cause of indiscriminate ruthless use of firearms against innocent people by the police. It must be withdrawn.

4.3 . The policy of the police either to ^{make} excessive use of firearms or to become passive spectators to scenes of violence caused by confused political misdirections must be replaced by a rational and steady policy based on humane norms.

4.4 Involvement of the Mohallah and District Peace/Ekta Committees as envisaged in Section I for prevention of riots, must be ascertained in control operations for countering rumours, persuading mob to disperse, enforcement of curfew, supply of essential commodities and rescuing people under threat.

Section III

Measures for Punishing the Guilty

In this regard the following are our recommendations :

1. For registration of cases centres to be opened in all affected localities and in registering cases police officers to be assisted by the mohalla ekta/peace committees (working under CRC).
2. Special Investigation Squads of unbiased mixed community composition and Special Prosecutors to function under the Inquiry Commission to be constituted as recommended in Section II 1.4 & 1.5.
3. Special courts to be set up or specially designated courts to try riot related cases. 'Riot related cases' will include leaders involved in instigating riots and administrators and police personnel charged with dereliction of duty.
 - 3.1 While constituting Special Courts efficiency, integrity and impartiality of judges must be considered essential requirements.
4. Special trial procedure to be provided for in a comprehensive central law on communal and other riots, which on the one hand will take cognisance of the special circumstances of public disorder during riots and on the other hand will not dispense with or abridge the right of the accused to proper defence.
5. A reasonable time schedule for conduct and completion of trial, and appeal to be laid down and to be adhered to.

Section IV

Compensation to Victims of Riots

1. The Statutory Recommendation of the NCM to all State Governments for payment of uniform compensation of Rs. 2 lakhs with interest to the families of all those killed in all riots in any part of the country according to the Delhi High Court judgment delivered by Justice Andil Dev Singh on 5 July 1996 should be implemented in all riot cases after 1984.

1.1 The National Human Rights Commission should direct the Governments of concerned states to take steps for uniform payment of Rs. 2 lakhs with interest to the families of all those killed in riots since 1984.

1.2 Ad hoc tribunals may be appointed by State Governments concerned to determine the loss of life during riots in each State since 1984.

2. Enactment of a central law on communal (and caste) riots to be adopted by all States and Union Territories with provisions, inter alia, for restitution of rights and payment of compensation for loss of life or property or injuries caused during riots.

3. The Inquiry Commission as provided for in Section II clause 1.2 to be made further responsible for determining losses of life and property and injuries and social and economic dislocation suffered by victims and the amount and kind of compensation to be paid to each sufferer.

3.1 The Inquiry Commission will fix responsibility of individuals, and organisations for causing riots and of

officials for dereliction of duty and determine their liability to pay compensation to the victims. Liability of Ministers for compensation will also be determined by the Commission.

3.2 The Special/designated courts trying cases arising out of riots must combine the determination of guilt and compensation aspects, wherever required.

4. Some Special Riot Insurance Scheme may be made available to all persons residing in riot prone places, where premium for the poorer sections must be paid either fully or partly by the Government.

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ADMINISTRATIVE AND LEGAL MEASURES REQUIRED FOR
PREVENTION OF COMMUNAL RIOTS

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1. Given the country's religious and cultural diversity and given the historical legacy of mutual prejudices and animosities, potential for communal conflict and tension can be presumed to perennially exist in varying degrees and nature in large parts of the country with sizable minority presence. Inter-group social psychology, collective memories and their symbols, demographic features of communities and their socio-economic relational patterns are some of the variables of inter-group relations. In the event of intra-and inter-group elite competition for control over resources and power, mobilisation of people over religio-cultural issues and symbols engenders an atmosphere conducive to outbreak of communal violence, which may be occasioned by trivial proximate causes.

1.1 Given this overall diagnosis of communal violence its prevention requires the following :

- a) Study and research on all diachronic and synchronic sources of inter-group potential conflicts and their actual manifestations
- b) monitoring of current inter-group relations
- c) prediction, warning and management of conflicts by involving and engaging adversaries in peaceful resolution of disputes
- (d) initiating prompt legal action against those involved in fomenting communal hatred, illwill and disharmony through writings, speeches and rumours.

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1.2 National Integration Council even if activated cannot be expected to perform this four-fold function.

What is required is setting up a statutory Community Relations Commission (CRC) having members from among sociologists, historians and jurists and other specialists (The Commission will be responsible for all inter-group relations based on religion, caste, language, region and ethnicity).

1.3 The Commission (CRC) may have its Union and Regional units and also units in selected districts.

1.4 The Commission's Act will provide for its functioning in liaison with NGOs and officials, especially at the district level.

1.5 As powers for initiating legal proceedings against offenders (i.e. political leaders, newspapers etc.) u/s 153A etc. will vest in the C.R.C., it may be provided with the assistance of a Special Public Prosecutor.

1.6 At local/district levels peace/ Integration/Ekta Committees may be reconstituted to function under overall structural organisation of the CRC, having reputed individuals and NGOs active in the area of communal harmony. The principle of the Hindus nominating some Muslim members of such committees and vice-versa may also be adopted.

2. To supplement the monitoring activities of the CRC Special Intelligence Unit should be constituted

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at national and state levels, as recommended by the National Integration Council (1968), for collection of intelligence related to inter-group/communal disputes and tensions to be headed at the State level by a senior-ranking police officer with network at local and district levels. Necessary intelligence, regular periodic and emergent, to be made available by this agency to the political wing, administrative wing and the Community Relations Commission (CRC). A specially trained cadre of intelligence personnel need to be raised, comprising persons from different communities with special aptitude and capable of absolute impartiality. Personnel involved in Intelligence collection need to be given due recognition and status.

3. The appointments of the Senior IPS Officer-in-charge of Intelligence (Communal Peace) and of the Special Public Prosecutor at the State level to be made by the Statutory State Police/Security Commission (as envisaged by the NPC) to which these officers will be accountable.

4. We do not approve of the practice of preventive arrests of persons considered to be anti-social, or communal. Similarly the use of Sections 107, 108, 109 & 110 Cr.P.C. to bind the anti-social elements needs to be made with care and caution. Such administrative measures suffer from two serious flaws : one, that some persons are permanently branded as anti-social or communal which is against the basic principle of natural justice, secondly district officers consider it their duty to take such preventive action against equal number of persons from both communities, which may not be valid in each case.

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4.1 Preventive legal action, however, may be taken against persons earlier convicted of offences under Section 153A & 295A & 505(2) etc. of the IPC.

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5. The lower courts may be required to give top priority to cases that are likely to disturb communal peace. Without giving the impression of any summary trial it should be possible for the law courts to schedule daily hearing of such cases leading to their expeditious disposal.

5.1 By denying any speedy delivery of justice, the judiciary sends the message that criminals/offenders can be promptly dealt with either under administrative detention laws or outside law, which makes matters worse

6. There is a need to make a study of both non-use of Sections 153-A & B, 295-A and 505 of IPC & the pattern of legal proceedings under these sections, indicating average time for disposal of cases and the rate of acquittal and conviction. Non-use of existing legal provisions results from lack of will as well as from hierarchical control like seeking permission from the political executive. The inordinate delay in legal proceedings and high rate of acquittals need to be rectified by reforming investigation, prosecution and trial procedures and practices.

7. In view of our diagnosis that it is mobilisation of people over religion and culture for social and political power that accentuates communal division and conflict, a Central Political Activities (Regulation) Act should provide for prohibition of any political activity that engenders and aggravates communal tension

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especially all such activities that seek dominance of one religion or culture over others.

