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**POLICE AND SOCIAL VIOLENCE
A STUDY OF COMMUNAL RIOTS IN UTTAR PRADESH
FROM 1981-1990**

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the Degree of
MASTER OF PHILOSOPHY*

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CERTIFICATE

This is to certify that this dissertaton entitled **POLICE AND SOICAL VIOLENCE - A STUDY OF COMMUNAL RIOTS IN UTTAR PRADESH FROM 1981-90**, submitted by **Mrs. SEEMA KAKRAN**, in partial fulfilment for the award of the degree of **MASTER OF PHILOSOPHY** of this University, is a bonafide and Original work to the best of my knowledge. This dissertation has not been submitted for the award of any other degree of this university or any other university.

We recommend that this dissertation may be placed before the examiers for evaluation.

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Chapter - I

INTRODUCTION

The triumph of nationalism in 1947 marked the beginning of the pursuit for goals of integration, mass mobilization for change and effective use of state power for social engineering in India. An unavoidable consequence of this was the assumption of total civic power by the state and an enormous growth in the state activities. 'The State sought to recast human relations to reinvigorate culture and to extricate itself from the dominance of feudal hegemony, for restructuring society on more equal, more just and more democratic principles'.¹ However, the tempo of lawlessness and violent activities which have manifested on an unprecedented scale in our country, which boasts of age-long strand of non-violence in cultural and spiritual heritage, have brought the state control mechanism to the forefront of public discussion and academic scrutiny.

Violence and crime of a reasonable level are inevitable in any society, but cause of concern in the present situation is the ominous increase in total crime and an explosion of discontent culminating in increasing trend of social violence

¹ Khan, Rasheeduddin, "Impediments to Democratic Change in India : The Challenges of Communalism and Poverty", in Jim Masselos, ed., India Creating a Modern Nation (New Delhi : Sterling , 1990), p.389.

in the society. The crime clock of 1990 indicates that a violent crime is committed in our country every two minutes.²

A cursory glance at the crime statistics (See Table - 1) would indicate that the past decade (1980-90) has been the most violent and turbulent period of independent India's history. The nation witnessed a series of caste and communal riots and the growth of militant, terroristic and naxalite movements in various parts of the country. Agitational and 'Demand Politics'³ gave an impetus to the growing violence, be it in the form of self-immolations by the students during the Anti-Reservation riots or mass disorders organised by the agrarian and trade union leaders. One needs only to see and hear the warnings on mass media against such violence to perceive the prevalent sense of insecurity in the minds of people.

It is, therefore, imperative that Police - the single most important institution for establishment of peace and order in the society should come under close review and critical assessment by the people at such a time.

² Government of India, Ministry of Home Affairs, Conference of Chief Ministers on Administration of Criminal Justice, Nov'92.

³ For a detailed discussion see Rudolph, Lloyd, I., and S. H. Rudolph, In Pursuit of Lakshmi - The Political Economy of Indian State (New Delhi : Orient Longman, 1987).

TABLE - 1
Crime Under IPC and Violent Crime under IPC
(1953-1990)

Year	INCIDENCE OF CRIME								
	Total Violent Crime	Murder	Kidnapping & Abduction	Dacoity	Robbery	Riots	Inc. Homicide not Amounting to Murder	Rape	Attempt to Murder
1953	49578	9802	5161	5579	8407	20529	-	-	-
1961	55725	11188	6698	4213	6428	27199	-	-	-
1971	124380	16180	9647	11193	18402	64114	2357	2487	-
1981	193224	22727	13833	14626	22996	110361	3272	5409	-
1986	182119	27269	15667	10444	22395	94197	4195	7952	-
1987	179786	28513	15251	10036	22917	90789	3721	8559	-
1988	203589	28771	15771	9306	21611	94587	3755	9099	20689
1989	217311	31222	17318	9896	22480	98943	3952	9752	23748
1990	234338	35045	18474	11089	25440	102846	4281	10068	27095
Percentage change in 1990 over 1953	327.2	257.5	251.1	98.8	202.6	401.0	81.6*	304.8*	-

Note : Percentage change in 1990 over the year 1971.

Source : Conference of Chief Ministers on Administration of Criminal Justice, New Delhi.

However, it is disheartening to note that despite such an important role of police in society, studies in police science in India are still in a stage of infancy.⁴ Very few scholars and social science researchers have devoted their energy and expertise to understand the socio-administrative realities of democratic governance in a plural society of India's size and diversity.

The studies which have so far been undertaken have concentrated on the formal administrative, organizational, legal and managerial aspects of police structure. They mainly deal with problems pertaining to the Indian criminal justice system, police training, recruitment, promotion, motivation etc. There has been scarcity of research in the areas of changing pattern of crime and its relation to police role of crime prevention, investigation and maintenance of order which are important areas of actual police functioning.⁵

The literature available on police includes the works of police officers, governmental agencies, police commissions and academicians. Nevertheless, most of this literature comprises of individual opinions about the police system and there

⁴ Sharma, P.D., in foreword to K.M. Mathur, The Problems of Police in a Democratic Society (Jaipur : RBSA, 1987).

⁵ Mehra, Ajay K., Police in Changing India (New Delhi : Usha, 1985). Rajgopal P.R., Social Change and Violence - The Indian Experience (New Delhi : Uppal, 1987).

appears to be tendency among the writers to evaluate the performance of police and suggest reforms for it without integrating it in the larger framework of criminal justice system.

However, this is not an indication that illuminating empirical researches have been entirely absent on the subject of police and its role performance. Infact, there are a number of such studies. Two of these studies have been conducted by David H. Bayley,⁶ one in 1969 and another in 1983. In his later study he has remarked that there is an atmosphere of desperation in the public system today which was absent about twenty years before. The public has lost faith in the police to impose order. He notes that a larger part of police attention is devoted to growing group violence leading to :

- (a) "substantial increase in the armed police mainly at the central level relative to the civil;
- (b) distortion in deployment patterns in that officers tended to collect their forces in reserve in order to be prepared for mob outbreaks. This meant pulling police out of the rural areas and concentrating them in urban areas and the neglect of beat duties;

⁶ Bayley, D.H., The Police and Political Development in India (Princeton : Princeton University Press, 1969).
-----, "Police and Political Order in India",
Asian Survey, April, 1983.

(c) continuous police involvement with riots, demonstrations, firing, deaths, injuries and so on, further leading to the decline of professionalism, morale and efficiency of the police".⁷

A comprehensive and detailed scrutiny was undertaken, in 1978, by the National Police Commission,⁸ which presented its seven reports over a period of three years (1979-81). In its reports the Commission handled subjects ranging from redefinition of police role, duties, powers and responsibilities to accountability of the system, policing in rural areas, methods of record maintenance and mechanisms for redressal of citizen's and policemen's grievances⁹. It made concrete suggestions for reform of the system after identifying the various problems including political interference, deteriorating public image of police and lack of coordination between various parts of criminal justice system. However, it is not possible to include here all the findings and recommendations made by the Commission. The noteworthy

⁷ Subramaniam, K.S., "Political Violence, Social Movements and the State in India" (New Delhi, N.M.M. & Library, 1991).

⁸ Government of India, Ministry of Home Affairs, Reports of National Police Commission, 1979-1981.

⁹ Government of India, Ministry of Home Affairs, First Report of NPC, Feb. 1979.

fact is that a large number of these have not been implemented and lie buried in government files.

A study conducted by V.K. Mohanan¹⁰ looks into the existing relationship between the police and the criminals and the influence of community interaction on their relationship. On the one hand, he examined the impact of police officer's status on his behaviour towards criminals and on the other, the effect of offender's educational background on the relationship between the two.

Yet another empirical investigation had been undertaken by Upendra Baxi¹¹ in 1982 in which he discussed at length the types of methods employed by the police for investigation and misuse of authority that follows. He also gave an analysis of the structural causes of police torture.

P.R. Rajgopal,¹² has elaborated the causes of failure of criminal justice system in India and substantiated his conclusions with vital data which are revealing in a number of ways.

¹⁰ Mohanan, V.K., Crime, Community and Police (Delhi : Gian, 1987).

¹¹ Baxi, Upendra, Crisis of Indian Legal System (New Delhi : Vikas, 1982).

¹² Rajgopal, P.R., op. cit.

A number of studies have also been conducted by both individual researchers and institutions pertaining to relations between the police and the community and the image perception of the two.¹³ Almost all these conclude that the public is not only suspicious but also sceptical about police behaviour. The police in their turn consider the public non-cooperative and hostile. Among these studies is a survey carried out by the Indian Institute of Public Opinion.¹⁴ According to the findings of this survey only 20% of the general public thought that police discharged their duties in an impartial and straight forward manner, 78% thought the opposite. As many as 83% of them thought that the police favoured the rich and the influential and 77% thought that police protected and shielded anti-social elements and criminals. Among the respondents 81% considered political interference as a cause of this situation and 63% attributed it to corrupt and ulterior motives of police. This clearly

¹³ See Mehrajuddin, Mir, Crime and Criminal Justice System in India, (New Delhi:Deep & Deep, 1984); Sharma, K.K., "Citizen Police Relationship - An Empirical Exploration", Indian Journal of Public Administration, Jan-Mar'78; Mehra, Ajay K., "Revamping Indian Police", Administrative Change, Vol 8 July-Dec'80 and Rajan, V.N., Wither Criminal Justice Policy (New Delhi : Sagar, 1983).

¹⁴ Bureau of Police Research and Development, Survey on "Image of Police in India", New Delhi, 1993, as quoted by P.D. Malviya, "The Challenges Ahead", in S.K. Chaturvedi, ed., Police and Emerging Challenges (Delhi : BR, 1988).

shows that the Indian police carries a very poor image in public mind.

In addition to these empirical studies there is also abundant literature available on police which gives a vivid description of corruption, malpractices and inefficiency of the state control mechanism. This literature can be divided into four categories :

- (a) literature dealing with criminal justice system which looks at the police sub-system as a part of it;
- (b) works of police officers based on personal experiences;
- (c) writings on police and its changing role in the light of changing social, economic and political conditions;
- (d) works on causal analysis of violence of different types specially caste and communal violence and police role in curbing such violence¹⁵.

Despite such differences in emphasis, what is acknowledged in the literature universally is the fact that the police structure as it exists today in India is a legacy of the colonial regime. It was created by the British Rule with the purpose of using it as an instrument for sustenance

¹⁵ These categories are not rigid and often there is overlapping among them.

of power and maintenance of status quo. The police largely functioned in the pre-independence period to prevent crime and suppress mass movements against the government with the help of draconian laws. However, with the rise of democratic independent nation, the role of police changed. It was now expected to act more democratically, refrain from adopting rough ways, function within the ambit of law and eschew the erstwhile punitive approach. The system though deficient in many ways, sustained itself and operated smoothly for sometime but after 1970's the situation changed. There grew a strong resentment against it in the public mind and its inefficiency came into the open.

Apart from this there also grew a tendency of greater reliance on the paramilitary and armed forces for preserving peace within the country. In the twenty years between 1951 and 1970 the armed forces were summoned on 476 occasions and in between 1980 to 1984 alone, the army was called out 369 times, an average of once in every five days.¹⁶ This was accompanied by a growing feeling in the public mind that the police have a partisan attitude. Police literature indicates that police discretion in making arrests is generally used to the disadvantage of the minority groups.¹⁷

¹⁶ Times of India, New Delhi, 24th Jan'93.

¹⁷ Mathur, K.M., Op.Cit., p.21.

It is often reiterated that the police either lack timely response or use unwarranted force in dealing with law and order situations. This kind of a portrayal is fairly common in the reports of the media. Often after a riot or a demonstration there is vehement criticism of the police. On numerous occasions of public protest the real issues are lost behind and police brutality becomes the major issue. Such incidents tend to develop into a tussle between the police and the public.¹⁸

I have endeavoured to study this hitherto neglected aspect of police functioning i.e. its performance as a public order maintenance machinery especially in the backdrop of growing social violence.

Here it becomes essential to distinguish violence from crime. Although, crime and violence are both seen as expression of alienation¹⁹ from society, they differ from each other in more than one way. Crime, as defined in the Chamber's Twentieth Century Dictionary, is 'a violation of law'. Violence, on the other hand, is related to 'the use of great physical force'. It is explained as excessive, unrestrained or

¹⁸ For instance the Anti-Reservation stir in New Delhi in 1990-91 turned into an anti police agitation.

¹⁹ Sociologists Durkhiem, Merton and Parsons have explained crime in these terms as quoted by Subramaniam, Op.Cit.

unjustifiable force, outrage or injury. While crime is an individual phenomena, with a non-ideological base and motivation of personal gain, violence has larger implications and is rarely a solo performance. It usually grows out of an interaction of opponents and has ideological roots. Violence is sometimes used to contain all varieties of protests, militancy, coercion and destruction, but often it connotes use of illegitimate force.

Any definition of violence will be arbitrary in some regards and debatable since men do not agree on what they will call violent.²⁰ Nevertheless, we may define it in Charles Tilly's terms as 'any observable interaction in the course of which persons or objects are seized or physically damaged over resistance' (direct or indirect).²¹

Further distinctions start from this point. We can distinguish collective violence from individual violence on the basis of number of parties to the interaction.

Collective violence, in this study, encompasses events which meet a minimum criteria of size and damage to persons or property (wars are excluded). Below a certain scale it would

²⁰ Tilly, Charles, "Revolutions and Collective Violence", in Fred I. Greenstein and Nelson W. Polsby, ed., Handbook of Political Science, Vol.3 (Massachusetts : Addison-Wesley, 1975), p.513.

²¹ Ibid.

begin to fade into banditry, brawling, vandalism, terrorism and other varieties of threatening events.²² Thus, a group of five or more persons²³ who seize or damage someone or something of another group can be said to be committing collective violence.

Various scholars have adopted different approaches to explain the phenomena of collective or group violence. A great deal of empirical work has been undertaken in Europe on environmental characteristics and frequency or magnitude of collective violence in spatio and temporal units.²⁴

Among these approaches is one that emphasizes biological factors and explains collective violence in terms of man's basic instinct of aggression.²⁵ This approach emphasizes the role of increase in population on the likelihood of emotional explosion. Another explanation is given in sociological terms, where violence is treated as disorderly response to structural

²² Ibid, p.515.

²³ Indian criminal law defines an assembly of five or more persons as a group when Sec 144 Cr.PC. is enforced.

²⁴ Snyder, David, "Collective Violence - A Research Agenda and Some Strategic Considerations", Journal of Conflict Resolution, Vol.21, No.3, Sept.1978, pp.499-534.

²⁵ Ibid, p.501.

change.²⁶

Ted Gurr provides a general explanation of group violence in terms of 'relative deprivation'. He argues that the widening discrepancy between what men expect of life and what they get from it causes anger and under specific conditions this individual anger coalesces into collective discontent which under further specified conditions produces violent actions.²⁷

The kind of collective violence that is explained by these scholars is Western in essence. It mainly includes violence carried out by the agents of state - troops, police and other repressive forces and violence carried out by contenders of power against one another and against the regime. Social violence as manifested in our country can be distinguished from this kind of violence which is largely political as pointed out by Charles Tilly.

