

POLICING A RIOT IN INDIA

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[While agreeing with the proposition that there is a need for a comprehensive law on communal violence, without systematic changes in the police and administration of justice, prevention and timely control of riots will not be achieved. The following article is reproduced from Astha Bharti Journal Dialogue Vol. 6 No.1 (July – September, 2004, which suggests measures for basic reform of the police – Ed.]

I

Basic requirement of social stability and inter-group peace in a democracy is impartial, effective and humane law-enforcement by the police to prevent and control conflict and to protect the life, property and honour of innocent citizens. In the event of outbreak of violence, it should be repressed with appropriate use of force, and the guilty must be speedily brought to justice and victims should be adequately compensated and fully rehabilitated.

Contrary to this basic norm of rule of law, most official and reputed NGO studies reveal that role of the police during communal riots from Jabalpur 1961 to Gujarat 2002 has been largely partisan during all the phases—prevention, control, arrest, investigation and prosecution which has made the guilty enjoy impunity and the victims lose hope in the system.

The National Police Commission (NPC), in its Report VI on 'Communal Riots noted the following:

We also heard of stringent criticism from many responsible quarters that the police do not often act with 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 situation. Serious allegations of highhandedness and other atrocities, including such criminal activities as arson and looting, molestation of women etc. have been leveled against the police deployed to protect the citizens. There is evidence to suggest that in one recent riot, the police resorted to uncontrolled firing, killing many people of the congregation and later indulged in looting, and arson, when some of their colleagues were assaulted by the crowd. In another incident, it is alleged that a group of anti-social elements was able to brutally kill many persons, including women and children, while the police was present in the vicinity. In yet another recent incident it has been alleged that the force ran amuck after one of their colleagues was stabbed. All these incidents are only symptoms of the underlying malaise.¹

Similar is the finding of N.C. Saxena, who inquired into the Meerut riots of 1982, as Jt. Secretary of National Commission For Minorities (NCM). He reported that "In Aligarh riot in 1971 the presence of district administration and police force.... disappeared for a few hours when most of the incidents of looting, arson and murder took place". Presenting the other side of the same coin Saxena says about 1982 Meerut riot: ".....In many places the P.A.C. behaved like a mob and committed atrocities". He is of the opinion that in Meerut the "district administration perceived threat to public peace only from Muslims.... The order from the senior officers in the district to the police could be summarized in one phrase: "Muslims must be taught a lesson; the P.A.C, and the Police faithfully implemented this policy" (N.C. Saxena, Meerut Riot Report).²

About a decade before the NPC Report, Justice D.P. Madon had reported the following findings of his inquiry into the riots in Bhiwandi:

103.145 Several instances have been proved before the Commissions in which police officers and policemen either did not prevent the Hindu rioters from indulging in rioting, looting or arson or showed communal discrimination in dealing with the rioting mobs, or gave incorrect report to the Control Rom or lodged incorrect F. I. Rs, in order to make out that the persons who had rioted or were responsible for looting or arson in particular incidents were Muslim rioters and not Hindu rioters, or actively assisted the Hindu rioters in burning and looting Muslim properties.

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.

The evidence before the Commission has established the following facts with respect to the working of the Special Investigation Squad set up to investigate all riot cases:

1. The working of the Special Investigation Squad, Bhiwandi, is a study in communal discrimination.
2. The officers of the Squad systematically set about implicating as many Muslims and exculpating as many Hindus as possible irrespective of whether they were innocent or guilty.
3. No investigation was conducted into the composition and activities of Hindu communal and allegedly communal organizations operating in Bhiwandi but only in respect of Muslim communal and allegedly communal organizations.
4. A false case was got up against 223 Muslims in which it was alleged that 16 out of them had entered into a criminal conspiracy, later jointed by the remaining 207, to attack simultaneously at 5-30 p.m. on May 7, 1970, the Shiv Jayanti procession in the Bhusar Mohalla, Old Thana Road locality, and the Hindus and their properties in different localities.³

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.⁴

A little more than a decade after the NPC Report, Justice B.N. Srikrishna Commission of Inquiry into Mumbai riots of 1992-93 made the following observations:

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 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 crystallized itself in action during January 1993. (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 appointed post; on others, the attitude was that one Muslim killed, was one Muslim less. (Ch. IV)

1.13 Police officers and men, particularly at the junior level, appeared to have an inbuilt bias against the Muslim 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)⁵

The pattern that emerges from the conduct of the police in various riot situations indicates that on occasions it behaves like a riotous mob under provocation using indiscriminate force, causing death and destruction of innocent

citizens, the worst example of which was the killing of about forty Muslim youth by the personnel of U.P's Provincial Armed Constabulary (PAC) from Hashimpura, Meerut, on 22-23 May 1987 near Ganga Canal in Muradnagar and throwing their dead bodies in the canal, which aroused the conscience of the nation.⁶ In other situations when members of vulnerable groups are under attack it abdicates its authority, and becomes passive spectator to the scene of killing, loot and arson.