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7.1 Activities related to practice and teaching, preaching and dissemination of any religion and culture which are not directed to have dominance through political power over others will not attract the provisions of this Act.

8. The law on people's right to processions is settled and well defined; so are powers of the magistracy and the police to regulate processions including its banning if maintenance of peace and order so require.

8.1 In view of the fact that the right to religions/social/political processions has been often abused causing many major riots in the past, the proposed Community Relations Commission (CRC) will make community leaders agree on certain rational norms, in the light of which it will prepare guidelines for each type of procession. The law-enforcing agencies will be well advised to err on the side of strictness if there are reasonable basis for apprehension of breach of peace.

8.2 The carrying of lathis, spears, swords, daggers, tridents and other such material should in no case be allowed. Causing nuisance in the name of music and use of loudspeakers should not be allowed in any procession which passes through residential areas, markets or busy public streets.

8.3 Provocative slogans and leaflets have been major source of friction among communities. Issuance of

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licence to take out processions should be subject to conditions including use of agreed non-provocative slogans breach of which should be reason enough to declare the procession an unlawful assembly.

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8.4 The problem of route of processions should also be rationally sorted out to eliminate all avoidable sources of friction. There should be arrangement for videography of processions.

The need for a permanent Community Relations Council can be realised from the difficulty of policing not being able to take care of all possible situations in a country where processions — social, religious, cultural, and political — are integral part of public life.

9. As some local/regional newspapers on occasion tend to publish unverified stories and reports that often result in aggravation of communal tension, monitoring of the press will be done by special committees at State and district levels having representatives of the CRC, the district administration and reputed members of the public/NGOs along with representatives of all newspapers and periodicals.

10. There is a need to empower the Press Council to not only censure any erring newspaper/periodical but also to initiate legal proceedings against serious offences, like the publication of fabricated story of killings of 76 patients in the J.N. Medical College of Aligarh Muslim University during riots in 1990 by the Hindi dailies Aj and Amar Ujala.

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11. In spite of being one of the more communal sensitive towns, Bhiwandi remained totally peaceful in the wake of demolition of Babri Masjid in 1992. The reason for this has been attributed to the experiment known as 'Mohalla Committee' conceived and implemented by the SSP of the town Shri S.A. Khopade. After analysing the background of the victims and the rioters of 1984 riot from both the communities i.e Hindus and Muslim he came to the conclusion that overwhelming majority of victims as well as rioters belonged to the poorer sections with no criminal antecedents. They had moreover no communal political association either. Based on this empirical reality Khopade constituted Mohallah Committees for each locality, comprising fifty members from each community from all professions, trades and occupations - rickshawalas to doctors and advocates excluding known goondas and rabid communalists. The committees headed by a police officer not below the rank of sub-inspector held fortnightly meetings at some public place, but not in the police station, exchanging news and views. Meetings are reported to have been regularly held since 1988-89, bringing about a change in the public image of the police and better understanding between Hindus and Muslims. Change has also reportedly occurred in the self-image and role of the police as a people friendly gentleman with equal stakes in peace.

We agree with the underlying assumptions and approach of this scheme and commend it for adoption wherever feasible. This scheme visualises ^{right} leadership provided by upright and dutiful senior police officers. In places where initiative is not taken by the police officers, people themselves need to organise such

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neighbourhood committees with representatives of a sections and strata of the society. Community Relations Commission will adopt this scheme as one of the important preventive measures in all sensitive towns.

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12. In view of the above we recommend the following measures for prevention of riots.

12.1 Setting up a Statutory Community Relations Commission (CRC) at the national level comprising jurists, sociologists, historians and specialists in ethnic conflict resolution for i) study and research on sources of inter-group conflicts ii) monitoring of current inter group relations iii) prediction, warning and management and peaceful resolution of conflicts iv) initiating legal action against those involved in fomenting communal hatred, illwill and disharmony.

12.1.1 The CRC to have regional units and units in selected districts and to work in liaison with NGOs and district officials.

12.1.2 District Peace/Ekta Committees as well as Mohalla Committees (as experimented by IPS officer Shri S.A. Khopade in Bhiwandi since 1989) to function under the supervision of the CRC.

12.1.3 The CRC to be provided with the services of Special Public Prosecutors to initiate legal proceedings under Sections 153A, 295 & 505 and other provisions of the G.P. and Cr.P.C.

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12.2 Constituting Special Intelligence Units at the national and State levels, as recommended by the NIC, for collection of intelligence specially related to communal disputes and tensions.

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12.2.1 A specially trained cadre of intelligence personnel to be raised comprising persons drawn from all communities, with adequate representation of minorities

12.2.2 Personnel involved in collection of intelligence to be given due recognition and status to make the service attractive for competent persons with special aptitude for the work.

12.3 The law courts to dispose of cases u/s 153A, 295, 505 etc. expeditiously on a day-by-day basis.

12.4 Enactment of a Central Political Activities (Regulation) Act prohibiting any political activity that engenders or aggravates communal tension, especially such activities that seek dominance of one religion or culture over others. (Contd. on p-8/b)

12.5 Right to procession — religious, social or political — to be strictly regulated; licencing of processions to be subject to following prescribed route, slogans and placards and use of loudspeakers/musical instruments, and videography of processions.

12.6 Regular monitoring and periodic review of the writings in the press, especially in local and regional newspapers and certain political organs, by a special committee at State and district levels.

12.7 Amending the Press Council Act to empower it to initiate legal proceedings against erring newspapers/periodicals in the event of serious offences especially publication of false stories during riots arousing communal passions.

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From p-8/a (12.4).

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The Act should provide for the appointment of a 'Commissioner of Political Parties', who will report to the Election Commission about the activities of political parties which are promoting communal disharmony. The law should empower the Election Commission to disqualify the concerned political parties from participating in elections. Such a decision should be final subject to an appeal to the Supreme Court.

12.8 The National Council of Educational Research and Training (NCERT) and the University Grants Commission may be required by law to appoint Standing Review Committees to examine all reading-teaching material used at primary, secondary and undergraduate levels to ensure that they help remove inter-community prejudices and inculcate values of tolerance and peaceful coexistence of various religions and cultures.

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II

Dated :

**Administrative and legal measures required for
Controlling and Stopping Communal riots.**

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1. In June 1968 the National Integration Council made the recommendation that "the District Magistrates and Superintendents of Police should be made personally responsible for prompt action to prevent or stop communal disturbances" and that "failure to take prompt and effective action should be considered a dereliction of duty and the officers concerned should be dealt with accordingly. Service Rules should be amended, if necessary". The principle has been reiterated ever since in most official pronouncements including the Prime Minister's Fifteen Point Programme on Minorities of 1983.

1.1 If the DMs and SPs are held responsible for prevention and timely control of communal disturbances they should enjoy necessary freedom to act impartially irrespective of governmental directions and orders mostly based on partisan political calculations. It is true that under existing laws the DM and the SP can and should disregard any interference from the political executive but in fact the role of the magistracy and the police is that of a subordinate body constituted to provide maximum satisfaction to the political executive of the day irrespective of the objective requirements of impartial enforcement of law. The contrast in the behaviour of the DM and the Police/PAC in Ayodhya (Faizabad) on two occasions i.e. in 1990 and 1992 very demonstrably illustrates how the official machinery allows itself to

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be used as a mere tool in the power game of political bosses. On the occasion of the Shilanyas in 1990 the then Chief Minister's orders to prevent any harm to Babri Masjid was carried out rather ruthlessly using excessive force against Karsevaks; on the other hand in Dec. 1992 the DM and the police/PAC carried out the orders of the then Chief Minister not to use any force against Karsevaks for protection of the mosque. Inquiries into most major communal riots like those in Ahmedabad (1969), Nellie, (1983), Bhagalpur (1989) & Bombay (1992-93) reveal that it is this 'direction' from 'political bosses' or their indecision and lack of clear direction to the administration and the police that made the state forces either become passive onlookers of acts of violence or use ruthless indiscriminate force like terrorists.