In the West, before the Sixteenth century, Nation States did not exist, therefore, the contenders for power were essentially communal in structure. After the rise of Nation State, there occurred reactionary violence of communally based contenders but gradually the State came to concentrate in

²⁶ Op.Cit., Subramaniam.

²⁷ Op.Cit., Tilly.

itself the means of coercion. Combined with this, the rise of industrialization produced new associations which reduced the role of communal groups for mobilization. Thus, State became a participant in almost all collective violence either as a policeman or as party to the conflict.²⁸

In contrast to this, in India, the dichotomies of class were superimposed on the existing traditional dichotomies of caste and community, which generated discordance in the body politic and created an in-built social schism that lends itself easily to tension and conflict.²⁹ Violence generated by caste and communal mobilization has its roots in the social structure and I have, therefore, termed the violence generated by these two social constructs as social violence. Social violence can be distinguished from political violence on the grounds that with "communal contenders", collective action tends to be uncoordinated, localised, raggedly bound in time and space and responsive to routines of congregation. On the other hand, with "associational contenders", the collective action, and hence, collective violence, tends to be planned, scheduled, bounded, disciplined and is large in scale.³⁰ Thus, a students violent congregation or a trade union agitation or

²⁸ Op.Cit., Tilly, pp.509-511.

²⁹ Op.Cit., Khan, p.508.

³⁰ Op.Cit., Tilly, p.505.

electoral violence are distinct from a communal or caste riot or a massacre of untouchables.

Political violence and social violence differ also due to the fact that political violence can have a positive or democratic aspect³¹ but social violence cannot be democratic since it is a product of gross injustice and exploitation. Such violence occurs either due to the deprived or depressed sections asserting themselves to acquire their legitimate role and/or it can be due to the vested interests trying to hold on to what control they have over the victims of violence for years and refusing to part with this control.³²

Although social violence is not new for our country, its study has gained special relevance in the wake of increasing brutality with which caste and communal violence is being carried out. The problem of communal violence has assumed serious proportions as is suggested by the growing incidence of such violence and the number of persons killed and injured during these riots. (See Table - 2)

A disturbing trend in this regard is that most recent incidents cannot be termed as spontaneous. Newspapers are full

³¹ Baxi, Upendra, "Violence, Dissent and Development", Seminar on Law and Social Change under the Auspices of Indo-US Commission, Boston, 1983.

³² Ibid.

of reports about the hoarding of arms and ammunition by the people in order to protect themselves from future hostility.

TABLE -2

**No. of Communal Incidents and No. of Persons
Killed and Injured (1961 -1990)**

Year	No. of Incidents	Killed	Injured
1961	92	108	593
1971	321	103	1330
1981	319	196	2613
1982	470	238	3025
1983	500	1143	3652
1984	476	445	4836
1985	525	332	3751
1986	764	418	5389
1987	711	383	3860
1988	710	259	3103
1989	922	892	3871
1990	1421	1246	3913

Source : Conference of Chief Ministers on Administration of Criminal Justice, New Delhi, Nov 1992.

However, my intention is not to delve into the causes of this growing violence, instead, I intend to confine my study to the nature of police response to various incidents of communal violence and analyse the ability of police to handle such situations.

Police performance during communal riots, almost everywhere, has been a subject matter of strong criticism by the minorities as well as the impartial citizenry.³³ The failure of police to play the role of a neutral law enforcement agency is a matter of grave concern. Alongside this is the dangerous trend of communalization of the force which has been brought to notice by a number of scholars and members of intelligentsia.³⁴

My study on the police response concentrates on the state of Uttar Pradesh. Selection of this state was a result of the fact that Uttar Pradesh has been a communal cauldron since the Partition. It has been registering a large number of communal riots (See Table - 3) and these incidents have tended to have a fallout throughout the country. The communal divide is so wide in Uttar Pradesh that even a mere tree can trigger off tension. The row over the Puja being offered under an amla tree in the Taj Mahal precincts, which was opposed by some Muslims, and which resulted in a strong response from the BJP

³³ Ghosh, S.K., Communal Riots in India (New Delhi : Ashish, 1987) p. 91.

³⁴ See Dutt, K.G., "Genesis of Communal Carnage", Tribune, Chandigarh, 31-May-1987, Engineer, A.A., "Exploited by Leaders", Deccan Herald, Bangalore, 25-Aug-1987, Saksena, N.S., "Why are the Police Communal", Indian Express, New Delhi, 17-Jan-1988 and Rao, G.K.M., "Sad Story of Lax Administration", Tribune, Chandigarh, 24-Dec-1990.

-Bajrang Dal -VHP combine, is the latest indicator of the Hindu - Muslim polarisation in the State.³⁵

TABLE - 3

**Incidence of Riots and Volume
per One Lakh of Population in Uttar Pradesh, 1981-90**

Year	Incidence of Riots	Volume
1981	10136	9.1
1982	10027	8.8
1983	9016	7.7
1984	11997	10.1
1985	10614	8.7
1986	10315	8.3
1987	9228	7.3
1988	9411	7.3
1989	9818	7.4
1990	11696	10.0

Source : Crime in India, BPR&D, New Delhi, 1981-90.

The study of communal riots in Uttar Pradesh and the role of police in this regard is also relevant because the Uttar Pradesh Provincial Armed Constabulary (PAC) has been accused of blatant misuse of power against the minority community on more than one occasion.³⁶ Infact, it is pointed

³⁵ Indian Express, New Delhi, 04-Apr-1993.

³⁶ Op. cit., Ghosh, p. 91.

out that the PAC incites hostility among the Hindus and the Muslims and provokes violence against the latter. This criticism has assumed such serious proportions that some Muslim leaders have demanded the disbandment of the PAC and the creation of a new impartial force with adequate representation of various communities.

For this study I have largely relied upon the data available in the form of crime statistics of National Crime Record Bureau and Bureau of Police Research and Development. Although, accuracy and reliability of official statistics is doubted and questions raised,³⁷ there seems to be no alternative since it is the only available source of information.

The study has been divided into five chapters. In the First chapter the criminal justice system and the position of police within it is discussed.

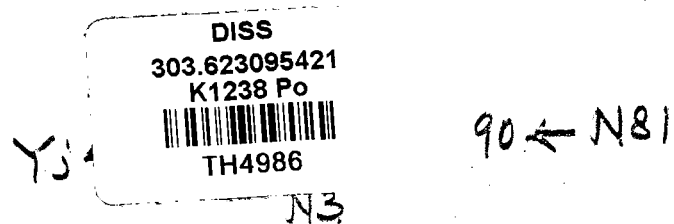
The Second chapter deals with the legal position with regard to public order maintenance and rioting. The highlight here is the discrepancy that exists between legal explanation of terms and violence as unfolding itself in practice and how this impedes police efficiency.

³⁷ See Nayar; 1975, Bayley; 1969, Op.Cit.

The Third chapter is on the analysis of the data on riots and the inferences that can be drawn from it.

The Fourth chapter deals with the response of police to situations of crisis in specific areas and a causal analysis of their behaviour.

The Fifth and final chapter is on the problems faced by the police and remedies that can be suggested for a more effective functioning of police in the country for public order maintenance and control of social violence.



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Chapter - II

CRIMINAL JUSTICE-PHILOSOPHY AND PRACTICE

Deviant behaviour is a phenomena common in all societies and every society has the prima facie duty to control this kind of behaviour in order to enable its members to lead a stable and normal life. Society has its own machinery for this purpose. At the apex of this machinery is the State, which represents a societal consensus for legitimate use of sovereign authority through institutionalized agencies collectively called-Government. Though the state performs many other functions, maintenance of peace and order constitutes the single most important objective for its establishment. This objective is mainly achieved through the criminal justice system which bears the explicit responsibility for preventing and controlling crime in a state. Police, Judiciary and penal administration are the three clearly identifiable sub-systems of this system.

The success of criminal justice system depends largely on a proper understanding of the objectives of the system by all its parts put together and their coordinated functioning to achieve the desired goals.³⁸ Police constitutes an important part of the system. The role, duties, powers and responsibi-

³⁸ GOI, MHA, Ist Report of National Police Commission, Feb., 1979.

lities of the police cannot be studied in isolation but have to be fitted into the overall requirements for the success of criminal justice system as a whole.

The criminal justice system, as an apparatus of society, operates by apprehending, prosecuting, convicting and sentencing those members who violate the basic rules of social living. 'It covers the entire scenario from the occurrence of crime, i.e., any deviatory conduct punishable by law, investigation into the facts there of by the enforcement agency, adjudication proceedings in court aided by the prosecuting counsel as well as the defence counsel, the performance of the correctional services in facilitating the quick return of delinquent person to normal behaviour and finally the administration of Jails with the ultimate object of resocialising the criminal apart from deterring him from repeating his crime'.³⁹ Police, prosecutors, advocates, judges, functionaries in the correctional services and jails form the different distinct constituents of this system.

The various constituents are not independent of each other, infact they are closely inter related. Courts can deal with only those whom the Police arrest, the job of correction can be done only with those who are brought to the agency by the orders of the courts. 'How successfully the correction

³⁹ Ibid.

reforms convicts in a jail or outside determines the police efforts and influences the sentencing policies of the Courts with regard to repeaters.⁴⁰ The sub systems of criminal justice system are, therefore, interlinked in the form of a chain, which is not broken at the ends, instead, its ends are again joined, so that each subsystem effects the other and is in turn impressed by it.

However, police occupies a primary position among the various parts. This primacy accrues from the following facts:

- (a) Policeman is the first to arrive on the scene of crime and while applying law in a specific situation he enacts a legal scene in the parameters of which the latter legal battles are fought.
- (b) Investigation being the primary and major responsibility of police organisation, it collects facts, evidence, witnesses and all other cognate materials which influence the process of truth searching in the establishment of guilt or crime complicity therein.
- (c) However, detailed or neat the law, the discretionary range of police judgement in choosing and rejecting is wide and varied. No future review by any agency can

⁴⁰ Sharma P.D., Police and Criminal Justice Administration in India, (New Delhi : Uppal, 1985), p. 37.

recreate a crime situation, if the police allows it to get white washed or distorted in the initial stages.

- (d) The trial being a thorough juristic battle in a given field cannot undo what the police decides to present before the court of law.

Thus, absence of genuine information at the investigation level prevents a full understanding of the circumstances, motivations and compulsions which occasion the incident as a result of which both the offender and the victim are liable to suffer. It is widely recognised that the efficiency of the legal and correctional machinery depends basically on the quality of initial work done by the police. Even the most ardent supporters of new theories of social defence acknowledge the importance of police role in the administration of criminal justice.

After the police has completed its task and the investigation stage is over, the trial phase begins. This phase consists of three functions- verification of facts, decision making and sentencing. The judgement which is pronounced in the courts identifies a particular act or conduct as crime, establishes who is responsible for it and expresses moral condemnation of the person or persons who are found guilty. Thus, the chief concern of judiciary is to uphold the principles of Justice, equality and individual

rights. It attributes primary importance to justice and a secondary status to control of crime. However, this justice must be delivered without delays because 'justice delayed is justice denied'.

When the judiciary has performed its functions and the judge has given the judgement, the correctional system comes to the fore. It then reforms the offender in the jail or other such institutions as the court decides. Since the task of this wing is clearly defined, vis., deterrence and reformation it suffers from the least amount of role ambiguity.⁴¹

At this juncture, the administration of criminal justice, viewed in totality, may seem to be a continuous and coordinated process. But when examined at closer range, serious gaps and barriers become apparent. In Robert, H. Scott's words, "inconsistencies inhibit cooperation, chasms cut communications, the process of criminal justice becomes a series of segments separated from each other by differences in philosophy, purpose and practice. Moreover, the segments themselves are often characterised by internal conflicts and confusions. The blanket of administration of justice, when

⁴¹ Rao, S. Venugopal, Criminal Justice - Problems and Respectives in India (Delhi : Karnaka, 1991), p.19.

seen at close range becomes a patchwork quilt".⁴²

Thus, the system at the practical stage⁴³ faces many problems which include :

- i. questions of procedures, questions of due process, questions of custody and treatment of offenders;
- ii. problems of different and to some extent opposing philosophies within the system particularly in functions and goals, i.e., court decisions upholding the due process that restrict police power; punishment versus rehabilitation of offenders; conflicts arising from over specialised functions and poorly defined roles; and
- iii. problems of conflicting theories in the causes and responsibility for crime.

But before the details of these problems are discussed it is important to analyze the philosophy behind the criminal law of any country since the law of land forms the infrastructure on which the superstructure of criminal justice stands, specially in a democratic society.

There exist two views on the purpose of criminal law.⁴³ One view is that its purpose is to protect society from

⁴² Scott, Robert H., as quoted in Louis A. Radelet, The Police and the Community (California: Glencoe, P.338.

⁴³ Op. Cit., Rao, pp. 25-27.

internal disorder and disruption. It may be termed as the theory of Social Protection. The criminal is here judged in relation to the threat he poses to society and security within it. This theory lays emphasis on the criminal act and takes minimal notice of the offender. The other theory looks at crime as the acts of individuals whose perceptions and attitudes are distorted and here, the purpose of criminal law transforms into focusing attention on the psychological, social and economic needs of the offender. The criminal is looked at, not as a dangerous person who has to be punished but, one in need of understanding and sympathy. Thus, the criminal law assumes a therapeutic approach. The most prominent feature of this approach is that criminal gets into centre stage and in the process victim is entirely ignored.

These two divergent theories are both justifiable but neither of them is exclusive. If criminal law were to be too impersonal in its concern for social protection, it is liable to degenerate into an engine of oppression. Contrarily, if it were to assume a purely therapeutic role it is likely to open the flood gates of crime and violence. A society over occupied in the rehabilitation of the criminal is likely to lose sight of the impact of deterrence. In an extreme view, it can be argued that the therapeutic approach doesn't discourage the criminal from his aggression unless there is speedy attitudinal change. Thus, it would be more appropriate to

accept that the purpose of criminal law is social protection primarily through deterrence and secondarily through reformation of the offenders. Therefore, at the various stages of its enforcement there should be a balanced mix of deterrence and correction.

Historically, society has sought to deter crime through punishment and to redress wrongs against itself by exacting severe, sometimes barbarous penalties. In modern times, it is recognised that the primary aim of criminal law is to deter potential offenders. It is believed that the fear of exposure can have deterrence on those who enjoy some degree of public trust. But where the criminal perceives that his activities are not likely to be exposed or they are acceptable without any moral regret, mere denunciation is not likely to have any salutary impact. Hence, punishment must be prescribed to offenders according to the gravity of the offence. The punishment can range from fine to incarceration and for more serious offences even capital punishment. This kind of a punitive approach to crime is based on the premise that no state can exist without an element of force for social regulation and security and punishment is the most appropriate form of exercising this force.⁴⁴

In recent times, however, the criminal law has moderated

⁴⁴ Ibid. p.29.

punitive approach and protected the accused against unjust and coercive punishment. There is a great deal of emphasis, even in the international arena, on basic human rights of criminals.