All the three major 'riots' in independent India i.e. pogroms against Sikhs in 1984, the demolition of Babri Masjid in 1992 and widespread riots in its wake in 1992-93, and the Gujarat Carnage of 2002, owe themselves to this partisan role of the law-enforcement machinery.

In a study on Police-Public Interface, the Commonwealth Human Rights Initiative (CHRI) makes the following observations:

Lack of public faith in police fairness is a highly disturbing finding of this study, which has emerged prominently through responses to questions in different parts of the survey.

The three most prominent features of the ugly face of the policeman in this country are his brutality, corruption and partiality. We learnt to our surprise that the number of public respondents who regarded the police as partial was larger than the number who considered them either brutal or corrupt. This was true not only of the total but also of the sample in each of the three states.

In our survey on human rights awareness and attitudes, we asked the police officers to list out the common malpractices in which police indulge and priorities three considered most important by them. Showing partiality towards rich or influential people in cases involving them or reported by them and "Discriminatory treatment towards weaker sections of community" emerged as the two most common malpractices in which police indulged.

The sources of the persistent pattern of partisan conduct of the police are threefold:

- i) The organization and functioning of the police under the 1861 Act as a subordinate body subservient to the political executive.
- ii) The inbuilt communal biases based on negative stereotypes of minorities, especially Muslims.
- iii) The social composition of the police and other wings of law-enforcement system, including the justice delivery system.

Apart from the inquiry reports, like those of Justice Madon (1970) and Justice Srikrishna (1992-93), the studies on police attitudes and behaviour during communal riots by N.C. Saxena (1983)⁸ and the senior police officer V.N. Rai (1996) have reported findings based on field work of entrenched communal bias in the officers and men of the police based on negative stereotypes of the Muslims.⁹ Such biases in the police get manifested in most police-public confrontation, even when there are no communal riots. One glaring example of which was provided by the incident of police brutality in the Hostels of Jamia Millia Islamia on 9 April 2000 inquired by PUCL and PUDR teams. Innocent Muslim students were not only treated brutally but were called ISI agents and the bearded ones had their beards pulled out and abused for following their faith. The PUCL reported the following:

"The taunting, tortures and humiliations of the students on the ground of faith is a serious matter. It shows increasing communalization of the Delhi Police." The team of inquiry included team comprising.

The following are some of the findings of the PUDR Report:

The police entered room after room and fell upon the students calling them ISI agents and other communal abuses and asked non-Muslim students why they were in Jamia.

All the students we talked to, whether Hindu and Muslim, charged the policemen with making a special target of anyone who was bearded and was wearing a kurta-pajama. The Masjid in the compound was broken into and the Imam, himself a Ph. D student, was beaten up.¹¹

II

The inadequate representation of minorities in the police is another source of communal biases getting entrenched. In the name of secularism disaggregated community-wise figures in various wings of law-enforcement system including the police are not published. However it is widely known that Muslims are underrepresented in the system. Soon after 1947, in certain states like Uttar Pradesh the numerical representation of Muslims in the security forces like the PAC was restricted under a policy of loyalty to the State as a fundamental condition of service. The Amnesty International noting 2% Muslim representation in the PAC called it a Hindu paramilitary force.¹²

.... The issue of socially diverse composition of the police and other institutions of governance is the most neglected one in the country. Apart from the Durban Declaration and POA 2001, to which India is a party, which requires socially diverse composition of all institutions of governance especially State forces and the judiciary, the National Commission to Review the Working of the Constitution (NCRWC) in its Report 2002 has made strong recommendation for carrying out "special recruitment.....of persons belonging to the underrepresented minority communities in the State police, paramilitary forces and armed forces." The Commission holds the view that "this will instill confidence among minority populations as well as help them to develop responsible attitudes towards security issues confronting the nation."

In 1983 Prime Minister's Fifteen Point Programme on Minorities emphasised the need for such special recruitment. The following were its specific recommendations:

1. 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.
2. The Central Government should take similar action in the recruitment of personnel to the Central Police Forces.

The NPC also felt 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.

The following observations of the NCP need attention:

47.57 We would reiterate here our views already expressed in para 19.30 of our Third Report 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. In this regard the senior officers, particularly in positions of command have an important role to play. If they act in a correct and impartial manner and also discourage emphatically any partial or biased behaviour on the part of their subordinates, they can by their example instill confidence in the minds of the people regarding the ability and impartiality of not only themselves but of the entire force.¹⁴

The Home Ministry's Guidelines (for Governments of all States and Union Territories) to Promote Communal Harmony issued on 22 Oct. 1997 makes the following recommendations:

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 which were recommended from time to time, should be taken earnestly:-

Launching of Special Campaigns to recruit more members of minorities in the State Police Force.