1.2 Unless this colonial type command and control system of the district administration and the police and paramilitary forces, where they behave in a manner as if they are 'ruler appointed' to control a "subject people" ^{is changed} things will not improve. There have been instances during various riots where honest and impartial officers have been penalised for having earned the displeasure of the political bosses. Till such time as transfers, postings assignments, promotions and other legitimate aspirations of the civil servants are mainly dependent on the subjective discretion of the political bosses, average DMs cannot be expected to behave ideally upholding the rule of law during any disturbance.

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2. The police in India still functions under the Colonial Police Act of 1861 which was mainly designed to control a subject people. In the words of the National Police Commission headed by Dharam Vira police in India is not organised for impartial law enforcement, it is rather a policy enforcement subordinate body. Unless the police is given requisite independence from governmental policy enabling it to impartially enforce law and made accountable to law for its performance, the fate of the weaker sections and minorities in any inter-group clash will be at the mercy of individual politicians and officers.

3. Lack of impartiality of law enforcement is one of the major sources of outbreak and spreading of communal violence and its becoming uncontrollable for days and weeks. This lack of impartiality owes largely, as discussed above, to interference from 'political bosses

3.1 The communally prejudiced attitudes of the district officials and the police and state security forces towards Muslims and other minorities is also a major contributory factor causing the officers and men to acquiesce in, connive at and even on occasions participate in rioting. Communal behaviour of the district officials and the police force during riots has been established by, among others, Justice Madon Commission's Inquiry Report on Communal Disturbances at Bhiwandi, Jalgaon and Mohad (1970), N.C. Saxena's Inquiry Report on Meerut Riots (1982), Report on Bhagalpur riots (1989) and Justice Srikrishna Commission's Report on

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Bombay Riots (1992-93).

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3.2 V.N. Rai senior police officer presently holding the rank of I.G, BSF, who worked for a year on his dissertation "Perception of Police Neutrality During Hindu-Muslim Riots in India" reports in his published dissertation (1996) the following :

(a) Police behave partially during most riots. In all the riots discussed in this study, they did not act as a neutral law enforcement agency but more as a "Hindu" force.

(b) Perceptible discrimination was visible in the use of force, preventive arrests, enforcement of curfew, treatment to detained persons at police stations, reporting of facts and investigation, detection and prosecution of cases registered during riots. Muslims suffered in all of the above mentioned areas.

(c) An average policeman does not shed his prejudices and predetermined beliefs at the time of his entry into the force, and this is reflected in his bias against Muslims during communal violence.

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(f) The inimical relationship between police and Muslims make them over-react in a confrontation-like situation.

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3.3 The following is the conclusion of a study ~~xxx~~ carried out by the National Commission For Minorities in 1983 :

"The police personnel and the magistrates have their own perception about the involvement of various communities in the riots. The Secretariat of the Commission has been in touch with the field officers to find out how they perceived their own role in combating communal violence. The perception of a number of magistrates and senior police officers about riots is as follows :-

"(a) Riots take place in such districts where Muslims are either in a majority or they constitute a sizeable minority.

"(b) Muslims are excitable and irrational people who are guided by their religious instincts. Hindu, on the other hand, are law abiding and cooperate with the police in controlling communal violence.

"(c) Riots are started by the Muslims and they invariably take the first opportunity to strike at the other community and at the police.

"(d) In all other previous riots in the country before the current riot, Muslims took the upperhand which

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resulted in huge loss to the Hindu community. 'Therefore, there is moral justification if in the current riot casualties on the Muslim side are heavier.

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"(e) State Government attaches a great deal of importance in ensuring quick control of rioting. Since Muslims are aggressive, therefore, in order to control violence, it is necessary that Muslim mobs must be taught a lesson through arrests, firing and third degree methods."

It further reports : "The PAC treats Muslims as monsters, criminals and suspects. It has led to loss of faith among Muslims in the fairness of administration. They have started patronising anti-social elements for their defence and in the recent riots attacks on police from the Muslim side have also increased. Police-Muslim confrontation, if not checked, may lead to terrorism just as in some countries like Phillipines, Thiland, Muslim terrorism has assumed an alarming proportion."

3.4 N.C. Saxena, the then Joint Secretary of the NCM, who inquired into 1982 Meerut riots reported :

"The District Administration right from the very beginning perceived threat to public peace only from Muslims and, therefore, they chose to take one-sided action in pursuance of their thinking, observations and the reports which were received by them from the intelligence machinery. The orders from the senior officers in the district to the police could be summarised in one

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phrase: "Muslims must be taught a lesson". The PAC and the police faithfully implemented this policy. Looting and arson, in this context, was considered legitimate and necessary, and was therefore ignored".

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3.5 The following few extracts from Justice Madon Commission Report on Bhiwandi riots (1970) reveal the same pattern of bias :

"103.148 Discrimination was also practised in making arrests and while Muslims rioters were arrested in large numbers, the Police turned a blind eye to what the Hindu rioters were doing. Some innocent Muslims were arrested knowing them to be innocent. Some innocent Muslims who went to take shelter at the Bhiwandi Town Police Station were arrested instead of being given shelter and protection".

About Jalgaon riots of 1970 the Commission makes the following observations :

"104.34 The real reason for the inadequacy of the measures taken by the authorities was the communal bent of mind of some officers and the incompetence of the others.

"3. No attempts were made to check the rioting and arson at Joshi Peth, though fifty-four Muslim houses were set on fire there and the flames could be seen even from a distance of two miles."

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~~X Sol. J. Sorabjee~~

3.6 Justice B.N.Srikrishna makes the following
observations in his Report on Bombay riots (1992-93):

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" 1.6 The Commission is of the view that there is evidence of police bias against Muslims which has manifested itself in other ways like the harsh treatment given to them, failure to register even cognizable offences by Muslim complainants and the indecent haste shown in classifying offences registered in "A" summary in cases where Muslim complainants had specifically indicated the names and even addresses of the miscreants. That there was a general bias against the Muslims in the minds of the average policemen which was evident in the way they dealt with the Muslims, is accepted by the officer of the rank of Additional Commissioner, V.N.Deshmukh. This general police bias against Muslims crystallizes itself in action during January 1993." (Ch.II)

"1.29 The built-in bias of the police force against Muslims became more pronounced with murderous attacks on the Constabulary and officers and manifested in their reluctance to firmly put down incidents of violence, looting and arson which went on unchecked." (ch.II)

"1.11 The response of police to appeals from desperate victims, particularly Muslims, was cynical and utterly indifferent. On occasions, the response was that they were unable to leave the appointed post; on others, the attitude was that one Muslim killed, was one Muslim less." (Ch.IV)

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"1.13 Police officers and men, particularly at the junior level, appeared to have an inbuilt bias against the Muslims which was evident in their treatment of the suspected Muslims and Muslim victims of riots. The treatment given was harsh and brutal and, on occasions, bordering on inhuman, hardly doing credit to the police. The bias of policemen was seen in the active connivance of police constables with the rioting Hindu mobs on occasions, with their adopting the role of passive onlookers on occasions, and finally, in their lack of enthusiasm in registering offences ^{against} Hindus even when the accused were clearly identified and post haste classifying the cases in "A" summary." (Ch.IV)

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" 1.14 Even the registered riot-related offences were most unsatisfactorily investigated. The investigation showed lack of enthusiasm, lackadaisical approach and utter cynicism. Despite clear clues the miscreants were not pursued, arrested and interrogated, particularly when the suspected accused happened to be Hindus with connections to Shiv Sena or were Shiv Sainiks. This general apathy appears to be the outcome of the built-in prejudice in the mind of an average policeman that every Muslim is prone to crime." (Ch.IV)

3.7 The Sixth Report of the National Police Commission (1981) also takes note of biased and partial behaviour of the police thus :

"We also heard of stringent criticism from many responsible quarters that the police do not often act with

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impartiality and objectively. Several instances have been cited where police officers and men appear to have shown unmistakable bias against a particular community while dealing with communal situations. Serious allegations of highhandedness and other atrocities, including such criminal activities as arson and looting, molestation of women etc. have been levelled against the police deployed to protect the citizens."