The criminal justice process in a democratic society professing the principle of Rule of law, therefore, has to combine two competing systems of values,⁴⁵ the tension between which accounts for the dilemmas observable in the administration of criminal justice. One such system of values, which can be called the "Crime Control Model", is based on the proposition that the repression of all criminal conduct is the most important function to be performed by the criminal justice process. It claims that in its ultimate analysis the criminal justice process in society is a positive guarantor of social freedom and to achieve this the crime control agencies should focus their primary attention to the efficiency with which the process operates to screen suspects, determine guilt and secure appropriate dispositions of persons convicted of crime. The other value system which competes with this crime control value model can be called the 'Due Process Model' or 'Civil Liberties Model', which attempts to present formidable impediments to carrying the accused further along in the process. It insists on the prevention and elimination of

⁴⁵ Op. Cit., Sharma P. D., pp.29-30.

mistakes to the maximum possible extent. India, like all other Third World Countries has adopted a mixed approach' in this regard.

In our country the criminal justice system revolves around the laws passed by parliament and state legislatures. Thus, credibility of the system is first and foremost dependent on the inherent strength and weaknesses of these laws. It is a fact that criminal law represents only one of the facets of social control but it constitutes the most direct instrument since it determines the nature and manner of response to crime. The penal statutes and criminal procedure are two important laws in this regard. The penal statutes prescribe the acts of commission or omission and make them punishable. The implicit purpose is to define a crime and its constituent elements, so that a prosecution can be based on it and the violators may be brought to book.

The core laws of criminal procedure embodied in the basic codes govern the system at each step namely :

1. detection of crime by the police;
2. investigation as per needs in specific cases of criminal violation;
3. criminal apprehension, bail and prosecution procedures of cross examination of witnesses;
4. Bar-Bench roles and Police-court relationship during

trial;

5. sentencing policy; and
6. prison life and rehabilitation including correction.

The three basic All India statutes- Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act were passed by the Imperial Parliament of Britain in pre-independence years. The subsequent and subordinate legislation governing the administration of police, judiciary and jails was an exercise within the parameters laid down by the major Blue Books. Police and jail manuals have continued to be the same as they were hundreds of years ago. Even after independence when the State Governments could have revised or updated these codes, rules and manuals and work procedures in the three departments, very few states thought of it⁴⁶. As much of this subordinate legislation is inextricably enmeshed in the provisions of three major Central Acts, it is almost unworkable to change police procedures or prosecuting patterns or trial needs for dispensing criminal justice at all the levels.

There exist two diametrically opposite views on the nature of these statutes. One view holds that the acts give a strong arm to the administration and the other maintains that they breath in liberalism, equality and due deference to

⁴⁶ Ibid., p.47.

freedom of the individual.⁴⁷ A detailed discussion on this issue can only be taken up after analyzing the various provisions of these Acts. Nevertheless, a noteworthy fact is that the legal procedures prescribed by the present statutes or regulations presuppose a certain kind of society and still more certain kind of institutions manned by certain kind of individuals committed to certain kind of values of an agrarian society.⁴⁸

In the past four and a half decades of independence the nature of the erstwhile agrarian society has considerably changed and so have the types of crime. Thus, the gap between how the law defines crimes and prescribes controls and what actually happens in society, has widened. This gap has led to greater increase in crimes and loss of the credibility of criminal law and its institutions. There is a growth in public belief that the legal system is incapable of protecting people's lives, property and dignity.⁴⁹ The criminal justice system is presently under the glare of publicity as it had never been before which stresses the need for its agencies to function with greater care and competence.

⁴⁷ The former view is largely held by general public and the latter by members of the judicial wing.

⁴⁸ Op. Cit., Sharma, p. 55.

⁴⁹ Working paper of seminar on "Desirability and Feasibility of Separation of 'Law' Police and 'Order' Police", SVP National Police Academy, Hyderabad, 1983.

However, a look at the system in India today makes it clear that instead of increasing the efficiency of the system. The harshness is sought to be ameliorated by increasing the complexity of procedures and at the sametime the severity of punishments is being raised to terrorise the criminals into conformism.⁵⁰ This latter trend is visible in most of the recent legislations pertaining to drug trafficking, crimes against women and socio-economic offences.

A review of the basic principles embodied in the Indian criminal law and procedure provides a background for understanding the factors which are contributing to the failure of the system. The criminal law in India as point out before, consists of three major parts, The Indian Penal Code and the array of special and local laws which define crimes and prescribe appropriate punishment, the Code of Criminal Procedure which lays down the rules to be followed at all the stages of investigation, trial and sentencing, and the Indian Evidence Act which is woven round the nature of evidence that can be gathered, presented and accepted.

The IPC consists of 511 sections of which about 330 are punitive provisions, the rest being definitions, exceptions and explanations. The 300 odd offences are divided into two

⁵⁰ Op. Cit. Rao, p. 25.

categories - cognizable and non-cognizable, on the lines of arrestable and non-arrestable offences in British law. The major difference in the Indian law, however, is that the police are prohibited from investigation of non-cognizable offences on the ground that most of them are trivial and even when they are serious, it would be desirable for the courts to take direct cognizance.⁵¹ The offences are further divided into two other categories- bailable and non-bailable depending upon the severity of offence. Finally, they are categorised in relation to the procedure adopted which is again related to the nature and magnitude of the offence. When crimes become cases in the courts, they are treated as serious cases, warrant cases, summons cases, summary trial cases and petty cases.

National Police Commission, in its First report notes that, in the classification of offences as cognizable and non-cognizable it appears that the framers of the code were inclined to take a severe view of any violation of law relating to possession of property and a lenient view of the offences against human body.⁵² The classification of offences and limitations of police response to complaints there-of, as spelt out in the laws, do not conform to the understanding and

⁵¹ Ibid, pp. 40-41.

⁵² GOI, MHA, 1st Report of NPC, 1979.

expectations of the common people, who when they become victims of a crime naturally turn to the police for help. The provision of bailable offences have also been criticised on the ground that they have been so framed that bail release will be possible only if the arrested person has some financial backing. It causes discrimination against the poor since, similarly placed wealthier persons are able to secure their freedom and the poor are not. Here also, on account of procedural requirements of law, the police appear as harsh and oppressive, showing undue severity in dealing with poor persons who happen to get arrested.

Another significant feature of our criminal law is the accusatorial system.⁵³ Unlike the inquisitorial system in which the judge is expected to take the initiative and find out for himself, by examining all relevant persons including the accused, what really happened, in the accusatorial system the judge is only an umpire between the two contesting parties - the prosecution and the defence counsel. He only gives his decisions on the issues and evidence put before him.

Indian Evidence Act, 1872 says that, "who soever desires any court to give judgement as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist" and " when a person is bound to

⁵³ Ibid.

prove the existence of any fact it is said that the burden of proof lies on that person." (Section 101).⁵⁴

Thus, the judgement is pronounced by the bench on the basis of facts presented before it and no initiative to explore the truth beyond that is undertaken. The burden of proof lies either on the police or the prosecution.

The Indian criminal law, it is asserted, displays a deplorable neglect of the victim. It is woven rigidly round the need for protecting the rights of the accused and the elaborate procedural and evidentiary constraints are designed with that end in view. Also another impediment which weighs down the criminal law is the strait jacket of elaborate criminal procedure for prosecutions for offences ranging from murder to a petty theft or simple assault. The underlying principle here is that 'hundred guilty may go scott free but one innocent should not be punished.'

Another significant point is that, the entire Indian criminal law bristles with total distrust of the police.⁵⁵ The following provisions are an evidence of this fact -

(i) section 155 of the Cr. PC lays down that in his report on

⁵⁴ As quoted by NPC 1st Report, op. cit.

⁵⁵ This fact is noted by almost all the committees and writers on police.

the completion of enquiry, the police officer shall not give opinion as to the guilt of the accused person.

(ii) section 162 of the Cr. PC prohibits a statement from being signed by the witness making the statement. It lays down that no statement of a witness recorded by the police officer during investigation can be used for proving the guilt of an accused person.

(iii) section 24 of Indian Evidence Act says that a confession made by an accused person to a police officer is wholly inadmissible in evidence against him at his trial.

(iv) section 26 of Indian Evidence Act provides that no confession by an accused person while in police custody can be taken into account in his trial, unless it is made in the presence of a magistrate.

Apart from this the Cr. PC, 1973, specifically debars police officers from conducting prosecution of cases in courts. The law suspects that the policeman prosecutor will try to secure maximum convictions. Thus, prosecution and investigation are organised into two separate wings and placed under separate leadership. This lack of legitimate interaction between the police and prosecuting agency for proper framing of all the facts discovered during the investigation very often weakens the position of prosecuting counsel in the

courts and in the process the criminals benefit and often get acquitted.

It is not just law that distrusts the police but the general public also believes that the police are unscrupulous ignorant, uncultured, corrupt and petty tyrants who prosecute the innocent and have little respect for individual liberty.⁵⁶ This public distrust is very often to a large extent attributed to the politicization of police and inefficiency and misuse of power that follows.⁵⁷ Several officials and criminologists have discussed the influence exercised by the politicians on the police. David H., Bayley, remarks that, 'in India a dual system of criminal justice has grown up. The one of law, the other of politics. The autonomy of police officials in specific and routine applications of law has been severely curtailed. People accused of crimes have grown into the habit of appealing to political figures for remission from the sanction of law. Police officers have grown accustomed to calculating the likely political effect of any enforcement action they contemplate. Such supervision in the name of democracy has eroded the foundation upon which impartiality

⁵⁶ Rao, S. Venugopal as quoted by Mohanan, Op.cit., p.183.

⁵⁷ This fact has been pointed out by a survey carried out by Indian Institute of Public Opinion, Op.cit.

depends in criminal justice system."⁵⁸

Policemen also use the politicians, in their interest in order to obtain choice postings, to avoid being transferred, to mitigate disciplinary sentences or to earn promotions. This increasing politicization has led to severe criticism of the police and its functioning by the general public.

In their defence, the police officers attribute this politicization to the dilemma of accountability. They argue that their complicated nature of work makes them accountable to law, to the executive, to the judiciary, to public and within the system to their superiors, all at the same time.⁵⁹ These conditions cause extreme stresses and strains in the day to day functioning.

The double subordination of police to the administrative bosses and judicial guardians has eroded the clan of Indian police officers. Their accountability to the Executive has made the police result oriented rather than disposal oriented. The Executive want the crime figures during their regime to be lower. At the same time they want percentage of detection of cases, recovery of stolen property and convictions of accused

⁵⁸ Bay bey, D.H., as quoted in First Report of NPC, op.cit.

⁵⁹ Op. cit., Mathur, p.5.

persons to be higher. It is this result orientation which creates problems of non reporting of crime, meting of rude treatment to the complainants and witnesses, fabrication of evidence and resort to use of third degree methods.⁶⁰

Thus, apart from maladies of the overall criminal justice system, the police is loosing its autonomy because of its own deficiencies and declining professional competence. India has become a notoriously under reported nation as far as crimes are concerned. Police practise large scale concealment of crime and even in those cases which are registered, investigation is delayed. This fact is self evident if we look at the date on disposal of crimes by police during the years 1980 and 1990. (See Table 4)

Another issue often talked about is- police brutality. It is a fact that police brutality violates the dignity of the individual but their appears to be growing resort to this method of investigation. Often investigative journalists have brought to light cases of police brutality and so have the reports of human rights organizations like Amnesty International. It is pointed out that the police view the offenders as enemies and largely depend on suppression and control measures in order to find the truth. The police in

⁶⁰ Singhvi, G.C., "Police Accountability and Separation of Law Police Order police", SVPNPA, Hyderabad, 1983.

TABLE - 4

IPC Crime Pending Investigation at the End of 1980 & 1990

Crime Heads	1980	1990
Total IPC	313455	389306
Murder	8792	19578
Dacoity	7932	8690
Riots	34553	32532
Rape	2053	3864
Burglary	32671	31671
Theft	70981	87543
Criminal Breach of Trust	16281	11622
Cheating	11293	15468

Source : Conference of Chief Ministers on Administration of Criminal Justice, GOI, MHA, 1992.

their turn argue that they adopt such methods for the benefit of society and not for personal gain. However, empirical researchers⁶¹ have argued that the major structural causes for such police behaviour.

1. training and outlook of the subordinate police make them prone to exercise of illegal force from time to time;

⁶¹ See Baxi, Upendra, Crisis of Indian Legal System, op. cit.

2. the need to detect criminal and lead them to early punishment is a structural demand within the organisation as well as community expectation, which occasionally puts heavy pressure on the police to succeed in investigation;
3. detection of crime is a decisive indicator of personal efficiency in police organization;
4. the inadequacy of investigating personnel, the high and increasing overload of work and ineffectiveness of supervision by senior police officers;
5. police may see custodial violence as serving the overall spirit of law against its letter which they may find ill-suited to satisfaction of the task of police organization; and
6. police organization is starved of financial resources.

Apart from these structural causes some other general factors are that:

1. the standard of interrogators with regard to educational background and professional training is very poor; and⁶²

⁶² As noted by conference of Chief Ministers on Criminal Justice Admn., 1992.

2. the fact that criminals are provided for a very short remand period causes extreme pressure on the police personnel.

Despite such strong criticisms being levelled against the police for its malfunctioning, no where has its relevance been questioned in regard to its role of crime prevention. Although various suggestions for reform have been made, even the most vehement critics have not suggested that the police should be entirely done away with.

Judiciary which comprises the second wing of criminal justice administration in India is regarded as the most professional of the three subsystems,⁶³ in the sense that the lowest dignitary who is entrusted with decision making in the court possess adequate professional knowledge, as he is drawn from the legal profession. However, it is also considered the most conservative of the three. The reasons for its conservative behaviour are :

- (a) In lower courts scope for upholding values is reduced due to routinization;
- (b) there exists inherent resistance to change among the functionaries. The court has to function according to the

⁶³ Op. cit., Rao, p.6.

procedure established by law and when that law itself is rigid the system also becomes change resistant.

- (c) Due to large discretion there is scope for error and so the judges try to remain within the confines of established precedents. There also exists role ambiguity because the judiciary has to take both - the individual rights and protection of society, into account.⁶⁴

However, inordinate delays, prohibitive expenditure, procedure orientations are some of the oft quoted maladies of the judicial process in India the feeling of helplessness noticed in the functioning of courts, the triviality of punishments which have no meaning when imposed after interminable delays appear to be integral parts of the judiciary. The statistics on pending cases in various courts (See Table 5) is a clear indicator of how the principle of 'justice delayed is justice denied' is flaunted regularly in India.

The courts have also been accused of practising extreme liberalism in grant of bails. The tendency to grant bail even in non bailable offences under the provisions of anticipatory bail are not uncommon. Unfortunately, data relating to grant of bail is not compiled and maintained centrally. However, the

⁶⁴ Ibid, pp. 17-19.

