

# Structures of legal restraint, oh police powers in india

Government, Military



The Ibakkar - Natarajan Commission Part one of the Nanawati Commission report, probing into the Godhara incident in Gujarat, released last month has once again opened the Pandora's Box over logic of setting up Inquiry Commissions in the country. The report while giving clean chit to the Narendra Modi Government has supported the theory of conspiracy, leading to a widespread criticism across the country. Many call it 'eye wash' and other call it 'sponsored report'. Communists have termed it a 'piecemeal' and fabricated report, whereas; National Democratic Alliance (NDA) calls it 'triumph of truth'.

Justice Nanawati report in fact contradicts the UC Banerjee report which also probed the Godhara incident. How a single incident draws two extreme conclusions? The two reports have raised a very debatable issue. What do judicial commissions, appointed by the various governments to examine issues ranging from riots, scandals and assassinations to inter-state disputes actually achieve? Critics of commissions say that their recent history has been extremely spotty. Apart from taking inordinately long to deliver reports, they seldom achieve anything.

Keeping apart from such allegations and counter allegations, the issue that has again come to fore is whether an inquiry commission can substitute criminal prosecution? Do these Commissions serve any purpose? Is it not an eye wash? Are these Commissions able to bring culprits to book? Are not Commissions of inquiry a waste of time and money? To understand the entire issue, one has to discuss the Commission of Inquiry Act, 1952 itself. Before

this Act came into being, the governments used to order an inquiry by executive notifications under Public Service Inquiry Act, 1850.

Sometimes, they used to enact adhoc and temporary legislations too. To meet the public demand for impartial and judicial inquiries, the Government of India came out with a comprehensive legislation, which resulted into passage of this Commission of Inquiry Act, 1952. Since its enactment, the constitution of Inquiry Commissions has become a tool for the various governments to subside the public anger. Since Independence, more than a hundred Inquiry Commissions have been set up, but a very few have served the purpose. And the reasons are obvious.

First, the provisions enshrined in this Act are not of deterrent in nature and secondly, most of the time the Commissions are set up under retired Judges for obvious reasons. Section 4 the Act provides for powers and it is clear that the Commission has no power to compel a person to adduce before it and give evidence. It cannot pass verdicts or judgments which could be enforceable. The helplessness is such that even if an offence has been committed in view of or in presence of Commission, the Commission needs to forward the case to the Magistrate for trial as provided in Criminal Procedure code.

The appointment of retired Judges, as head of the Commission is very much suitable for the government. It is not merely a chance that one Judge has headed more than one Commission. The public perception is such that these Inquiry Commissions are becoming post retirement placement schemes for the favourite retired Judges. We have a long list of such Commissions, which

have made inordinate delay in submitting their reports. Many of them have taken decades in so called "conducting inquiries" and even then the report which was submitted were so voluminous that we required another committee to find out ways to implement the recommendations. For example, as many as ten Commissions or committees have so far been set up with regard to the anti-Sikh riots in Delhi after the assassination of former Prime Minister Indira Gandhi. First of all it was the Marwah Commission headed by Additional Commissioner of Police Ved Marwah, that was set up in November, 1984. The Commission was about to finish the assigned task when it was abruptly wound up in May 1985 and a new Commission headed by Justice Ranganath Misra was constituted. The new Commission was asked to carry out further inquiry hitherto done by the Marwah Commission.

The Justice Ranganath Mishra Commission which was appointed under Section 3 of The Commissions of Inquiry Act, 1952, was asked to inquire into "allegations" of violence and not to inquire into the "nature" of violence, a departure from the terms of reference of over a dozen other commissions on communal disturbances since Independence. It is needless to mention that what has happened to reports and how much amount have been spent on these exercises. Has any prominent leader been punished so far? Many persons, against whom leveled charges were being inquired into, have died.

Such are the frustrating results of these Commissions and Committees. As far as time and money aspect of these Commissions are concerned, its enough to look into the expenses of just couple of Commissions to understand the quantum of impact—both in terms of the amount and time

spent. The one that tops the chart is the Liberhan Commission. Set up under retired Justice M S Liberhan on 16 December, 1992 to probe into Babri mosque demolition, the Commission has so far been given more than 41 extensions. Overall the government has already spent Rs 90 million on this single man inquiry Commission, which is yet to come out with its report.