4. The numerical social composition of the police and paramilitary forces and other wings of law-enforcement machinery with gross underrepresentation of minorities, especially Muslims, at all levels and ranks, again helps in intensifying and entrenching their biased perception and communal behaviour against minorities during any conflict situation. . . .

5. General deterioration in sense of duty and uprightness of officers and men in administration and the police also impairs their ability to control riots. On occasions there exists a nexus between senior district officers and police and locally powerful people and anti social elements, which encourages criminals to exploit any communally sensitive issue to start a riot for their private gain.

6. Lack of adequate number of trained police personnel having training in imaginative humane handling of any social disturbance with minimum use of force

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proportionate to the situation and lack of good leadership of the force capable of showing resourcefulness in adapting methods and techniques appropriate to each riot situation also diminishes the chances of prompt control of riots with minimum loss of life, limb and property.

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6.1 Not much has been done during the last fifty years of independent India to pay attention to research and development of improved techniques and tools for control of any social disorder or riot.

This has resulted in excessive and undisciplined use of firearms for mob control in routine street situations, even when the mob has neither the intention nor the capacity to kill. Most of the State police manuals include threat to property as sufficient ground to shoot to kill. It is not usually specified that firearms can be used only when all other methods for dispersing the mob have failed.

6.2 All state Riot control Scheme emphasise vigorous use of firearms at the very outbreak of communal violence "with good effect against all rioters to the extent of killing a substantial number of them so that no one will, in future, be inclined to indulge in such a crime...." (Manual to Deal with Communal Disturbances, Govt. of Karnataka p. 232 & "Communalism-Instructions on "How To Deal With Communalism", Govt. of Andhra Pradesh, p.30).

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6.3 As studies of the Minorities Commission as well as by V.N. Rai reveal, this direction of the Govts. is translated by the police into ruthless use of force against Muslims who in their view are excitable and aggressive by nature and who always start rioting. As a result of this practice a disproportionately large percentage of Muslims have been killed during riots from 1970s till 1998 by police firing. ~~According to Justice S. P. Singh and Justice S. K. Sinha~~
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6.4 It is this policy and its distorted version in practice that was responsible, according to Justice Srikrishna Commission Report, for the killing spree indulged in by the Maharashtra Police on 6 Dec.'92 against unarmed Muslims who were peacefully protesting against the demolition of Babri Masjid and its celebration by Shiv Sainiks in Bombay. The Report says : ".... if the mobs had been handled tactfully and with sensitivity by the police and accepted leaders of both communities, the protest would

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have peacefully blown over. The police mishandled the situation and by their aggressive posture turned the peaceful protests into violent demonstrations during which the first targets of the anger of the mob became the Municipal van and the Constabulary, both visible signs of the establishment. It is significant that the mobs were not armed, not even with stones and sticks, though they were angry and wanting to vent their spleen against anyone in authority. This situation was misdiagnosed, mishandled and turned messier."

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The Report establishes two other cases of unjustified killing of innocent Muslims by the police by using firearms one at the Suleman Bakery and the other at Hilal Masjid.

Justice Srikrishna is very emphatic on the point that it is this insensitive, harsh and aggressive approach of the police at the initial stage when the protesting mobs were not violent, that turned the event of peaceful protest into a major riot.

6.5 This policy direction, on the use of firearms as a deterrent at the very early stage of rioting with a view to killing a substantial number of them has no sanction under either domestic law or international law on use of force and firearms by law-enforcement officials, which allows minimum proportionate use of firearms as a last resort when there is imminent serious threat to life.

7. Policy and procedure for calling the Army to the aid of civil administration for control of riots is also

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not well defined, which on occasions makes political establishment and officials to procrastinate while the army units called for aid remain undeployed for days; and when deployed their role remains uncertain.

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8. The enforcement of curfew is either too literal strict or too lenient. Prolonged strict enforcement of curfew continuously for several days, without making arrangements for supply of essential items of food and medicine causes undue hardship, especially to poor working class people. Curfew, however, can be an effective method of riot control if enforced with absolute impartiality. In reality however one finds that it is mostly during curfew that rioters from the majority community feel free and safe to loot, burn and even kill. One glaring example of this is provided by the PUCL report on Aligarh riots of 1990, when the train Gomti Express was detained at the Aligarh Railway station at 11.30 A.M. by a large group of rioters who killed a number of Muslim passengers when curfew was officially supposed to be in force.

9. When it comes to arresting persons for involvement in rioting or violation of prohibitory orders including curfew, the consistent pattern of anti-minority bias has been established by most inquiries and studies on riots including that of the National Commission for Minorities 1983. During Hindu-Muslim riots usually much larger number of Muslims are arrested and charged with serious offences than Hindus who are generally charged with minor offences or as preventive measure, although loss of life of Muslim

National Commission For Minorities
Committee on Communal Riots

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Chairman :
V.M. Tarkunde

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Dated :

~~X Mr. Rajendra Prasad~~
~~X Mr. B. B. Venkatesh~~
~~X Mr. S. S. Somji~~

Members :
~~X Mr. Rajendra Prasad~~
Mr. Zafar Ali Naqvi
Mr. N.D. Pancholi

Convener :
Iqbal A. Ansari

in all riots is very heavy. The NCM Study of 1983 reveal that in Meerut riots of 1982 "for each Muslim casualty 15.5 Hindus were arrested under substantive offences whereas for each Hindu killed 115 Muslims were arrested under substantive offences". For Bhiwandi riots (1970) the ratio is even more grotesque i.e. "the number of arrested Hindus for each casualty of Muslims works out to be 0.36 whereas the number of arrested Muslims for each Hindu casualty comes to 53.0."

This analysis of the causes of outbreak and spread of communal riots and their continuation over a number of days and weeks leads us to attribute the failure to control riots to the following factors :

(a) Total subservience of the district administration and the police to the political bosses who generally give directions calculated to promote their partisan political and personal interests.

(b) The communal biases and prejudiced notions about minorities among sections of the officers and men in the administration and the police and paramilitary forces.

(c) The numerical social composition of the administration and the police and other wings of law-enforcement

(d) The nexus between the administration, locally powerful persons and groups and the anti-social elements. All these factors i.e. a), b), c) and d) render the DM and S incapable of impartially enforcing law which is crucial

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Vice Chairman :

Soli J. Sorabjee

Dated :

for effective prompt riot control.

Members :

Mr. Rajeev Dhavan
Mr. Zafar Ali Naqvi
Mr. N.D. Pancholi

(e) The encouragement given to the police by State Riot Schemes to vigorously use firearms for deterrence at the very initial stage shooting to kill substantial number of persons has the potential to turn even ordinary protests and disorder into a major riot in which minority victim groups perceive the government and its forces as the enemy.