TABLE - 5

**No. of Cases Pending in Different Types of Courts
(1976-88)**

Year	Magistrates' Court	Sessions' Court	Total
1976	4472145	76813	4548958
1980	5951299	159490	6110789
1984	7741914	148902	7990816
1985	8590920	244860	8865780
1986	9408810	293255	9702065
1987*	9617034	338364	9955668
1988**	9578822	342435	9921257

* Except Nagaland; ** Except Nagaland & Madhya Pradesh.

Source : Conference of CMs on Criminal Justice, GOI, MHA, 1992.

Bureau of Police Research and Development undertook a limited exercise in this regard and concluded that in case of the three cities where the study was undertaken the percentage of persons alleged to have committed non bailable offences and were granted bail by the courts was as high as 90 percent.⁶⁵

Bar, an important constituent of the judiciary has been criticised for its professional lapses and unaccountable

⁶⁵ As quoted, by Conference of CMs, Op. cit

status. It is pointed out that in India perjury seems to be the rule rather than exception.⁶⁶

Prosecuting counsel has also been attacked for its extremely poor standards specially in wake of the growing number of accused who are able to get acquitted. (See Table - 6)

Jails, the tail end of criminal justice system, appear to be the worst among the different parts partly due to history and partly due to rigid social values of apathy to criminals.⁶⁷ The conditions in our jails are so horrendous that they are viewed as standing examples of man's inhumanity to man. they are over crowded and rituals of daily life are so rigidly administered that they tend to dehumanise the prisoners.⁶⁸ One very vital problem of the jails is that the undertrials and convicts are kept together in them which often leads to criminality instead of remorse and regret in the minds of inmates. The under trials, who are very often petty criminals turn into hardened criminals when they are huddled together with convicts for long periods.

⁶⁶ Op. Cit., Sharma, 93-101

⁶⁷ Ibid, p. 156.

⁶⁸ Op. Cit., NPC Ist Report.

TABLE - 6

Trial Results of IPC Crimes During the Years 1981 & 1990

Crime Head	Year	No. of cases in which trial was completed	No. of cases convicted	No. of cases acquitted
Total IPC	1981	505412	265531 (52.5)	239881 (47.5)
	1990	648554	316877 (48.9)	331677 (51.1)
Murder	1981	13969	6230 (44.6)	7739 (55.4)
	1990	15334	6337 (41.3)	8997 (58.7)
Dacoity	1981	7055	2555 (36.2)	4500 (63.8)
	1990	4446	1454 (32.7)	2992 (67.3)
Riots	1981	45597	16767 (36.8)	28830 (63.2)
	1990	47093	15070 (32.0)	32027 (68.0)
Rape	1981	3156	1150 (36.4)	2006 (63.6)
	1990	6177	2566 (41.5)	3611 (58.7)
Burglary	1981	43910	24478 (55.7)	19432 (44.3)
	1990	36907	17898 (48.5)	19009 (51.5)
Theft	1981	109904	69495 (63.2)	40409 (36.8)
	1990	95943	52086 (54.3)	43857 (45.7)
Criminal Breach of Trust	1981	8699	4250 (48.9)	4449 (51.1)
	1990	7770	2797 (36.0)	4973 (64.0)
Cheating	1981	6075	2886 (47.5)	3189 (52.5)
	1990	8869	3180 (35.9)	5689 (64.1)

Note:- Figures in brackest represent percentage to total cases in which trials were completed.

Source: Conference of Chief Ministers on Amdinistration of Criminal justice, GOI, MHA, 1992.

Moreover, the penal administration suffers from the problem of choice between punitive approach and reformative approach. They have to make constant adjustments between the competing demands of the two value systems while it is acknowledged that the conditions in these institutions should be consistent with human dignity. It is equally true that our enthusiasm for amelioration should not be taken to extremes of sacrificing their credibility as centres of punishment.

Paul, W Tappan points out that if cultural value system keeps the Western prisons in bad shape the economic conditions do not permit the non - Western world countries to evolve better models of prison management.⁶⁹ The chief problems in India obstructing any kind of reform are:

- (a) prison system in India being a state subject has not been viewed in a national perspective;
- (b) The three tier system devised by the British in Nineteenth century has not only become obsolescent but also organisationally dysfunctional; and
- (c) the prisons are manned by totally demoralised and corrupt management, who have a vested interest in the continuation of the existing model.

⁶⁹ Tappan, Paul W., Crime Justice and Correction (N Y; McGraw Hill, 1960) as quoted by P. D. Sharma, Op. Cit., 147.

The fact of too many crimes too few detections and still fewer convictions makes a travesty of the criminal justice system in India. This in efficiency is compounded by chasms in the intercomponental relationships between the police and the judiciary, police and the jails and courts and the jails. The relationship between the police and the judiciary has progressively deteriorated despite a valid recognition that it is contrary to the interests of functional efficiency of the total system. The policy makers argue that the police should be thoroughly reorganised and overhauled to inspire public and judicial confidence before procedural reform is contemplated, while the police contend that legal stigmatization has caused irreparable damage to their image and performance⁷⁰.

Police - judiciary relations have been a constant source of debate. On the one side is the view that there should be ultimate control of the courts over the police. Contrary to this is the view that criminal justice is a relay race and each agency participating in it has a different role to perform. The police is designed to play the primary role and it becomes self-defeating, if judiciary starts reviewing the role of their colleagues in police department and vice versa.⁷¹ It is also against the theories of separation of

⁷⁰ Op. Cit Rao, pp 41-42

⁷¹ Op. Cit., Sharma, p. 67.

powers and checks and balances. A rift between the police and the judiciary will inevitably result in a benefit for the criminals who will take advantage of the situation and go scott free.

In matters of investigation, the police is already subject to the control of and accountable to the judiciary. A copy of the First Information Report, has to be sent by the Police station officer to the Judicial Magistrate empowered to take cognizance of the police report (Section 157 of Cr.PC, 1973) The Judicial Magistrate on receiving such report may direct an investigation or conduct (or get conducted) a magisterial preliminary enquiry into the matter. Arrest of a person by the police has to be reported to the Judicial Magistrate. An arrested person cannot be detained for more than 24 hrs in police custody in the absence of a special order from a judicial magistrate. Only a judicial magistrate can, from time to time authorise the detention of the accused in police custody for a term not exceeding fifteen days. Copies of any records made by the police officers in the course of searches have forth - with to be sent to the nearest competent judicial Magistrate. If the police report makes out a case against the accused person or persons, the judicial Magistrate goes ahead with the trial of the case. If, on the other hand, the police report shows the case as not made out, the Judicial Magistrate has a right to direct further

investigation. It is, thus, evident that the pretrial stage is subject to the control by the judiciary.⁷²

These legal provisions and procedures have created a tussle between the police and judiciary. The police accuse the courts of liberal attitude towards criminals, conservatism and stinginess in extension of remand periods. The courts in their turn accuse police of high handedness with accused and inefficiency in carrying out investigations.

As a result of these problems the criminal justice system is losing its effectiveness in controlling crime and in dealing with criminals. More than the failure of the system to prevent crime, it is its ineffectiveness in dealing with those who commit crimes, that is really responsible for the erosion of and loss of public confidence in the system. Whenever a criminal, who is known to have committed a crime, escapes punishment the citizens doubt the efficacy and effectiveness of the criminal justice administration. Release of persons involved in heinous crimes on bail, the increasing rate of acquittals, mounting arrears in courts, failure to deal with influential criminals and increasing number of undertrials have contributed to the loss of public faith and confidence in the system.

⁷² Op. Cit., Singhvi

The history of Indian parliament doesn't display much interest in reform of criminal justice despite such a sorry state of affairs. It is over occupied with the concerns of development. "There has been a spate of Commissions and Committees, Conferences and workshops on judicial reforms. The famous 14th Report and latter recommendations of the Law Commission and many other high brow proposals from committees of senior judges have enriched our reform literature with inert excellence. The focus, must shift from banal propositions of reform to cardinal issues of modernization, of the liberalization of the access to courts, of the simplification of procedures and rationalization of the rules of evidence," points out Justice V.R. Krishna Iyer.⁷³

There have also been various reform proposals put forward by Commissions and Committees to reform the police system. These reforms include the isolation of police from extraneous influences, adoption of scientific techniques of investigation, improvements in standards of training and recruitment, strengthening of the prosecuting staff and increasing coordination between the investigation and prosecution wings.

However, as Louis A. Radelet points out, "Our approaches

⁷³ Krishna Iyer, V.R., *Our courts on Trial*, (New Delhi; B.R, 1987) quoted by Rao, op. cit., p. 39.

to crime and delinquency prevention and treatment frequently fail because they tend to deal with the problem in fragments, compartments and pieces. The critical test of criminal justice system is the degree to which it succeeds in coping with the crime phenomena as a totality".⁷⁴

Reform movements often concentrate on what should be done to improve police officers, rather than what fundamental changes should be contemplated in the system itself. A symptom of this attitude is in the observation that guidelines for the exercise of discretion by the police are frequently prescribed and spelled out in specific recommendations.

The voices for overhaul of criminal justice system are legion, that substantial change must be undertaken appears to be virtually unanimous verdict; exactly what changes, and how they are to be made are continually contested question. But, it can be concluded with conviction that mere treatment of aberrations in the system is not going to help we need a simultaneous major operation with a view to over hauling the system of dispensation of justice, role of police and jail administration.

⁷⁴

Op. Cit., Radelet, p. 339

Chapter - III

MAINTENANCE OF PUBLIC ORDER - LEGAL PROVISIONS*

Internal security and Public order are the two essential prerequisite of a Nation's march towards progress and development. Economic regeneration and reconstruction are not possible if the energy and resources of the country are frittered away merely to combat violence and lawlessness. Socio-economic and political justice can also not be assured to the citizens unless there is uninterrupted state of peace and tranquillity. Thus, maintenance of public order is an important objective of every nation. In our country the subject of public order is included in the State List, therefore, it is the states that are responsible for establishing peace and maintaining order within their territory. Irrespective of the cause of violence or disorder, it is the police, as the agent of law, which has to promptly act to maintain order as it constitutes the primary agency for this purpose. Police like public order is a state list subject. Despite, these constitutional arrangements, at the operational

* Legal provisions as prescribed in the various Acts have been quoted from Ghosh, S.K., Laws of Public Meetings and Processions in India (Calcutta : Eastern Law House, 1976) and Edmund, C. Cox, Police and Crime in India (Delhi : Manu, 1976).

level both police and public order maintenance are guided largely by the Central Acts, viz, Police Act, 1861, Indian Penal Code, 1860 and Code of Criminal Procedure, 1973.

Before various provisions that have been provided by these laws and other related enactments are listed and elaborated, it is essential to understand the ambit of the term 'Public Order.' At the onset, it may simply be considered as synonymous with public peace, safety and tranquillity. In a ruling given by the Supreme Court it was stated that Public order, signifies that state of tranquillity prevailing among the members of a society which is a result of internal regulations enforced by the government, constituted by them⁷⁵ (members of the society). It, therefore, means absence of disorder. However, this disorder involves breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife and war, which affect the security of the state.⁷⁶ Thus, anything that disturbs public tranquillity in a local area affects public order.

The question that arises here is what does public tranquillity mean? The expression 'public tranquillity' has not been defined in law but chapter VIII of the Indian Penal

⁷⁵ Ramesh Thapar vs State of Madras, SC 124, AIR 1950, quoted by K.M. Mathur, Op. Cit., P. 54.

⁷⁶ Supdt. Central Prison vs Dr. Lohia, AIR 1960, SC 633.

Code gives us an idea as to what events are meant to be covered as threats to it. These are: (a) unlawful assemblies; (b) rioting; (c) promoting enmity between different classes; and (d) affray. It can therefore, be deduced that when in a specific area there are no unlawful assemblies, no rioting, no incitement to enmity between different classes in a noticeable form and no affray, there is general public tranquillity. It also follows that acts of violence which fall under the categories mentioned earlier can form the basis for detention of the perpetrators thereof on grounds of disturbing public order under the appropriate law.

However, all acts of violence do not pose a threat to public tranquillity. It is commonly known that the contravention of law always affects order, but before it can be said to affect public order, it must affect the community or the public at large'.⁷⁷ Disturbance of public order has to be distinguished from acts directed against individuals which don't disturb the society to the extent of causing a general disturbance of peace. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or public order. illustrating this proposition in concrete terms the Supreme Court has observed, "Take for

⁷⁷ Ram Manohar Lohia vs State of Bihar, AIR 1966, SC 740, quoted in the 1st Report of NPC, MHA, GOI, 1979.

instance, a man stabs another, people may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of another community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardised because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order".⁷⁸ Thus, an act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. It means, therefore, that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.⁷⁹

An act or activity, in order to give rise to an apprehension of public disorder, must directly or proximately be linked to some elements, subversive, violent, dangerously mischievous or general fear - foreboding.⁸⁰ The act or

⁷⁸ Ibid.

⁷⁹ Working Paper of Seminar on "Public Order : Scope and Extent of Effective Police Action"; SVP NPA, Abu, 1971.

⁸⁰ Op. Cit, Mathur, P. 54.

activity must ^{be judged by the immediate or prob-}able effects on the public mind and such activity should be of pervading character disturbing the general peace, tranquillity and order of the Society in a noticeable form. Therefore, public perception forms another important factor in determining whether an act falls in the category of disturbance to public order or not.

Disorder as, most commonly known, is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. As the Supreme Court once observed, " One has to imagine three concentric circles, law and order represents the largest circle within which is the next circle representing security of the State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."⁸¹

Thus, from the foregoing discussion it can be concluded that two things are crucial for an understanding of the term public order and its ramifications if not maintained. The first is, the extent of affect that a disorder causing act has upon the society and the public perception of it and the second is, the area of its affect. However, what cannot be doubted is the fact that effective enforcement of law in the growing atmosphere of violence and disturbances of public

⁸¹ Op. cit., Ram Manohar Lohia vs State of Bihar.

peace comes to depend on effective maintenance of public order. In such a condition, maintenance of order takes precedence over enforcement of law as without the former the latter remains an illusion.

Even within the concept of public disorder. There are two types of disorders one caused by individual against the public and the other caused by group of persons against the public. This, second type of collective disorder is more serious and has wider implications since action against one individual involves lesser complication than controlling of a group of hostile individuals. D.H Bayley had, observed that new types of public disorders are emerging in India creating hitherto unknown problems for the police. These disorders include increasing public protests of violent variety. He divides protests in two categories legal and illegal.⁸² Legal protests include strikes and hartals, fasts and processions and public meeting. ^{The illegal protests are of two kinds, violent} ones like riots and non violent ones like obstructions gheraos and courting of arrest.