Creation of composite battalions of armed police which should include members of all religious communities including SCs/STs. for exclusive use in maintaining communal peace and amity in the sensitive areas.

Starting of special training/orientation programmes for State Police Force with a view to maintaining communal harmony.¹⁵

In the light of these observations there is a need to develop firm policy measures for making police force qualitatively secular in attitudes and behaviour and socially diverse in composition ensuring effective presence of vulnerable minorities and weaker sections not only at the lower level but at all levels.

III

However the major source of partisan role of the police lies in its functional command-control system, which makes it carry out the policy directions of the political executive, which is invariably based on cynical political calculations in the game of power. For example in 1990 the PAC and civil administration used rather excessive force against Kar Sevaks to protect the Babri mosque, according to the directions of the then Chief Minister, Mulayam Singh Yadav, who perceived his consolidation of power in the protection to the mosque. In December 1992 the same PAC and a pliant district administration aided and abetted the Kar Sevaks and allowed the mosque to be demolished, according to the directions of the then Chief Minister, who perceived his consolidation of power in terms of maximum protection to the Kar Sevaks at the cost of the safety of the mosque and media persons.

In 1984 it was not a case of spontaneous upsurge of violent passions of the Hindus against the members of the Sikh community, beyond the caused the butchery of three thousand innocent Sikhs. Justice Rauganath Misra, who inquired capacity of the security forces to repress it, which into the riots, testified to the fact that the riots occurred broadly on account of "the total passivity, collousness and indifference of the police in the matter of controlling the situation and protecting the people of the Sikh Community." The Commission further noted the bias of the administration against the Sikhs in taking away licensed firearms from them during the period thus "exposing the weaker group to greater risk at the hands of the rioters". The Commission was convinced that "if at the right time police action had started with the number of police force available the entire situation would have remained under control".¹⁶

The police did not act, because of the lack of will at the highest political level.

What has happened in Gujarat 2002, is not a one-time phenomenon. In Ahmedabad 1969 riots, which took a toll of more than two thousand lives, the police inaction during the first three days, which caused maximum loss of life and property, was the result of the political policy direction of the ruling congress party who had directed the police not to be tough with rioters for fear of losing the next elections to the Jana Sangh.

IV

Following are some of the reform measures that are required to be implemented for democratic governance, making the police function as an instrument of rule of law:

1. The present command-control system of the police under 1861 Act which makes it function as a ruler-appointed State-centric subordinate body to provide maximum political satisfaction to the ruling party, should be replaced by a citizen-centric system which enables the police to function independent of political directions, making it accountable to law. It requires overall supervision of an independent statutory State Security Commission (SSC) having its branches in the districts.

The posting, transfer and promotions of police personnel and punitive actions against them to be subject to review by the SSCs.

It will also require amendment of the service rules of magistrates and police officers making them liable to legal proceedings including payment of compensation to victims in the event of their failure of omission and commission leading to communal violence (or any other inter-group disorder), established by an independent Inquiry Commission (not under the present Commission of Inquiry Act, but appointed in a manner suggested by NCM Report 1999).

2. The training of the police at the initial stage and also periodic (annual, biannual etc.) to have strong component of human rights including the right to dignity, equality and non-discrimination of all citizens.

Special course on eradication of communal prejudices and negative- stereotypes of communities acquired by police-personal from the society.

The course should include field work by way of inter-group interaction and communal living together for a period.

3. Numerical composition of all wings of law-enforcement system including the civil police, the paramilitary forces, the intelligence gathering agencies and authorities entrusted with investigation and prosecution should be socially diverse insuring the presence of vulnerable minorities at all levels, not only to the extent of their share in population but adequate enough to make the police force a good mix of social caste, religions, regional and gender variation.

Such a socially diverse body will ensure neutralization of biases within the police-personnel manning the system. It will also inspire more confidence in the vulnerable sections of society like Muslims and other minorities, who will thus stop perceiving police as their enemy.

4. Training of the police in more humane, intelligent and effective methods of riot prevention and control, seeking cooperation of civil society.

4.1 Amendment of the police manual and riot control scheme on use of force and firepower, directing the police to use non-lethal methods of mob control. Use of firepower should be governed by UN Basic Principles on the Use of Force & Firepower by Law-enforcement Officials (1990) which require, use of firepower proportionate to the situation only when there in grave imminent threat to life (and not to property), and when all other methods have been exhausted.

The idea of State Security Commission is based on the National Police Commission's basic reform measure suggested in its Second Report¹⁸ to make police functionally independent of political policy directions and interference by the government and the ruling party. It has been endorsed, among others, by the NHRC and the NCM.