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(f) Official riot control model does not have any institutionalised role for a good number of social activists and NGOs committed to peace and secular democratic values to be found in every locality, village and town. The so-called Peace Committees/Ekta Samitis are severely handicapped because of their composition and functioning as an official appendage.

10. We recommend the following legal-administrative measures for prompt control of riots:

10.1 Independence and Accountability of the District Officers and the Police : Reorganisation of the civil administration and the police to ensure their functioning independent of the interference of the government of the day while maintaining law and order and communal peace, and making the DM and the SP accountable for any failure in this regard.

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Introducing the principle of independence and accountability in the functioning of the district administration and the police would require :

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(a) Reorganisation of the police based on a suitable variable of the model suggested by the Second Report of the National Police Commission, wherein the idea of the District Security Commissions in each State has been proposed. Apart from the State level Commissions, statutory watchdog district level bodies comprising DM, SP, and 5 to 7 retired judges, administrators, academics and social workers resident in the district to function, to ensure transparency and accountability of the administration and police. Such bodies may be constituted even at the Police Station level.

Postings, transfers, suspension and promotions and penal actions against police officers from SHO to the highest rank in the State should be done with the recommendation/approval of these statutory thana to state level bodies.

Appointments to these State and District Security bodies should be made on the recommendation of a panel comprising the Chief Minister, the leader of opposition in the State Assembly, the Chief Justice of the High Court of the State or his nominee from among sitting judges and the Chairman of the Community Relations Commission.

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The State Security Commission besides laying policies and principles and framing rules and regulations for transparent functioning of the police as a protector of rights of people and humane enforcer of law will review entire performance of the police under its jurisdiction monthly, quarterly, yearly and emergent basis, where communal situation will constitute a regular significant

(b) A similar model for independent and responsible functioning of the senior officers of the district administration should be adopted. Alternatively a single constitutional body at the State level may be entrusted with responsibility of laying down policies, and assessment review of performance and controlling and reviewing transfers, postings, suspensions and other punitive action in the case of both civil servants and the police in the State.

(c) The State Security-cum-Administration Commission in consultation with the Human Rights & Minorities Commission of the State concerned, wherever such Commissions exist, shall appoint an Inquiry Commission headed by a sitting or retired judge of the High Court to determine the extent and modalities of failures of commissions and commissions of the DM, the SP and other district officials and fix responsibility in the event of any communal riot which continues beyond a specified period, say twenty four hours and casualties crossing a particular number, say, three.

In the event of casualties exceeding twenty or more, such an Inquiry Commission will be appointed by a panel headed by the National Human Rights Commission and having as members Chairmen of the National Minorities Commission and the State Security-cum-Administration Commission of the concerned State as members.

The Governments will not have the power to reject recommendations of the Inquiry Commission.

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The Inquiry Commission will fix individual responsibility and make recommendations for disciplinary action against the DM & SP and other officers and men in a period of one to three months.

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(d) Rules will be framed regarding conduct of so as neither to presume guilt of DM & SP and suspension nor to allow the suspect officers to influence the inquiry in their favour.

(e) The State Security-cum-Administration Commission will suitably amend service rules of the civil service police personnel providing for penal action in the event of any serious dereliction of duty during communal riots.

(f) On the basis of the Inquiry Commission's Report and recommendations the State Security-cum-Administration Commission will take disciplinary action against erring officials including criminal legal proceedings against such officials to be paid to the sufferers of riots.

10.2 - Decommunalising the Officials and other personnel of the Administration and the Police : (a) The attitude of those officials and police personnel who are entrusted with responsibility of law-enforcement,

should be free from any taint of communal prejudice, ill-will and hatred. However in reality, as revealed by inquiries and studies from Justice Madon (1970) to Justice Srikrishna (1992-93) large sections of personnel have communally biased perceptions and attitudes. Almost every inquiry report has emphasised training of police personnel

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to eradicate prejudices. Justice D.P. Madon (1970) has gone to the extent of stating that "police men who are guilty of communal hatred should be immediately dismissed from service".

10.2.1 Alas nothing has been done to improve this state of things; rather conditions in the wake of aggressive nationalist mobilisation since the 1980s have become worse as demonstrably proved during demolition of Masjid and the riots of 1992-93. Partiality of administration and the police has been responsible for massacres at Nellie (1983), Delhi (1984), Meerut and Bhagalpur (1989) and a large number of places in Mumbai in 1992-93.

10.2.2 It is a great pity that nation's conscience has not been shakened enough to give the problem of police reform both organisational and attitudinal - the priority it deserves.

10.2.3 We recommend that steps be taken to screen all police and paramilitary forces at the time of recruitment to remove communal biases; further, that their training programmes include a comprehensive course in human rights, and that the course components on removal of prejudices and stereotypes of Muslim and other minorities and vice-

10.2.4 All police men and officers must undergo special training programmes wherein they are exposed to audio-visual material as well as through real life situations to the idea of equal dignity and rights of all human beings and of special need for protection of vulnerable groups like minorities.

Police officers should also attend periodic seminars etc. on issues related to community relations.

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inter-group conflicts in a plural society. They should be offered courses based on the study of previous major wherein causes of failure have been scientifically professionally dealt with drawing lessons for future.

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10.2.5 The police has to change its image vis-a-vis public in general and minorities in particular from the an instrument of oppression in the hands of the powerful that of the protector of their rights especially during majority-minority clashes and riots.

10.2.6 The NCM sample study of 1983 on this subject given the warning signal that in case conditions did improve, sections among the victim groups would be driven to seek desperate remedies outside the system i.e. terrorism would rise. That it did happen in the wake of Bombay is a sad commentary on the state of things.

10.2.7 (b) For neutralisation of biases in the police K.F. Rustanji suggests the following formula : 1) Put all State armed battalions under a Central command 2) Reshuffling of battalions and 3) a cadre of armed officers with several inductions from paramilitary forces and NCC.

Such a force will be deployed in those States where the dependability and impartiality of the armed police have been questioned.

10.3 Social composition of the police and other wings of law-enforcement: The analysis of community figures on the police in almost all States reveals gross underrepresentation of Muslims at all levels and ranks. It is an accepted principle in all democracies that minorities that for impartial law-enforcement during inter-group clash an essential requirement is the soci

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diverse composition of the police and other agencies, giving even larger representation to minority groups than their share in population. It is not a question of affirmative action in favour of minorities. It is rather derived from the logic of inter-group social psychology. It is the smaller/weaker group who feels threatened during any conflict situation. Therefore their adequate presence in the law-enforcement agencies is reassuring to them. Secondly it helps neutralise the biases that may be there in the police personnel coming from the majority group.

10.3.1 Recognising this principle Justice Madon observed (1970) that it was necessary that in recruitment to the police adequate representation was given to the minorities. Justice J. Narain and others drew attention of the ^{Government} of Bihar to the composition of the BMP in their Inquiry Report on Jamshedpur riots (1979). In its Sixth Report on Communal Riots (1981) the National Police Commission noted the "views expressed in several responsible quarters that one main reason for lack of objectivity on the part of the police is the composition of the force itself, which is heavily overweighted in favour of the majority community (para 47.14)". Though not agreeing with the principle of reservation, the NPC did reiterate its recommendation made in the Third Report (para 19.30) that "the composition of the personnel in the police system as a whole should reflect the general mix of communities as exists in society and thereby command the confidence of the different sections so that the system would function impartially without any slant in favour of any community (47.57) and further observed that "there is a strong case for encouraging the recruitment of members of the minority community and other weaker sections at various levels in the police force...."