Although, demonstrations by means of morchas, satyagrahs, bandhs, meetings, processions and strike were common even during pre-independence period, they were much easier to handle as the police was given arbitrary powers to suppress

⁸² Bayley. D.H., Police and Political Development in India, (Princeton : Princeton University Press, 1969).

such movements since they were considered threats to the Imperial rule. However, after independence the handling of such situations involved skillful law enforcement and a tactical approach on the part of policemen. These protests are now recognised forms of expressing disapproval of certain government measures or acts or deficiencies in such acts. But in doing this the public should not be coerced or blackmailed by the protestors. However, it is important to note that the very purpose of such demonstrations is to disrupt the civic life of the community and to draw the attention of the people to deeply felt grievances. Thus, even strikes, hartals, processions and public meetings often turn violent thereby converting these legal forms of protests into illegal ones. Observing this trend in India, K. M. Mathur remarked that "Hartals, bandhs, gheraos, self immolations, communal clashes and terrorist activities have converted the politics of agitation into politics of mass violence".⁸³

These various collective disorders require special kind of response from the state as they are certainly more serious compared to public disorders caused by individuals through independent acts. The state can utilise three defences against these kinds of disorders. The first of these defence agencies is the police which naturally begins to operate as soon as an

⁸³ Op. Cit, Mathur, P.64.

illegal act is committed and reported to it or observed by a member of the force. The second line of defence is the use of armed force of the affected state or the paramilitary forces of the centre like CRP, BSF. These forces are used specially against collective disorders, when the law and order situation seems to be out of control of the State police. However, when there is reason to believe that the situation is likely to be beyond the control of the police and other forces like BSF and CRP, the third line of defence that is, the army can be called to aid the civil authorities in controlling the violence.

Nevertheless, among these three agencies police is the most important agency for law enforcement and disorder management not only because it constitutes the first line of defence but also because even when paramilitary forces of the centre or army are called, they function in aid of the police and not as its substitute.

Police responsibilities in this regard have been clearly spelled out in section 23 of the Police Act which says that the police are required to (apart from other functions):

- (i) Collect and communicate intelligence affecting the public peace;
- (ii) Keep order on public roads, thoroughfares, ghats, landing places and at all other places of public resort; and

- (iii) Prevent obstruction on the occasion of assemblies and processions on the public roads.

In order to fulfill these responsibilities various powers have been provided in the Three Major Acts: Police Act, 1861, Indian Penal Code 1860 and Code of Criminal Procedure, 1973. In addition some provisions have been incorporated in the Indian Arms Act, 1959; Explosives Act, 1884; Explosive Substances Act 1908, Unlawful Activities Prevention Act, 1980; and Terrorist and Disruptive Activities (Prevention) Act, 1985. Besides these there are many other State laws which arm the police with stringent measures to combat disorder and illegal activities in public interest. An amalgam of these laws helps the law enforcers to maintain public order and peace.

The police have an impressive armoury of laws that they can use to headoff public violence. The provisions of section 31 in the police Act, 1861, make it a duty of the police to keep order in the streets, places of public resort, thoroughfares, ghats, landing places and in the neighbourhood of public worship during the time of public worship. In the case of meeting held on private premises, the police have no power to enter except by leave of the occupier of the premises or promoters of the meeting, or when they have good reason to believe that a breach of the peace is being committed.

In some states Police Acts provide for recording of the proceedings of the public meeting in writing where the meeting is likely to promote sedition or disaffection or to cause a disturbance of public peace or tranquillity.⁸⁴

According to the provisions of section 30, Police Act, 1861, leaders may be required to apply for a licence if there is any apprehension of disturbance of public peace. The advantage of issuing a licence is that an assembly or procession which disobeys the conditions of the licence can be given order to disperse under section 30-A, Police Act. A refusal to carry out such order turns the assembly into an unlawful assembly.

Here it is essential to understand the notion of unlawful assembly which is explained in chapter VIII of Indian Penal Code, devoted to offences against public tranquillity. Section 141, of the Code states:

'As assembly of five or more persons is designated unlawful assembly if the common object of persons composing that assembly is, First, to overawe by criminal force, or show of criminal force, the Central or any state Government or Parliament or the legislature of any state, or any public

⁸⁴ As observed by Ghosh, S.K., Law of Public Meetings and Processions in India, P. 19.

servant in the exercise of the lawful power of such public servant; or second, to resist the execution of any law, or of any legal process; or

Third, to commit any mischief or criminal trespass or other offence; or

Fourth, by means of criminal force, or show of criminal force to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of use of water or other in corporal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth, by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Section 146, of the Code then says that, 'whenever force or violence is used by an unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of offence of rioting.'

Thus, the category of rioting covers not only such riots that may be political in nature directed against governmental authority, but also those involving private parties engaged in property or other disputes.

Section 129 of Code of Criminal Procedure, 1973, permits a Magistrate or an officer-in-charge of a police station to commend both lawful as well as unlawful assembly to disperse if such an assembly is likely to cause a disturbance of public peace. The question that becomes crucial here is , if the police in exercise of this power honestly feel that a lawful assembly i.e. a religious procession may excite another group of people and that a riot cannot possibly be avoided, then can they ask the processionists who are observing their own fundamental rights to assemble peacefully and to practice and propagate their religion as contemplated by articles 19 (1) (a), (b) and 25 (1) of the Constitution, to disperse?

The law says that, "if an assembly other than an unlawful assembly behaves in such a manner as to provoke a breach of the peace by its own conduct or action, there would be a justification to order it to disperse under the powers given by section 127 of the Code of Criminal Procedure 1860, (Section 129 in the Code of Criminal Procedure, 1973) But, if a religious assembly or procession remains peaceful in the enjoyment of its legitimate rights and privileges under the law, it should not be ordered to disperse merely because a body of antagonistic persons take it into their hands to attack it with a view to provoke a riot. In such a case, it is rather that body of aggressive persons that constitutes an unlawful assembly and requires to be sternly dealt with under

the law".⁸⁵

However, in a number of cases it has been held that where the authorities are unable to preserve peace otherwise than by dispersing the meeting, a lawful assembly may be dispersed on the grounds that others may be provoked to cause a breach of the peace.⁸⁶ The freedom of speech and expression, the freedom to assemble peacefully and the freedom to practice and propagate one's religion are all subject to the interest of public order and it is a ^{major} point as to whether the subsequent point of view should not hold good even in a situation where the police cannot otherwise maintain public peace. So far as prohibitory orders under section 144 Cr PC are concerned, it has, however, been held that in the paramount interest of public order, prohibitory orders temporarily taking away the liberty of the citizen to assemble peacefully would be quiet in order. Magistrates specified in the provisions of this section or any other Executive Magistrate especially empowered by the state Government to issue a restrictive order preventing a person individually or to the public generally when present in a particular place to abstain from a certain act for the purpose of preventing an imminent breach of the

⁸⁵ Deb, R, Principles of Criminology, Criminal law and Investigation, 2nd Edition, PP. 833-835. Quoted in working paper of Seminar on Public Order; Op. cit.'

⁸⁶ Op. Cit., Working paper of Seminar on Public order.

peace. Under the provisions of this section assemblies of more than five persons can be banned in the interest of public peace and tranquillity.

In view of this position a different approach in the exercise of police powers under section 129 Cr PC, is not really called for. It amounts to saying that citizen's liberty can be muzzled temporarily by taking away their right to come out in a procession in the interest of public order, but once they come out, they cannot be asked to disperse even if it is honestly felt that a breach of the public peace cannot be otherwise prevented.

Section 129 Cr PC also permits the use of civil force including a recourse to firing to cause dispersal of an assembly under certain circumstances (under section 130 and 131) But in doing so no greater hurt than is unavoidable should be inflicted. Section 152 Cr PC enables a police officer, on his own authority, to interpose to prevent any injury attempted to be committed in his view to any public property. In addition, all police officers have the same right of private defence which is available to every other person within the meaning of section 99 to 105 of IPC. The extent to which this right may be exercised is laid down in Section 99, 100, 101 and 103 IPC and the period during which the right exists is explained in section 102 and 105 of IPC.

However, any use of force by the police is regulated entirely by the provisions of law. These provisions are contained in chapter V (especially section 46 and 49) and chapter IX (especially section 129) of the Cr PC, 1973. Such force must be the minimum force that is necessary to protect life and property.

Section 129 Cr PC gives concurrent powers to the Magistrate and the officer - in - charge of a police station. Instructions in the Police Regulations, however, direct that when a Magistrate is present he alone shall give the warning and the order to open fire. This is another point for discussion as to how far these Executive instructions in the Police Regulations which virtually take away the powers of the police given under section 129 Cr PC, can be justified in law. In the context of police powers to investigate a cognizable case without the orders of a Magistrate the Supreme Court has observed that these statutory powers cannot be taken away by the High Court and the High Court has no right to ask the police to stop investigation of a cognizable case.⁸⁷ Similarly, in another context the Supreme Court has held that under our system there is no scope of superseding the

⁸⁷ State of West Bengal vs S.C. Bask, AIR. 1963, SC 447. quoted in Working paper of seminar on 'Public Order,' op. cit.

provisions of the law by an executive order.⁸⁸ Thus, it is necessary that these executive instructions in the Police Regulations should be withdrawn. Moreover, even if the existing practice is to be continued, it is necessary to insist that the Magistrate should give written order to the police to open fire as he usually does when he gives order of firing to the army. This will eliminate all possible chances of doubt and subsequent complications..

Imposition of curfew under section 144 Cr PC is another step to prevent and control disturbance of public peace. "It is an elementary Proposition that all persons charged with the responsibility of law and order are empowered under the Cr PC, to proclaim orders, including curfew, under section 144 and they alone are responsible for such a declaration, without the need to consult anybody".⁸⁹ However, very often the political leaders of the area affected by public disorder interfere in the decision making in this regard. This is specially the case when the place of disturbance is within a state capital or nearby area. The political leadership of ruling parties tend to unnecessarily influence the police and magistracy. Such

⁸⁸ In the context of Right to Property for e.g in Chief Settlement Commissioner, Punjab vs Om Prakash, AIR 1969, SC 33, quoted in Working Paper on Seminar on Public Order, Op.cit.

⁸⁹ Report of Commission of inquiry on Ahmedabad Riots, 1969, p. 125.

interference sometimes leads to mishandling of the situation and subsequent deterioration in law and order position.

Another point which needs to be considered is whether in our country we have any curfew in the real sense of the term. What we have in India is merely a prohibitory order under section 144 Cr PC, the violation of which may at best result in commission of a cognizable offence under section 188 Cr PC. In the circumstances to talk of shooting at - sight for the violation of the curfew imposed under section 144 Cr PC, appears to be somewhat confusing. Even when, army is called out to disperse a riotous assembly, to aid civil authority under section 130 Cr PC by a Magistrate, they too like the police have to use only the minimum force within the meaning of sub - section 2 of section 130 Cr PC.

Apart from these powers the police possess wide powers of arrest without a warrant for prevention and commission of offences relating to maintenance of public order and tranquillity these include:

Section 143 IPC, .

Being a member of an unlawful assembly.

Section 144 IPC,

Joining an unlawful assembly armed with any deadly weapon.

Section 145 IPC,

Joining or continuing in an unlawful assembly knowing that it has been commanded to disperse.

Section 147 IPC,

Rioting

Section 148 IPC,

Rioting armed with a deadly weapon.

Section 149 IPC,

If the offence of rioting is committed every member of the unlawful assembly will be liable to action.

Section 150 IPC,

Hiring, engaging or employing persons to take part in an unlawful assembly.

Section 151 IPC,

Knowingly joining or continuing in an assembly of five or more persons after it has been commanded to disperse.

Section 152 IPC,

Assaulting or obstructing public servant when suppressing riots etc.

Section 153 IPC

Wantonly giving provocation with intent to cause riot, if rioting be committed or if not committed.

Section 156, IPC

TO go armed to take part in an unlawful assembly or riot.

Here it is essential to mention section 132 of Cr PC, 1973 which gives protection to members of the armed forces of the Union, Executive Magistrates and Police officers against prosecution for acts done under section 129, 130 and 131 CrPC. It provides that officials acting under good faith in connection with dispersal of unlawful assembly would be deemed to have thereby committed no offence.

In addition to these provisions some sections are specially relevant for control of communal riots. Provision of section 153A, IPC and section 505 IPC provide that making publishing or circulating any statement, rumour or report with intent to cause or which is likely to cause illwill or hatred between different religious, racial, language or regional groups or castes or communities is punishable and if the offence is committed in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, the offender will be liable for enhanced punishment.

Although sections 151, 188, 124A, 153A, 296 of Indian Penal Code describe the legal obligations of those who attend meetings or join processions there are some deficiencies in these provisions. The existing definitions in the IPC regarding abetment, unlawful assembly and the liability of the abettors and members for the ultimate unlawful acts committed,

imply geographical proximity and directly intended involvement in the actual commission of the offences to a degree which doesn't obtain in reality in regard to several accused in situations of this kind.⁹⁰ Therefore, there is a need to redefine the instigators and spell out their criminal liability for various acts that actually occur.

The provisions so far mentioned, concentrate on post-violence breakout situation. However, the success of law enforcement agencies in controlling violence is ultimately to be judged not by the speed with which a riot is quelled, but by the manner in which explosions are recognised in anticipation and averted. Preventive measures rather than punitive approach assumes prime importance in a situation of serious threat to public order. Even anticipatory intelligence will be worthless unless the related preventive measures become possible and prove effective.

Preventive measures against individuals who are likely to threaten public peace include the following provisions of law which allow the police :

- (a) To arrest preventively persons believed to be about to commit a cognizable offence (sections 149-152 CrPC);

⁹⁰ Third Report of National Police Commission, MHA GOI, Jan. 1980, Chapter 21.

- (b) To require security for good behaviour in lieu of which a person may be detained (sections 106, 107 and 116 Cr PC);
- (c) To arrest persons who cannot give a good account of their presence in a certain place; (section 122 of Police Act) and
- (d) To pass orders regarding the conduct of individuals within prescribed areas. (section 144 CrPC).

In most situations the police need to take into preventive custody those persons who are likely to commit or instigate the commission of offences affecting the peace of the locality. Preventive arrests of this kind are made under section 151 CrPC. According to this section, a police officer knowing of a design to commit any cognizable offence may arrest without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented. No person arrested under this section shall be detained in custody for a period exceeding 24 hrs. from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

It is important to note that a police officer cannot

arrest a person under section 151 merely on an apprehension of the breach of the peace. For apprehension is not the same thing as knowledge. While the former is a mere feeling, the later is definite conclusion. What is required by section 151 is that the officer concerned must know that the person to be arrested is designing to commit a cognizable offence. Then again, even knowledge that the person concerned will endanger peace or tranquillity need not always result in a cognizable offence and as such mere knowledge of an apprehended breach of peace falling short of a cognizable offence (e.g. affray) will not justify an arrest under this section. Therefore, section 151 doesn't empower the police to secure Magistrate's permission for continued detention of the person beyond 24 hrs. Magistrates orders for remanding an arrested person to custody for longer periods upto 60 days (or even upto 90 days involving serious offences specified in CrPC) can be obtained under section 167 CrPC which can however, be resorted to only when the police have taken up investigation of a specific offence alleged to have been committed by the accused.

With regard to persons taken into custody under section 151 Cr PC the police may not always be able to cite any specific offences already committed because the preventive arrest will mostly be based on intelligence regarding the likelihood of commission of some offence by the accused person.