Similarly, Justice B N Kripal Commission of inquiry was set up on 13 July, 1985 to probe into the bombing of the Air India Flight 182 on 23 June, 1985 which led to the crash of this plane into the Atlantic Ocean leaving 329 passengers including crew dead. The Commission submitted its report after extensive tours of countries like Canada and USA but when the prosecution began, nothing could be proved and none could be punished. The entire 'investigation and inquiry' went in vain. It is needless again, to calculate the amount which was spent on such inquiries.

Phukan Commission was set up to probe the Tehelka expose into fictitious defence deals. Everyone saw the tape on television and the then Government just to avoid immediate legal course, set up this Commission. In May 2005 the Newsweek reported that Justice Phukan along with his wife and eight officials used IAF plane and went to Pune, Mumbai and Shirdi. The Ministry later said that the Judge was not entitled to use the military plane and it was made available to him by the then government in order to influence the Judge. Such allegations and incidents definitely erode public faith in such Commissions.

The situation is such that every Government in power uses this provision to oblige the retired judges. In Bihar for example, Justice Amir Das Commission

was set up to probe into the alleged connections of political leaders with a banned outfit called Ranveer Sena in 1997. The Commission was finally wound up in 2006 as it could hardly do anything except for some tours and recording the statements some leaders in over eight years of its existence. Similar is the case of Justice Ali Ahmed Commission that was set up to look into excess withdrawal in 1996.

In fact, very little is known about the outcome of the Commission, including the recommendations that it submitted or the actions taken by it. Commission under Justice R C P Sinha and Justice Samsul was set up on Bhagalpur communal riot in 1989. Reports were submitted in 1995. But when the new government came to power it set up N N Singh (retired Justice) Commission to investigate the matter again. In 2008 a Commission under retired judge Sadanand Mukherjee was set up to probe into the Kahalgaon police firing. This commission is still a non starter vis-a-vis investigation of the incidence.

Not to miss the fact that when the recent breach in Kosi embankment that caused a major flood in Bihar led to lot of allegations and counter allegations, the state government was quick to constitute a Commission under Rajesh Walia, again a retired Judge to probe into it. And while there is no bias against the judiciary or the retired judges, who are a national repository of knowledge as far as judicial matters are concerned, the question needs to be examined is whether a Commission can substitute the country's criminal investigation system.

How can a Judge be better equipped to do forensic test, do scientific investigations than a professionally trained police officer? Has the Commission power to make arrests to the persons likely to tamper evidences? The answer to these and many such questions has been provided by a two Judge commission itself. Set up by in 1987 to investigate the Fairfax Deal, the Justice Thakkar and Natarajan Commission in its report have said that the Commission of Inquiry Act was " ineffective and toothless". They two, in fact, devoted one full chapter on the inadequacies of this Act.

It is important to note that India has a criminal justice system, which is based on the twin pillars of investigation and dispensation of justice. How can the Judiciary be asked to do the work of investigation, which is the work of the State as enshrined the law of the land? The Criminal Procedure Code and for that matter entire Criminal Justice System is erected on this principle (Article 50 of Chapter IV on Directive Principles of State Policy) and perhaps it is due to this principle, that the judiciary and executive have been completely separated in 1973, when the Code of Criminal Procedure was amended.

Besides, most of these Commissions, after years of its investigation, usually submit reports that are so voluminous that it again requires some committees to suggest measures to implements the recommendations. Not to talk about the fact that such reports are not obligatory and mandatory for the government to implement. It is also worthwhile to mention here that the Judiciary in India is an independent system and that is precisely the reason why Article 220 restricts practise by retired Judges. The idea is that there

should not be any scope, whatsoever, of favour or disfavour by the serving Judges.

By appointing the retired Judges in these Commissions or for that matter in any other body tends to clearly violate the spirit of the Constitution itself. What is more shocking is that instead of modernising and equipping the investigating agencies to probe into such serious issues of national shame, the country has been a mere spectator to the cosmetic make ups. In India, every one knows about the 'normal' pace of the court proceedings, and so all these commissions, needless to say have virtually become black holes.