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10.3.2 This formulation again finds reiteration in the Prime Minister's Fifteen Point Programme on Minorities presented in 1983 which in Section II Clauses (1)&(2) says : "In the recruitment of police personnel, State Governments should be advised to give special consideration to minorities. For this purpose the composition of Selection Committees should be representative" and that "Central Government should take similar action in the recruitment of personnel to the Central Police Forces."

10.3.3 Alas during the whole period beginning with 1970 the recognition of the need for adequate presence of minorities has not led to any substantial change in the numerical composition of the police forces, which proves the inefficacy of mere recommendations and exhortations. We therefore recommend at least 25% reservation of all positions in the police and other branches of law enforcement system for minorities for a specified period for restoring the balance. It must be borne in mind that other factors remaining constant adequacy of minority presence in the police system cannot be determined only by their share in population in a State. Muslims or Christians or Sikhs may for example be only 5% in a State. But for impartial law-enforcement adequacy requirement, cannot be fulfilled by 5% representation to them in the police system; whereas in States where the numerical strength is higher than 25%, they need not be necessarily proportionately represented. The less the number of minorities and more the threat to them because of political and social factors greater the need for their larger than proportionate representation.

Here the principle of differential treatment for equality of effect (in terms of security of life and property) needs to be kept in mind.

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10.3.4 This principle of reservation ensuring adequate representation of minorities in the police system has been supported by Justice V.M Tarkunde and Police Officer V.N Ra I.G. Even if any fixed quota is not reserved for minorities in the police system, the target of adequate representation must be mandatory, the methodology for which may be worked out.

10.3.5 The following instruction contained in the Bihar Government's Manual of 1991 on "Measures to Prevent and Control Communal Disturbances and Promote Communal Harmony" is worthy of note :

"30. It has been commonly observed that the presence of minority community members in the police force deployed in communally sensitive areas goes a long way in winning the confidence of the minority communities. This is of vital importance. The following steps should be undertaken without any loss of time :-

- (a) Launching of Special Campaigns to recruit members of minorities in the State Police Force
- (b) Creation of composite battalions of armed police which should include members of all religious communities including S.Cs/S.Ts for exclusive duty in maintaining communal peace and amity in sensitive areas.
- (c) Starting of special training/orientation programmes for State Police Forces with a view to maintaining communal harmony." (p.49)

This is the minimum that can be done by all States and Union territories.

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10.4 Use of force by the police for controlling communal riots :

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We have seen how most State Manuals on use of Force & Firearms by the Police and Riot Control Schemes encourage the vigorous use of firearms at the initial stage shooting to kill people, irrespective of whether the mob itself is armed or not, for psychological impact of deterrence. This policy and practice neither enjoys the sanction of law, nor has it yielded the desired results during any communal riot.

10.4.1 While sharing the official view that a distinction has to be made between communal riots and other social disturbances, and again sharing the governments' concern to stop communal riot as promptly as possible through effective deasive measures, we do not consider the policy of authorisation of the police to shoot to kill people irrespective of the nature of the situation and the potential or actual threat posed by the mob as sound. The policy has done rather great harm by giving the police licence to kill innocent people in any street situation even other than communal riots, as is borne out by the findings of the Commission of Inquiry headed by Justice S.D Gundewar into the firing by the Mumbai police in July 1997 killing 11 persons which considered police firing unjustified and unwarranted. (The Statesman 31, December, 1998).

Since the police is authorised to shoot to kill people for controlling any unarmed mob during ordinary social disturbances, its ferocity and ruthlessness becomes all the more intensified during any sign of communal disturbance as they are required by the government to ensure quick control of rioting. This engenders a psychosis in the police mind which sees danger even when there is none.

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10.4.2 The National Police Commission's Report VI had noted that "several instances were mentioned to us in which the authorities were alleged to have used force on groups of people collected together for self protection." (para 47.46).

10.4.3 Though here we are concerned with only communal riot control measures, we consider it imperative for the Union and State Governments to modify the Police Manual on use of Force and Firearms for all mob control bringing it into conformity with the UN Basic Principles on the Use of Force & Firearms (1990) and the UN Code of Conduct for Law Enforcement Officials (1979) which allow firearms to be used only when all other methods of control have failed and when there is imminent serious threat to life and not to property.

We further recommend that non-lethal methods of crowd control must be ordinarily used when force is at all to be used. The NPC Report VI noted and endorsed the efforts of the Bureau of Police Research and Development towards production and use of non-lethal bullets.

10.4.4 It is a pity that developing and using the non-lethal methods of crowd control like use of water canons, rubber/non-lethal bullets, electric rods etc. which may help demobilise the mob without killing and maiming persons has not been given any priority by any government.

10.4.5 (b) In almost every major riot including the Mumbai riots of 1992-93 as reported by Justice Sri Krishna, one comes across the pattern of police behaviour indulging in two extremes : either it is ruthless using excessive and indiscriminate force or it becomes totally passive not using any force at all. Generally what happens is that excessive use of firearms resulting in loss of innocent lives attracts severe public criticism, in response to which the 'political bosses' direct the police to be lenient and go easy.

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10.4.6 We consider that in the light of the analysis of the pattern of police firing and its results in all previous major riots like those reported by Justice Madon (1970) and Justice Sri Krishna (1992-93), and a sampling of use of firearms in a number of other riots like Aligarh (1978, 1990), Moradabad (1980) etc. it should be possible to prepare a typology of riot situations which call for varying techniques and tools of riot control. In those types which may be identified as fit for use of firearms by the police the guidelines for pre-firing and post-firing stages based on UN Code of Conduct and Basic Principles must be clearly laid down and strictly adhered to.

Alternating between ruthlessness and passivity by the police under political misdirection does greatest damage to the cause of impartial and humane policing.

10.5 Community Involvement in Riot Control :

We have discussed in Section I how local community can be involved in preventing communal tensions. Based on the same assumption that ordinary citizens have a stake in peace, they can be involved in stopping riots and preventing violence from spreading. The members of the traditional peace committees of the town generally have their personal axes to grind - political or economic, but ordinary citizens of a neighbourhood may be genuinely involved in peace keeping, especially at the initial stage for countering rumours, disinformation and other means of causing communal frenzy. Even after outbreak of violence citizens of proven integrity and impartiality from each community should always be associated in most official operations like enforcement of curfew, supply of essential commodities, rescuing people under serious threat, and for persuading agitated mobs to disperse.

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III

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Administrative and Legal Measures for Punishing the Guilty

1. There has always been unanimity on speedily bringing to justice all offenders during riots. Speedy justice in riot cases requires that agencies and personnel involved in registration of offences^{and} / their investigation and prosecution be impartial and free from any communal or political bias and that they function independent of interference from powerful political and social groups and that procedures and methods are appropriate to the requirements of the situation, which do not cause undue delay or lead to large number of acquittals.

1.1 But in reality none of these conditions obtain. As Justice Madon in his report on Bhiwandi riots and other studies like that of the NCM(1983) and of V.N. Rai(1996) have noted that the personnel's own behaviour is not free from communal bias and arbitrariness and that they are subjected to political/societal pressures. Madan Commission has gone to the extent of observing that "the working of the Special Investigation Squad, Bhiwandi, is a study in communal discrimination".

1.2 At the trial stage the law courts' proverbial delays are there to frustrate any serious attempt to get the offenders convicted in reasonable time.