In practice, therefore, the police manage to secure remand custody of persons under sec. 151 CrPC by showing them as wanted for intended security proceedings under section 107 CrPC. But the basis for such action is weak in law and the strategy fails against influential accused who move the courts and get the benefit of law as it stands.⁹¹

Another method of preventing the recurrence of a riot, or for the matter that of a breach of the peace, is to take a bond for keeping the peace from a convicted person under the provisions of section 106 CrPC. In all appropriate cases of public disorder, especially in cases where there is a feeling of deep seated enmity, illwill or grudge between the parties which itself whips up passions and serves as a motive for further acts of lawlessness the taking of a bond under 106 CrPC, becomes an imperative necessity.

Apart from these legal provisions the police can also exercise powers of search, seizure and arrest under the Arms Act, 1959, Explosives Act, 1884 and Explosive Substances Act, 1908. Under section 4 of the Arms Act, the Government can in public interest, ban possession of even arms other than firearms. Under section 19 and 23 of the said Act it is permissible for a police officer or any other officer

⁹¹ Ibid.

specially empowered to seize, under certain circumstances, arms and ammunition which are being carried by a person or in a vehicle etc. Section 20, permits seizure of even licensed arms if there are grounds of suspicion that the same are being carried for unlawful purpose. Section 22 of the Act authorises a Magistrate to cause the search of a person's house for seizing arms and ammunition which have been kept for unlawful purpose or which cannot be left in possession of such person without danger to public peace or safety. Similar provision of raids to recover explosives in circulation are provided for in the other two Acts.

Police in recent years has been provided with enormous powers under the unlawful Activities (Prevention) Act, 1980 and Terrorist and Disruptive Activities (Prevention) Act, 1985 to arrest antisocial elements and criminals who indulge in terroristic activities or are likely to disturb public order. These Acts and various other provisions regarding preventive detention provided in the law have been criticised by a number of human rights supporters. This criticism has given birth to a debate in academic circles regarding the rights and limits of the powers of State. The question, whether the Parliament can pass such laws which give arbitrary powers to the executive to legally encroach upon the fundamental rights of the citizens in the name of securing public peace, has come to be repeatedly asked.

The provisions of preventive arrests, securing of bonds and power to arrest persons who are unable to account satisfactorily for their presence or behaviour in a public place have been severely condemned. It is asserted that these provisions encroach upon the right of freedom provided in the Constitution. In this context A. R Desai, has observed that preventive detention, negatives all the rights provided in the Preamble and Part III and IV of the Constitution. He says that the Constitution itself has clothed almost all the rights in the Part III, in such a phraseology that they are susceptible to diverse and contradictory interpretations. Infact they are capable of being made non- functional in the larger context of the arrangements provided in other parts of the Constitution.⁹² These powers have been characterised by various scholars as " Government lawlessness" and "assault on democratic rights⁹³."

The police also on there part have come to misuse the various laws in order to arrive at a shortcut method of securing peace. The Report of Amnesty International has criticised the unconstitutional practices of Indian police specially widespread torture, custodial rape and deaths in

⁹² Desai, A. R., Violation of Democratic Rights in India, ed., Vol. 1, (Bombay; Popular, 1986).

⁹³ Ibid.

custody.⁹⁴ Quoting a senior former official the Report says that, "In India public demonstrations and loud protests in legislature has to be organised before police officers are punished for their illegal acts. Very often the only action is transfer, followed by the hushing up of the case by superior police officers".⁹⁵ Thus, remedial actions are few and far between. Commenting on police mal-practices Mohan Ram says that 'laws and procedures are used to hold individuals to perpetual illegality. Those ordered by courts to be released on one set of charges are rearrested on another set of charges.' Prohibitory orders are issued on the mere subjective satisfaction of the executive and such notification's are not subjected to review by the legislature or the courts.⁹⁶ All these clearly point to the fact that the police use legal methods for illegally curbing human rights of the citizens.

Speaking in a similar context Iqbal A. Ansari has observed that the purpose for which Parliament can frame laws for preventive detention are, defence, foreign affairs and security of India; and those for which both Parliament and

⁹⁴ Human Rights in India, The Updated Amnesty International Report (New Delhi; Vistaar, 1993) p.2.

⁹⁵ Ibid, p.4.

⁹⁶ Ram, Mohan, "Undemocratic Elements in the Constitution:", in AR Desai, (ed). Op.Cit. pp. 92-93.

State legislature can make detention laws are security of the state, maintenance of public order an maintenance of supplies and services essential to the community. These are all very vague and general purposes specially the one relating to the maintenance of public order, which accounts for the maximum number of preventive detention cases.⁹⁷ Ansari maintains that the preventive detention laws should only be used during times of Emergency and not in ordinary circumstances because they are then often misused against political rivals, to curb trade union rights and to deal with normal crimes of law and order dimension.

However, it needs to be mentioned here that laws and procedure in the formal sense conform to needs of what is understood as the rule of law. But in practice it is the perverse application of law and procedures or discriminating use of them which normally curb human rights or fundamental rights. This is specially applicable to our country where the communal predilections of some elements in the police have been found to be beyond doubt. Also the caste prejudices of the policemen in the country are too well known to be elaborated or substantiated. This kind of behaviour on the part of policemen doesn't reflect the deficiencies of the law

⁹⁷ Ansari, Iqbal, A., "Preventive Detention : Its Incomparability with the Rule of law," in A.R. Desai, Op. Cit. p. 97.

but reflects a totally different kind of socio - psychological problem.

Nevertheless, the criticisms of various judges, lawyers, writers and civil libertarians as well as many police and other officials regarding misuse of preventive detention laws is very, much valid. But what can be added here is also the fact that such powers are required in special circumstances of collective violence like communal clashes, caste carnages and riots. Therefore, these laws cannot be totally scrapped. Instead, adequate safeguards need to be provided to prevent their misuse and certain aspects which enforce repressive and coercive attitude need to be reexamined and changed.

Apart from this, there are certain areas in which the power of police have to be strengthened in order to make it an effective public order maintenance agency.

The first among these changes as suggested by the NPC was regarding the protection of public property. It is a widely known fact that when disorder occurs, public property becomes the first target of attack of the rioters. Public property is picked up because there seems to be a belief that there will be no aggrieved individual as such to complain and pursue the matter through the process of law. It is therefore, necessary to define public property in precise terms in the law itself and make the act of sabotage in respect of such property a

specific offence under the law. Such a provision has been made by the Prevention of Damage to Public Property Act, 1984.

The second change is regarding the provision of bail which should be appropriately tightened to avoid bail release of anti - social elements, which may be prejudicial to public peace and interest of justice.

The third change is that the normal requirements of mensrea (guilty mind) which may be applicable in regard to ordinary crimes creates serious difficulties for the prosecution if they are applied in the same measures to crimes committed by riotous mobs or sections there of. Therefore, provisions should be made in the law raising some presumptions in evidence as it appears against the accused during trial and placing the burden on him to rebut the presumption.

These changes would make it easier for the police to deal with criminals and anti social elements at the time of riots. To conclude the discussion on legal provisions regarding maintenance of public order it may be said that the police have to enforce curfew, arrest people, search them and with even the best intentions, there is always the likelihood of commission of acts which will infringe the dignity of the individuals. However, the police must try to deal with collective disorder keeping in mind the democratic rights of the citizens as well as the human rights of the offenders.

Nevertheless, a cut and dried approach in enforcing the laws without a proper appreciation and understanding of the social milieu and their relevance to the situation on hand can be disastrous. The decisions to enforce laws must be based on a comprehensive understanding of the situation and the actions should be so timed as to ensure a proper balancing of the short term goals and long term requirements. Crisis management and not rigid law enforcement may prove to be a most appropriate approach. The critics of police powers as well as functioning need to realise that the existing laws almost seem to assume that police officers are superhumans. The mere number of laws and the provisions therein are mind boggling.⁹⁸ Thus, there is a necessity to realise the limitations of policemen. The laws have to be suitably amended to bring about a proper balance between police powers and individual rights in such a manner that offenders of law do not go unpunished and at the sometime, Democratic rights of citizens are not jeopardised in the name of maintaining peace.

⁹⁸ S.K. Ghosh, in Protection of Minorities and Scheduled Castes (New Delhi, Ashish, 1980) observed that on an average our Parliament has passed 60 Acts ever year and about 3 or 4 times as many sets of rules and regulations. To these we must add almost an equal number of Acts passed by state legislatures.

Chapter - IV

COMMUNAL RIOTS IN UP : A STATISTICAL PROFILE

The most serious threat to public order and peace is posed by riots, especially communal riots in case of India. Although, these violent riots are not limited to one group or community, Hindu - Muslim conflict accounts for the largest number of such riots in Uttar Pradesh. The reason behind this could be the fact that UP occupies a unique place in the history of Indian Muslims. Delhi and the Ganga-Jamuna Doab of UP has been the cradle of Muslim, religious, linguistic educational, cultural and political activity and has the distinction of having major all India institutions like Deobands' Daml Uloom, Lucknow's Nadwatul Uloom, Aligarh's Muslim University, that have attracted Muslims from all parts of the country. The historical antecedents have converted U.P. into an area of inter religious tension over the centuries and placed it in the forefront of communal politics.⁹⁹ The spread of communalism both as consciousness and as eruption of collective violence, is easily discernable in Up of 1980's statistics of incidence of riots and number of persons killed provide one quantified indicator of this phenomena (See Table 7).

⁹⁹ Gupta, Raghuraj, "Communalism in Uttar Pradesh (1947-1984)" in Asghar Ali Engineer and Moin Shakir, eds., Communalism in India (New Delhi: Ajanta, 1985) p. 88.

TABLE - 7

**Number of Communal Incidents in UP and Persons Killed
(1980-1990)**

Year	No. of Communal Incidents	Person Killed
1980	91	191
1981	119	11
1982	77	40
1983	104	15
1984	77	6
1985	27	11
1986	55	53
1987	DNA	103*
1988	DNA	22*
1989	DNA	24*
1990	DNA	179*

* Data compiled from Press Clippings from 1987-1990, Times of India, The Hindustan Times and Indian Express.

Source : From 1980-1986 - Patriot, 29th April, 1987.

These statistics clearly indicate that UP has been chronically afflicted with the scourge of communal dissensions and riots. These riots mainly comprise of the conflict between Hindus on the one hand and the Muslims, who constitute approximately sixteen percent of the total 110 million strong

population of the state, on the other. However, the emphasis here is not on providing a causal analysis of these riots through socio-economic or political correlates. Instead, the major objective here is to provide an analysis of trends in UP with regard to incidence of riots and more importantly, a comparative study of the level of public order prevalent among the various districts of the state over a period of ten years, viz, 1981-1990 and to highlight the distinctive characteristics of the districts with very high and very low incidence of riots. Reliance has been placed on statistical tables and graphs to aid the analysis.

Nevertheless, before the statistical analysis a brief commentary on the causes presented by scholars in empirical studies for the rise and growth of communal riots is made. This is done with the objective of fitting together the correlates presented in these studies with the conclusions drawn from the data in the present study. Several hypothesis and explanations have been offered for the aggravation of communal riots. However, one important study in this regard is that of Baldev Raj Nayar.¹⁰⁰ He has presented an analysis of trends and patterns of violence in India and explained these in terms of developmental, rural, administrative and political variables.

¹⁰⁰ Nayar Baldev Raj, Violence and Crime in India - A Quantitative Study, (New Delhi : MacMillan, 1975).

These variables which he has used for explaining the variation in incidence of riots in different states are :

1. Per Capita Monthly Consumption Expenditure;
2. Level of Urbanisation;
3. Rate of Growth in Urbanisation;
4. Literacy;
5. Newspaper Circulation;
6. Unemployment;
7. Population Density;
8. Food-grains Production;
9. Proportion of rural households below poverty line per 10,000 rural households;
10. Proportion of rural workers employed as agricultural labourers (Per 10,000);
11. Proportion of Scheduled Caste and Scheduled Tribes in the Population;
12. Police Strength;
13. Electoral Participation Rate.

Nayar concluded that only the level of urbanisation has a significant correlation with the incidence of riots. Using this study as a base, a micro level study of the state of UP was here undertaken. However, while conducting the study of the communal riots in UP apart from urbanisation, two other variables appeared to be worth analysing they are proportion

of muslims in the population and proportion of main workers employed as household workers.

Starting with the trends in UP over the ten year period. It is clear that the movement has been taking place within narrow limits. (See Figure 1) The volume of riots ranges between 7 to 10 riots per one lakh of population (See Table 8) The only two drastic shifts have been in 1984 and 1990 the years which have registered a sharp rise, The volume rose from 7.7 in 1983 to 10.1 in 1984 and 8.7 in 1990 from 7.4 in 1989. Another significant trend is a decline from 10.1 in 1984 to 7.3 in 1987.

TABLE - 8

Volume of Riots per one lakh of Population in UP
(1981-1990)

Year	Volume
1981	9.1
1982	8.8
1983	7.7
1984	10.1
1985	8.7
1986	8.3
1987	7.3
1988	7.3
1989	7.4
1990	8.7

VOLUME OF RIOTS PER ONE LAKH OF POPULATION IN UP (1981-90)

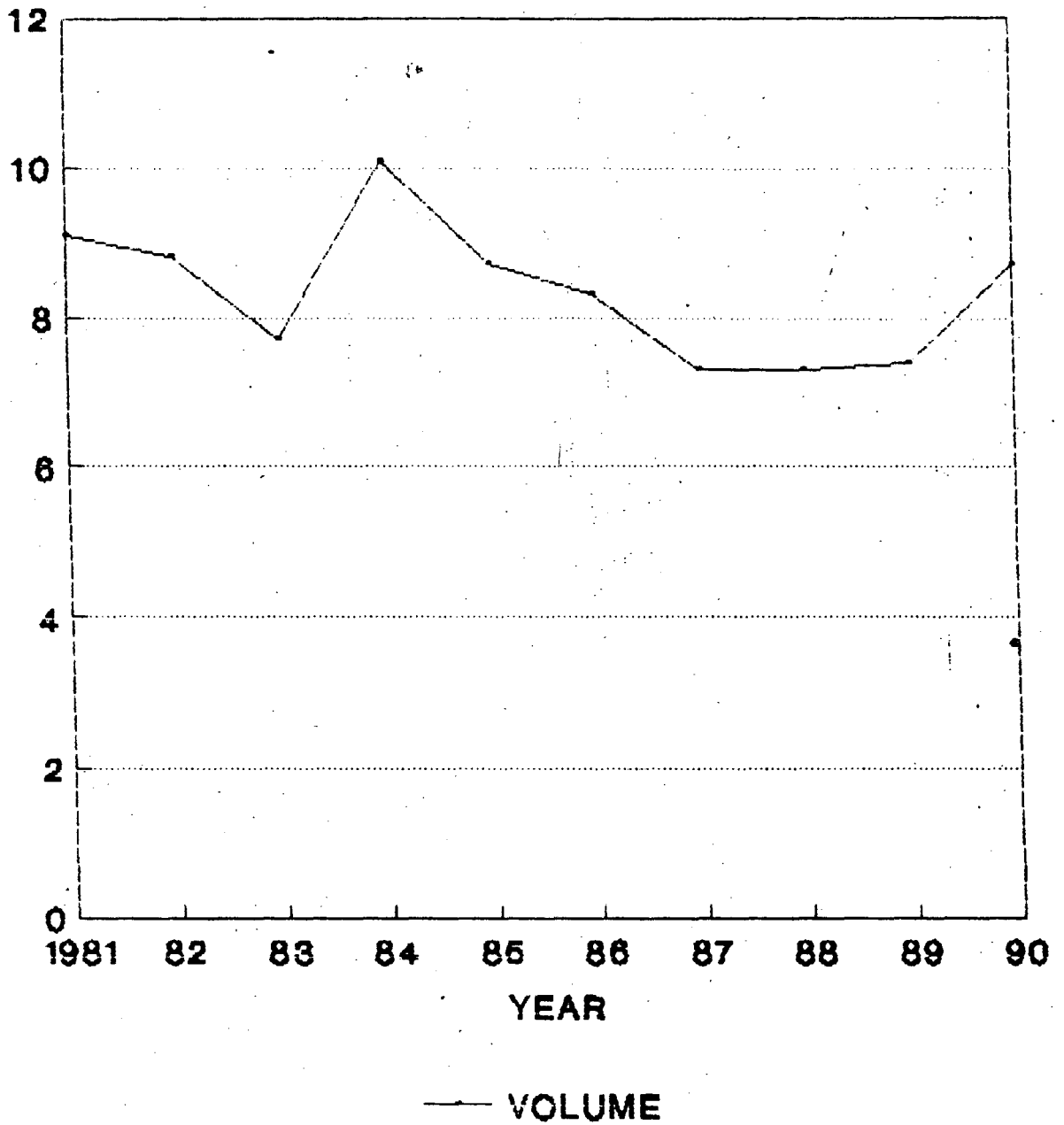


Figure 1

The sudden rise in 1984 and 1990 is due to high incidence of riots in 1984 after the PM's assassination and the anti-sikh riots that followed and in 1990 the Hindu Muslim riots after Babri Masjid Ramjanam bhoomi controversy and anti-Reservation riots. Barring these two years the volume has ranged approximately between 7 to 9 riots incidents per one lakh of population.

We now come to the more important aspect of the analysis i.e. a comparative study of the various districts of the State. For this purpose, the 63 districts have been divided into five blocks - very high, high, medium, low and very low. The measure employed is to take the ten year average of each district and then to divide the 63 districts into five blocks with reference to the ten year average. (See Table 9)

The procedure used for classifying the districts is to take the 10 year average of each district adding it up and dividing by the number of districts, double this figure and divide into five blocks - very low 0 to 20%; Low 20% to 40%; Medium 40% to 60%; High 60% to 80% and; Very High above 80%. Table 9 incorporates the position of the districts in respect of incidence of riots.

If this position of various districts is plotted on the map of UP, it is discovered that the whole belt of Hill

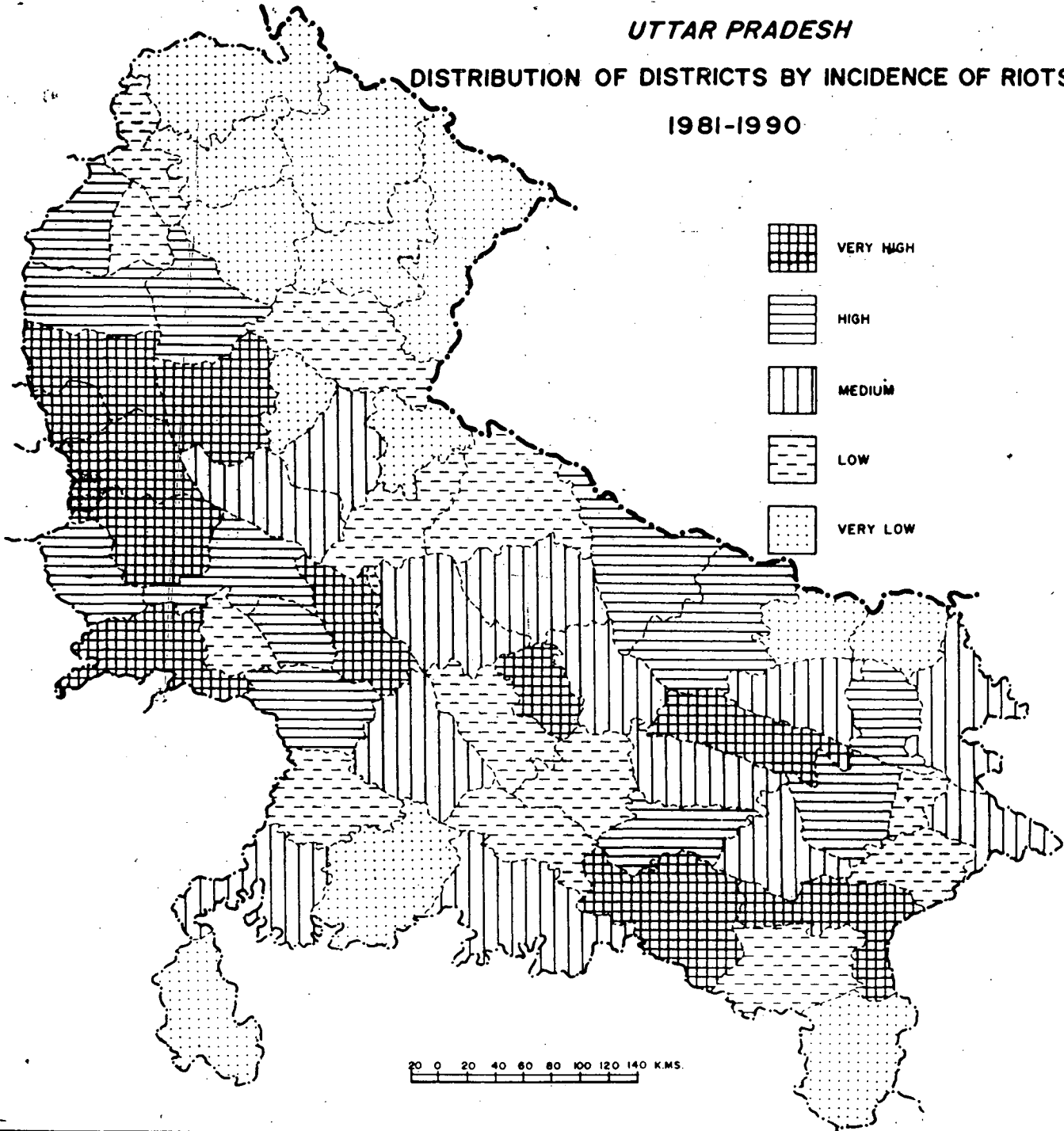
TABLE - 9
Distribution of the Districts by Incidence of Riots

S.No. District	S.No. District	S.No. District
VERY HIGH (+265)	22. Mathura 210	43. Kheri 106
1. Agra 489	23. Mainpuri 204	44. Nainital 105
2. Faizabad 391	MEDIUM (132-199)	45. Jalaun 95
3. Meerut 364	24. Basti 197	46. Unnao 93
4. Bulandshahar 359	25. Fatehgarh 197	47. Rae Bareli 92
5. Kanpur city 341	26. Bareilly 196	48. Dehradun 86
6. Moradabad 322	27. Sultanpur 187	49. Ghazipur 81
7. Aligarh 318	28. Sitapur 177	50. Mau 68
8. Ghaziabad 311	29. Badaun 164	VERY LOW (0 - 66)
9. Allahabad 294	30. Barabanki 152	51. Maharajganj 64
10. Lucknow 292	31. Jaunpur 150	52. Rampur 61
11. Varanasi 268	32. KanpurDehat 149	53. Hamirpur 60
HIGH (199-265)	33. Deoria 141	54. Pilibhit 55
12. Azamgarh 263	34. Ballia 141	55. SidharthNgr 55
13. Gonda 250	35. Banda 136	56. Lalitpur 52
14. Gorakhpur 240	36. Hardoi 136	57. Uttarkashi 36
15. Etah 228	37. Jhansi 134	58. Almora 35
16. Bijnore 223	LOW (66 - 132)	59. Chamoli 31
17. Pratapgarh 222	38. Shahjanpur 127	60. Pithoragarh 29
18. Bahraich 220	39. Ferozabad 116	61. Sonbhadra 29
19. Muzaffarngr 215	40. Hardwar 115	62. Tehri Grawal 26
20. Etawah 213	41. Fatehpur 113	63. Pauri Garhwal 14
21. Saharanpur 213	42. Mirzapur 108	

UTTAR PRADESH

DISTRIBUTION OF DISTRICTS BY INCIDENCE OF RIOTS

1981-1990



MAP

districts and Terai region from Dehradun to Kheri is the area which falls in either the low block or the very low block. On the other hand districts in the western UP from Saharanpur to Mathura and down to Agra fall either in the high block or the very high block. A marked picture in this regard is the close proximity of the very high block to the national Capital - Delhi.

Two other districts which fall in the very high block i.e. Kanpur city and Lucknow but are not located in Western part are highly urbanised districts of the state with urban population of 84% and 62% respectively. Allahabad and Varanasi, which also fall within the same block, are districts with very high population of over 4.8 million and 4.9 million respectively. the only exception seems to be Faizabad which is neither highly populated nor highly urbanised.

A number of scholars have asserted that urbanization¹⁰¹ is a crucial factor with regard to communal riots. Areas with higher level^{of} urbanisation are prone to riots. If the districts which are included in the very high block are looked at in relation to the data on urban population. It can be concluded that all districts with the exception of Faizabad have a level

¹⁰¹ See for example, Shaker, Moin, Islam in Indian Politics, (Delhi : Ajanta, 1983); Ghosh, S.K., Commercial Riots in India (New Delhi : Ashish, 1987).

of urbanisation that is above the state average. The districts in the very low bloc are below the state average in respect of urbanization with the only exception being Rampur. (See table 10)

This can be taken as an indicator that the more urbanised areas are relatively more prone to riots than the less urbanised ones.

Another assertion made by many writers is that districts with Muslim population of 20 to 40 percent are more prone to riots. If we look at the percentage of Muslim population to the total population in various districts of UP, (See Table 11) it is clear that in the 1980's a new trend has developed in the state. Districts with a Muslim population of about 10 to 15 percent have also become susceptible to communal riots these districts include. Agra, Faizabad, Allahabad, Varanasi and Kanpur. Although, Aligarh is also within this category but it has been an area where communal violence has been chronically taking place irrespective of the proportion of Muslim population.

This new wave of communal riots in these districts can be attributed to the growth of Militant Hindu revivalism undertaken by the VHP and RSS in the state. The Bhartiya Janata Party's stand over the Ramjanam Bhoomi - Babri Masjid controversy has also contributed towards Hindu militancy. The

TABLE - 10

Urban Population in Selected District of UP

District/State	Urban Population as %age of total population	
	1981	1991
Uttar Pradesh	17.95	19.89
Agra	37.71	40.63
Aligarh	23.00	25.20
Allahabad	20.37	21.04
Bulandsehar	19.34	20.96
Faizabad	10.96	11.66
Gaziabad	34.13	46.41
Kanpur	84.29	84.98
Lucknow	52.60	62.34
Meerut	31.22	37.10
Moradabad	26.95	27.46
Varanasi	26.88	27.20
Almora	6.28	5.78
Chamoli	8.17	8.42
Pithoragarh	5.52	7.52
Uttar Kashi	6.95	7.21
Tehri Garhwal	4.13	5.73
Pauri Garhwal	9.76	12.23
Rampur	26.74	26.15

TABLE 11
Muslim Population in Districts of Uttar Pradesh as
Percentage of Total Population

Ranking*	Name of District	Percentage of Muslim Population
1	Agra	10.98
2	Ferozabad	12.48
3	Meerut	25.30
4	Bulandsehar	19.37
5	Kanpur City	12.48
6	Moradabad	38.06
7	Aligarh	13.17
8	Ghaziabad	21.17
9	Allahabad	12.77
10	Lucknow	19.67
11	Varanasi	10.45
12	Azamgarh	13.97
13	Gonda	22.48
14	Gorakhpur	10.77
15	Etah	10.45
16	Bijnore	39.45
17	Pratapgarh	10.93
18	Bahraich	25.02
19	Muzaffarnagar	28.74
20	Etawah	6.34
20	Saharanpur	31.37

Contd.....

Table 11 (Contd.)

Ranking*	Name of District	Percentage of Muslim Population
21	Mathura	6.39
22	Mainpuri	5.14
23	Basti	20.40
23	Fatehgarh	12.64
24	Bareilly	27.15
25	Sultanpur	12.95
26	Sitapur	17.64
27	Badaun	19.12
28	Barabanki	20.45
29	Jaunpur	8.34
30	Kanpur Dehat	12.48
31	Deoria	20.72
31	Ballia	5.26
32	Banda	5.51
32	Hardoi	10.84
33	Jhansi	8.40
34	Shahjahanpur	16.56
35	Ferozabad	DNA
36	Hardwar	DNA
37	Fatehpur	12.86
38	Mirzapur	5.42
39	Kheri	16.29

Contd.....

Table 11 (Contd.)

Ranking*	Name of District	Percentage of Muslim Population
40	Nainital	12.92
41	Jalaun	8.21
42	Unnao	10.68
43	Rae Bariely	10.18
44	Dehradun	8.32
45	Ghazipur	10.08
46	Mau	DNA
47	Maharajganj	DNA
48	Rampur	47.22
49	Hamirpur	6.06
50	Pilibhit	21.12
50	Sidharth Nagar	DNA
51	Lalitpur	2.11
52	Uttarkashi	0.38
53	Almora	0.58
54	Chamoli	0.43
55	Pithoragarh	0.40
55	Sonbhadhra	DNA
56	Tehri Garhwal	0.48
57	Pauri Garhwal	2.11

* According to average incidence of riots from 1981-1990

Source: Social and Cultural tables, UP, Census of India, 1981.

political situation in the state was also quiet unstable with the change of three governments in the second half of the decade (under study) - first the Congress was in power, then the Janata Dal and then BJP. The Ramjanam Bhoomi controversy is specially relevant in this regard. After the opening of the temple in Ayodhya on 1st Feb 1986 command harmony of the state has been constantly under strain. Beginning with March, 1988 the spate of riots continued unabated till December 1990. The districts that were infested during this period include: Meerut, Allahabad, Etah, Muzzafar Nagar, Aligarh, Faizabad, Mathura, Badaun, Kanpur, Gonda, Bijnore, Varanasi, Bulandshehar, Agra, Moradabad and Bareilly.