1.3 The result of all this is not only impunity enjoyed by those guilty of serious crimes against humanity, but harassment and suffering of large number of innocent persons, mostly from the victim minority group, who because of communal biases of the police or their arbitrariness are falsely implicated and charged with serious offences.

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- 1.4 This lack of certainty of punishment of the guilty is the single largest cause of recurrence of communal violence and their spreading over large space and time.

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2. It is a sad reflection on the state of administration of criminal justice that those guilty of scores of earlier massacres and those at Nellie (1983), Delhi (1984), Meerut (1982-87), Bhagalpur (1989), Mumbai (1992-93) have not been punished. The ghastly case/killings of Hashimpura, Meerut in which dozens of Muslim youth were picked up by the PAC and taken in a truck near the Hindon canal in Muradnagar and shot dead and bodies thrown in the canal, had roused the nation's conscience to the extent that it was characterised as a Nazi pogrom against Jews, a clear case of genocide by Nikhil Chakravarty and Subramaniam Swamy, Chandra Shekhar called it "the most shocking incident in my political life". I.K. Gujral, Rajindar Sachar, P.N. Hasker, Subhadra Joshi, Kuldip Nayar and Badr-ud-Din Tyabji demanded "that the government must prosecute all those members of the PAC and Police who have disgraced their uniforms. Their misdeeds must be treated at par with treason and tried by special courts". Nirmal Mukarji recalling the Meerut event of 1987 as that of Hindu policemen actively planning and carrying out cold blooded massacre of blameless Muslims observed that "the least that should have been done was to have promptly disbanded this particular unit of the PAC and to have cashiered its officers".

The CID entrusted with the investigation of the completed its work after seven long years indicating 61 police and PAC personnel involved in the case. The U.P. Government gave

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permission in 1995 for prosecution of 19 of those indicted (PAC Platoon Commander-Havaldar-5, Jawan-11, Naik-1, Driver-1). Till date no progress has been made in the case.

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We recommend that a special case study of Meerut killings of 1987 and lack of any justice to the victims and punishment to the guilty is carried out by the NCM.

3. Obviously two essential requirements of speedy justice are impartiality and objectivity of the personnel and second relates to existing legal procedures, practices and methodology.

We hope our recommendations in Section II regarding social numerical composition of all wings of law enforcement system, as well as training of the personnel of the police system to remove communal prejudices; and reorganisation of the police to enable them to function independently will be applied to agencies involved in registering communal offences, their investigation and prosecution.

How to effect improvement in the procedure and method of investigation and trial appropriate to situations of communal riots which are different from ordinary crime situations deserves serious consideration.

4. For investigation of offences and prosecution of offenders during riots the National Integration Council (1968) recommended special team of investigators and Constitution of Special Courts with summary powers. It emphasised prompt prosecution of offenders and advised

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that prosecution once launched should not be withdrawn.

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4.1 For speedily bringing the offenders to book, the Prime Minister's Fifteen Point Programme on Minorities (1983) also recommends the setting up of Special Courts or Courts specifically earmarked to try communal offences.

4.2 The National Police Commission besides endorsing the proposal of Special Investigation Squads, recommends the opening of several reporting ^{Centres} for registration of crimes at different points in a riot torn areas under the charge of competent police officers.

4.3 But the NPC takes a rather dim view of Special Courts for expeditious trials, which it thinks has not solved the problem. It observes that "we should also have some special provisions in the law and procedure which will take into account the peculiar circumstances in which these offences are committed to ensure that the course of justice runs smoothly and to the advantage of society at large," for which it recommends the enactment of a special law applicable to areas seriously disturbed by communal riots.

4.4 Following are some of the opinions expressed by eminent persons having knowledge and experience in the field :

. K.F. Rustamji suggests working out a new method of trial of cases in which communal crime is involved.

.. Justices (Retd.) V.R. Krishna Iyer and Hosbet Suresh suggest Constitutional amendment for establishing Minorities Commissions ^{in all States} and empowering them "to investigate and

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inquire into any communal riot, for which purpose the services of any investigating agency could be requisitioned. It should be able to prosecute all cases arising out of a communal riot".

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... Mr. A.G. Noorani commends the establishment of Director of Prosecution of high judicial rank and of Special Courts to try offences arising out of riots.

.... Prof. Amrik Singh suggests necessary change in the legal basis of prosecution of riot cases, especially the law of evidence.

..... Mr. Padam Rosha would like adoption by other riot prone states procedure set in the J & K Criminal Law (Amendment) Act, 1981 which, inter alia, provides for completion of investigation by special team within weeks, trial to commence within one week of challan, proceedings to be held day-to-day and completed within three months; trial by special judge, one appeal to High Court and special provisions against bail.

..... Prof. M. Mohiuddin recommends enactment of a special law based on Genocide Convention (1948) and the Nuremberg Principles (1950) for protection of right to life during riots as ordinary law on murder and other crimes is inadequate to deal with cases of mass murders wherein on occasions police personnel are themselves offenders and wherein circumstances are such that it is not easy to produce witnesses.

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Justice (Retd.) V.M. Tarkunde also recommends setting up of Special Courts for trial of riot related cases.

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5. In this regard the following are our recommendations

5.1 For registration of cases centres to be opened in all affected localities and in registering cases police officers to be assisted by the mohalla ekta/peace committees (working under CRC)

5.2 Special Investigation Squads of unbiased mixed community composition and Special Prosecutors to function under the Inquiry Commission to be constituted as recommended in Section II 10.1 (c).

5.3 Special courts to be set up or specially designated courts to try riot related cases.*

5.3.1 While constituting Special Courts efficiency, integrity and impartiality of judges must be ensured.

5.4 Special trial procedure to be provided for in a comprehensive central law on communal and other riots, which on the one hand will take cognisance of the special circumstances of public disorder during riots and on the other hand will not dispense with or abridge the right of the accused to proper defence.

5.5 A reasonable time schedule for conduct and completion of trial, and appeal to be laid down and to be adhered to.

* 'Riot related cases' will include leaders involved in instigating riots and administrators and police personnel charged with dereliction of duty.

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Compensation to Sufferers of Riots under Law

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1. In its third Annual Report for 1980 the National Commission For Minorities "strongly urged upon the Government to pass appropriate legislation and formulate schemes for giving compensation to victims of communal riots" on the ground "that the State cannot be absolved from its responsibility of protecting life and property of the citizens and even if there is, as at present, no legal liability upon the State to compensate the victims for the loss suffered by them, the State cannot escape its moral obligation to rehabilitate the sufferers."

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1.1 In his opinion the matter Justice H.R. Khanna held that though as the law then existed the State was not liable to pay compensation to victims of communal riots, he noted the rising trend in some countries to pay compensation to victims of violent crimes e.g. Newzealand (1963), Britain (1964) and subsequently in Canada, Northern Ireland and U.S.A. and Australia.

1.2 The NCM's Report also makes reference to the following extract from "American Jurisprudence" IInd Edition, vol. 54 :

"In many jurisdictions municipal corporations are made liable by statute for injury to persons or property resulting from the act of mobs. These statutes are in recognition of the public duty entrusted by the State to municipalities and other sub-divisions, to preserve peace and order and to protect lives and property."

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- 1.3 In its Sixth Report (1981) the National Police Commission observed that "it is the duty of the administration to compensate these unfortunate sufferers (of communal riots) for the loss and suffering undergone by them and to assist them in their rehabilitation".

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2. The following provisions of the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the UN General Assembly need to be noted :

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

(9.) Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

(11.) Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred

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is no longer in existence, the State or Government successor in title should provide restitution to the victims.

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Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to :

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(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

Under Article 18 the Declaration defines "victims" "as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights."

Under Article 19 the Declaration requires "States to consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support."

3. The principle, however, is now well settled in the Indian jurisprudence that the State is liable in damages for violation of fundamental rights. A landmark judgment on the issue of legal liability of the State

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to pay adequate compensation to the family of those killed in communal riots was handed down by Justice Anil Dev Singh of the Delhi High Court on 5 July 1996 on Civil Writ Petition No. 1429 holding that "the Government cannot escape the liability to pay adequate compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Art. 21 of the Constitution which mandates that life cannot be taken away except according to the procedure established by law."

3.1 The line of argument of the judgment is based on the view that "it is not open to the State to say that the violations are being committed by private persons for which it cannot be held accountable. Riots more often than not take place due to weakness, laxity and indifference of the administration in enforcing law and order. If the authorities act in time and act effectively and efficiently, riots can surely be prevented. Message must go to the mischief mongers that the administration means business and their nefarious designs would be thwarted with an iron hand."

3.2 During the course of the judgment the learned judge cited the case of Chakmas in Arunachal Pradesh wherein the Supreme Court had held that "the State is bound to protect the life and liberty of every person and it cannot permit any body or group of persons to threaten it, (1996 (1) S.C. 163)".

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3.3 Dealing with the scope of Article 21 of the Indian Constitution Justice Anil Dev Singh observed :

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"Article 21 is the Nation's commitment to bring every individual or group of persons within its protective fold", which will become a mere paper guarantee if the State did not fulfil its duty "to create a climate where the cleavage between members of the society belonging to different faiths, caste and creed are eradicated".

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3.4 Reminding the conditions in which mobs in Delhi (1984) put into execution their plans openly in public places and in full gaze of the authorities, the learned judge observed that it was not something done clandestinely for which the State could plead ignorance.

3.5 In the light of previous judgments of the Supreme Court in different cases related to award of compensation, the learned judge awarded the amount of Rs. 2 lakhs with interest as adequate compensation to be paid to the petitioner Smt. Bhajan Kaur. The learned judge also observed that in order to secure parity its direction to pay enhanced compensation would be applicable to similar cases to alleviate the sufferings of the families of all ^{other} victims who lost their lives during the Delhi riots of 1984.

3.6 In the concluding para of the judgment the learned judge advised the State and the Union, as the case may be, "to locate the responsibility for the riots whenever and

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wherever they occur and the persons held responsible for the same should be made to pay compensation and the law should provide for confiscation of their properties so as to secure payment of compensation out of the assets so confiscated. In case it is found that an official or officials of the State did not act in time or were indifferent to mob violence, they should also be required to make reparations to the victims and face disciplinary proceedings."

4. The Government of Delhi instead of challenging the judgment and going into appeal to the Supreme Court accepted its legal liability to pay the amount of Rs. 2 lakh with interest to the next of kin of all those killed in the riots of 1984.

5. The Minorities Council of India, an NGO, made a representation to the NCM on 20 August 1997 asking the Commission to direct all the Governments of the ~~Union and the States~~ and Union Territories, especially to those of Assam, U.P., Bihar, Delhi, Maharashtra, Gujrat, Karnataka, and Andhra Pradesh to pay compensation of Rs. 2 lakhs with interest to the next of kin of all those killed in any communal riot as awarded by the Delhi High Court to the Sikh victims of 1984 riots.

5.1 The plea of the Minorities Council that as the judgment was based on the Constitutional guarantee under Article 21 its protection should be equally available to all other persons irrespective of religion or place of residence, was accepted by the NCM and it made the

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following Statutory Recommendation under the NCM Act,
1992 to all Governments of States and Union Territories :

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"The ratio of the Delhi High Court judgment 1996
be treated as the general law for awarding proper
compensation to all the victims of all communal riots.
Whenever in point of time, and wherever in the country,
they may have occurred."

5.2 The Chairman NCM addressed a letter on the subject
to the Home Minister of the Government of India on 13 Nov.
1997 saying that "appreciating the spirit and message of
the judgment of the Delhi High Court (5 July 1996) it
(the Commission) strongly feels that judgment should be
regarded as the basis for awarding compensation to all
victims of all communal riots all over the country
The Commission has a convinced opinion that all victims
of all riots are to be treated by the State at par."

5.3 The Minorities Council of India submitted a
similar representation to the National Human Rights
Commission on 13 Sept. 1997 which figures on its agenda
but is yet to be disposed of by the Commission.

5.4 It appears that only a couple of State Governments
have given some official indication of positive response
to the NCM's statutory recommendation and all other State
Governments as well as the Union Government have not shown
any signs of any move in this direction.

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6. The existing practice of making ex-gratia payment

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of compensation of varied ad hoc amounts for specified categories of loss of life, limb and property is extremely inadequate in principle and even worse in practice, as it is done as a welfare/relief measure depending on the discretion of the executive.

7. As there is no law in existence in any State on payment of compensation to victims of riots at variance with the Delhi High Court judgment of 5 July 1996, and as the apex court has not issued any order or direction contrary to it, the judgment should be made applicable to all other victims of riots in any part of the country since 1984, for which the State Governments need to constitute ad hoc tribunals to determine the loss of life during riots in their state and ex-gratia payments, if any, made to the dependants/family of those killed.

8. It may be noted that in the year 1992 two private members Bills were introduced in the Indian Parliament. 'The Civil Disturbance Victims Compensation Bill, 1992' was introduced by Syed Shahabuddin in the Lok Sabha and 'The Prevention of Communal Riots And Rehabilitation of victims Bill' was introduced by Mr. S.S. Ahluwalia in the Rajya Sabha. Both these private members' Bills proved infructuous.

9. In accordance with the UN Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power (1985) a comprehensive law on communal (including caste) riots must provide for, inter alia, restitution/compensation to all victims of riots for loss of life,

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and property and for all kinds injuries and for
restoration of land, house and shops in their possession
and tenancy rights held by them before riots.

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Studies show that during some riots part of the motive in inciting and perpetrating communal violence is forced displacement of the victims from some areas/land/site. In other cases the motive is to ^{cause} permanent harm to the economic activities of certain sections of the victims group. The law on restitution/compensation must, therefore, take care of protecting all legitimate rights of title, possession and tenancy of the victims. Choice, however, may be given to them to dispose of their property and other entitlements if they want to move to safer places of their own free will, in which case alternative arrangements for restitution of all their rights must be made.

10. In view of the above we recommend the following:

10.1 Enactment of a central law on communal (and caste) riots to be adopted by all States and Union Territories, with provisions, inter alia, for restitution of rights and payment of compensation for loss of life or property or injuries including mental trauma etc. caused during riots as well as for any other social and economic dislocation resulting from riots.

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10.2 The Inquiry Commission as provided for in Section II clause 1.2 entrusted with the responsibility of fixing official responsibility of failure to prevent and control riots and with that of Investigation and Prosecution, to be made further responsible for determining losses of life and property and injuries and dislocation suffered by the victims and the amount and kind of compensation to be paid to each sufferer.

10.3 The Special Courts/designated courts trying cases arising out of riots must combine the determination of guilt and compensation aspects, wherever required.

10.4 While we do not agree with the idea of area-wise punitive tax, we recommend that in the event of acts or omissions of government officials or ~~and~~ Ministers the amount of compensation to be paid to victims must be realised from them. In case responsibility for inciting and perpetrating violence is fixed on individual leaders or parties, their properties should be confiscated for payment of compensation.

10.5 Some special Insurance Scheme may be made available to persons in riot prone cities and towns where the premium for the poorer sections must either be fully or partly paid by the government.