Another factor that has been used to explain communal tension in different areas of UP is the economic rivalry between the Hindus and Muslims to monopolise the household industries like lock making in Aligarh, brassband, weaving and scissors in Meerut, glass ware in Ferozabad, brassware in Moradabad, Zari and silk in Varanasi and Shoe making in Agra. Although, the community wise figures of workers in these industries are not available., General conclusions can be deduced from the data that is available in the census reports. It is apparent that districts with very high incidence of riots have a generally larger household sector when compared to the districts with very low incidence of riots which have relatively smaller household sector. (See Table 12) This

TABLE 12

**Percentage of Household Workers to Total Main
Workers in Select Districts of Uttar Pradesh**

Name of District	%age of Household Workers
Agra	4.49
Aligarh	4.40
Allahabad	5.51
Bulandsehar	3.90
Faizabad	4.28
Ghaziabad	4.11
Kanpur	2.78
Lucknow	3.24
Meerut	6.12
Moradabad	4.72
Varanasi	14.60
Almora	1.54
Chamoli	1.94
Pithoragarh	2.18
Uttar Kashi	1.08
Tehri Garhwal	0.70
Pauri Garhwal	0.91
Rampur	2.63

becomes more clear when we consider the fact that the state average in this regard is 3.7 percent. Thus, the districts with higher incidence of riots fall above the state average with the exception of Lucknow and Kanpur and those with very low incidence of riots have smaller percentage of household workers when compared to the state average.

This statistical inquiry into the socio - economic basis of the incidence of riots and comparative level of order prevalent in the districts has thrown up very impressive points. The level of urbanization surfaces importantly and so

does the size of household sector. A new trend which is visible in the decade under study is higher incidence of riots in districts with Muslims as a, small minority. Thus, those districts which have a Muslim population of 10 to 15 percent have become highly sensitive communally.

If one were to rank the different regions of the state for their level of public order, Western UP would certainly be at the bottom with maximum number of disorders. It is also clear that the genesis of communalism is due to factors which are not within the control of police. The problem is a very deep rooted one that has to be solved at an entirely different socio - economic and political plane. However, when it comes to controlling and preventing communal riots, the police role is very vital. Statistics reveal that communal riots break - out at intervals in many districts. These repeated riots in the same districts can be controlled with effective police action, provided there is a preparedness on the part of law and order administration on a 365 day basis and not merely for a few days when the communal scene becomes tense. Police handling of the riot is not only important as a fire fighting exercise but also for determining the future course of communalists in the area. However, statistics reveal that the districts with very high incidence of riots have some particular characteristics in terms of economic progress and demographic composition which contribute towards the

development of communalism and these features are not within the control of police. Therefore, as far as curbing communalism as a phenomena is concerned the police has a limited role to play.

Chapter - V

POLICE RESPONSE TO RIOTS

In the preceding chapters an attempt has been made to identify the system within which the police has to curb social violence, the legal powers and handicaps that accompany this function, the trends in UP with regard to riots in the last decade and the areas which are prone specifically to communal violence. Here the response to police to specific situations of communal riots is discussed. It is a fact that India has a well organised law and order set up which is expected to tackle any kind of disorder. Each State has its own police force and reserved armed police. Should these fail, the centre has its network of para-military force namely CRPF, BSF and RAF to assist the states and in addition to these there are RPF and CISF to protect the railways and public property. There also exists a well developed Intelligence network with Intelligence Bureau at the centre and special branches of the state Intelligence. Yet over the years the law and order situation in the country has deteriorated. Communal riots in recent years reveal a pattern in the failure on the part of the law enforcement authorities.¹⁰² The general trend seems to be to blame the communal forces, political leaders or

¹⁰² This fact has been noted by a number of journalists and writers in the past decade in various articles in the Newspapers.

uneven socio-economic development for the communal riots.¹⁰³ Emphasis is placed on the perception of communities of each others conduct at the street level. Thus, the solutions also concentrate on removal of these causative factors. However, it needs to be realised that in a multi-ethnic society it is not possible to remove prejudice and conflict entirely but what can and has to be prevented is the violent out burst of these prejudices. And also to curb as far as possible the misuse of these prejudices by the vested interests. Thus, steps to tackle the growth of communal feelings are necessary but they can not be a substitute for steps to be taken immediately to punish those who indulge in riots and to take preventive measures to ensure that riots do not occur in future.

When any riot occurs and there is considerable loss of life and property there is a lot of hue and cry and the government orders the setting up of a commission of enquiry to delve deep into the causes of riots, find out who was responsible for the same and suggest reformatory measures which can be used in future.

¹⁰³ A number of such explanations have been given in the literature on growth of communalism in India. for e.g., Banu, Zenab, Politics of Communalism (Bombay : Popular, 1989); Kumar Ravindra, ed, Problem of Communalism in India (New Delhi : Mittal, 1990); Engineer, A.A. and Moin Shakir, ed., Communalism in India (New Delhi, Ajanta, 1985).

Reports of commission of enquiry into riots in various states almost entirely devote their attention to immediate causes. Some of these common causes which spark off riot are:

- (a) Encroachment on places of worship;
- (b) Disputes over land belonging to places of worship,
- (c) Music before mosques;
- (d) Teasing of girls belonging to other community;
- (e) Desecration of places of worship;
- (f) Petty quarrels between members belonging to different communities;
- (g) Proselytization;
- (i) Tussles between two different communities at the time of religious festivals.

Rumours very often precipitate the crisis and play a crucial role in spreading of the communal venom to various parts of the affected town or city. Enquiry commissions have also pointed out that very often district authorities fail to act promptly and effectively and later on conceal and suppress facts so that their short comings do not come to surface.¹⁰⁴ This is done by calculated manipulations and sometimes by change or padding of records. Even the evidence that is put before the Commissions is fabricated. Members of the enquiry committees also display certain bias and are often motivated

¹⁰⁴ Rajgopal, P.R, Communal Riots in India (New Delhi, Uppal, 1988).

by considerations of administrative and political exigencies. Thus, they try to buttress the arguments which were initially placed.¹⁰⁵

A special problem which is now coming to the fore is the communal attitude of the police force for eg the U.P. PAC has been strongly condemned for their dubious role in the Moradabad riots of 1980, Meerut riots of 1982 and 1987. Some writers have gone to the extent of asserting that "the trend in UP often is that whenever there is communal tension leading to minor altercations the PAC moves in, disperses the more volatile elements of the two communities, curfew is imposed and the PAC is let loose on the Muslims¹⁰⁶. However, before the allegations against the PAC in particular and the administration in general are examined the nature of religious processions and the rules provided for their control need to be touched upon.

At the onset it needs to be noted that there are various types of processions that may lead to communal riots. The first are Traditional religious processions like the ones on Muhharram, Id, Dusshehra, Ramnaomi, Durga Puja etc. The second, ones are occasional religious processions which are

¹⁰⁵ Tripathi, S.K., "The Farce of Enquiries", Indian Express, New Delhi, 14 sept, 1989.

¹⁰⁶ Aslam, M., in Jim Masselos, ed., Op. Cit, p. 148.

taken out to commemorate special events for example: installation of new idols in temples, to commemorate centenary of any saint or any religious event and processions taken out during periodical occurrences like kumbh mela etc. The third type of processions are protest processions on religious issues. These are taken out either in protest against alleged atrocities on co-religionists or in support of the cause of the faith, for example Ramjanambhoomi - Babri Masjid of Ayodhya or funeral processions of assassinated religious leaders taken out by co-religionists of the deceased.

These types of processions require special police preparations because of their nature. As the element of animus already exists, these processions easily turn into violent riots. They call out for well thought out police arrangements failing which they can develop into a critical law and order situation.

These situations should be anticipated and proper appreciation of each should be done by the police personnel in order to effectively handle them in the event of their recurrence. The police arrangements should be so devised as to take care of pre - procession preparation, arrangements during the procession and post procession analysis and appraisal. First and foremost thing is to brief all police officers deployed on duty down the line. Collection of intelligence is

of paramount importance which should be done sufficiently in advance. A study of past records also enables the police to know beforehand the temper of the people in the area and whether a particular meeting or procession is likely to cause breach of peace. This is important not only before the public meetings and processions but also during and after it. With a view to decide upon the deployment of the force and to take preventive measures. The plan should be flexible enough to meet even the most unexpected situations.

There are different methods which can be employed for control of crowds, namely:

- (i) Pshycological control of crowds;
- (ii) Control of crowds by planned regulation;
- (ii) - Control of crowds through the tactical use of pressure and
- (iv) Control of crowds by force.¹⁰⁷

The police arrangements in every procession drawing large crowds must include :

- (i) Control room,
- (ii) Patrol parties,
- (iii) Fire brigade units as stand by,
- (iv) Special investigating staff and

¹⁰⁷ Ghosh, S.K., Laws of Public Meetings and Processions in India (Calcutta: Eastern Law House, 1976), p. 119.

(v) Plain clothes staff for collection of intelligence¹⁰⁸

According to the model rules for use of force against unlawful assemblies¹⁰⁹, the main principle to be observed is that minimum necessary force to achieve the desired object should be used, regulating it according to the circumstances of each case. The object of use of force is the prevent disturbance of peace, or to disperse an assembly which threatens such disturbances and has either refused to disperse or shows a determination not to disperse, no punitive or repressive consideration should be permitted to become operative while this is being done.

As far as possible all attempts to disperse a crowd by persuasion and warning shall be made before force is used to disperse it. The warning should be administered in a clear and distinct manner that the crowd has been declared an unlawful assembly and should disperse within the stipulated period, failing which force shall be used for its dispersal.

The effectiveness of the force depends mainly upon the determination with which it is applied; its direction against

¹⁰⁸ Ibid, p. 120, A number of other Police officers have also given concrete suggestions^{ion} to improve method of riot control.

¹⁰⁹ Ibid, pp 201-207.

the most defiant section of the crowd to be dispersed, and its absolute control. It is not possible to lay down any definite rule as to when different methods or the quantum of force should be used. The officer responsible is required to decide this in each case on consideration of the strength and attitude of the crowd to be dispersed and the strength of the force available for its dispersal. Nevertheless, as far as possible use of tear smoke or lathi charge or both should be made before resorting to the use of firearms.

The rules also say that use of firearm for dispersing crowd is to be resorted to only in exceptional and extreme circumstances when there is imminent and serious danger to life or property. The officer-in-charge is also required to specify the target to the men who are to fire. Besides, every precaution is to be taken that an armed force is not allowed to come in the close proximity of the crowd so that there is no risk of the police being over whelmed by the crowd and thus, losing arms. It will also enable proper fire - control.

A significant rule is that the police force should be trained to exercise strict restraint and self control even under gravest provocation and must under no circumstances take action in a retaliatory or reprisal spirit. The magistrate and senior most police officer present at the spot are required to draw up a full report as soon as possible after the firing,

stating the circumstances under which the fire was opened, the number of rounds used and the number of casualties, if know.

Apart from these rules the police are required to keep a watch over antisocial elements and to take all preventive steps to avoid any conflict.

In the light of these rules it needs to be examined as to how is the actual police behaviour in times of crisis and how it responds to communal riots. The riots in Meerut that took place in 1987 deserve to be mentioned and analysed. The selection of this case study has been made due to twofold reasons viz., (a) Meerut appears in the top three districts in the statistical analysis and (b) Meerut has witnessed communal riots of varying magnitudes in the post - independence era. The more important ones among these being the riots in 1961, 1968, 1973, 1982, 1987, and 1990.

The 1987 riots, however, have been most widespread and peculiar in many ways. In these riots "117 human lives were lost, 159 persons were 'injured' 623 houses , 344 shops and 14 factories were burnt and destroyed, in addition to these several vehicles were burnt or damaged. The total financial loss was estimated to be about Rupees ten crores".¹¹⁰

¹¹⁰ Quoted from Report of Gian Prakash Committee published in Telegraph, Calcutta, 22 Nov - 1 Dec, 1987.

The government of UP appointed a committee to be chaired by former Chief Secretary Shri. Gian Prakash to go into the causative factors responsible for the communal flare up in Meerut 1987. However, it was not appointed under the Commission of Enquiry Act and its terms of reference were limited as it had been required by the government only to study the causes and events, and make recommendations for dealing with such riots with a view to prevent them from recurrence.

The report of the committee said that the riots were preplanned, organised and well directed and that their chief cause was the Ramjanambhoomi - Babri Masjid dispute which was exploited by communal elements in a bid to gain popularity and acquire leadership.¹¹¹ The committee examined 139 witnesses of whom 125 were from the public. It also examined 14 officers of the district administration to get first hand information as to whether effective and timely steps were taken to prevent the riots, and after the riots had broken out - to deal with them effectively and prevent them from spreading. The committee also met some leading citizens, MLA's and MP's to enlighten it with their views.

The committee felt that there was no need to determine as to which community was responsible for the outbreak of riots

¹¹¹ Ibid, Telegraph, 22 Nov, 1987.

for the members said that such outbreaks do not begin due to any single reason as they are the result of various grouses which keep smouldering for a long time for which no single community can be held responsible. Nevertheless, it is important to include here the findings of the Committee about how the incidents of rioting were connected with each other and spread from one locality to other, lasting for over two months.

Meerut which is situated at a distance of about 70 kilo meters from Delhi, is one of the most important cities in Western Uttar Pradesh. The area is agriculturally and Industrially quiet well advanced. It has become a very important centre of the handloom industry in the past two decades. Over a time the handlooms have been replaced by power looms. The number of such powerlooms in Meerut is now approximately 32000. According to some estimates, 90% of these powerlooms are owned by Muslim Ansaris and only 10% by the Hindus.¹¹² The powerlooms are concentrated in mohallas - Hashimpura, Islamabad and other neighbouring areas. Owners of these powerlooms get the supplies of yarn from Hindu traders and after weaving, the products are also sold to Hindu traders. Some of these traders have also set up ancillary factories.

¹¹² Ibid, Telegraph, 23 Nov, 1987.

This economic scenario had created rivalry between the business class of the two communities. The Muslims felt that all profitable operations were in the hands of Hindus and that they were trying to infiltrate the weaving operations too. This rivalry was portrayed as the chief cause of communal riots in Meerut by a number of journalists. However, the Gian Prakash Committee felt that this opinion was not correct and emphasised that the communal hatred between the two communities was the chief cause of the riots.¹¹³ Nevertheless, one more observation that was made by the commission was that the migratory Muslim labour working in powerloom industry was involved in these riots on a large scale. These Labourers who came largely from Bihar and Bijnore did not have any roots in Meerut and, therefore, they were easily exploited in the name of religion. Moreover, a large number of these migrants were bad characters. The police however, could not keep track of them as there were no police stations in the areas of their residence. the commission also noted that a number of members of Babri Masjid Action Committee lived among these labourers and had influence over them and they incited the labourers to cause damage to life and property.

The Ramjanambhoomi - Babri Masjid controversy became a

¹¹³ Ibid.

cause for rift between the two communities in the city. A rally was held in Delhi on March, 30th, 1987 which was attended by a large number of Muslims from Meerut. The inflammatory speeches made there had a tremendous impact on the Muslims. A similar congregation was earlier organised by the Babri Masjid Action Committee on March 20th at Meerut Idgah at which provocative and fanatical speeches were made by the leaders in order to incite their community members. The Hindus also retaliated with a Bandh call. Such meetings were organised by the two communities at various places in the town. It needs to be noted here that the police possess sufficient powers to deal with such instigators of violence under Section 153 IPC and 505 IPC.

Riots started on April 14th, when the Muslims were celebrating Shabebarat. In these riots, 10 persons lost their lives. However, The administration succeeded in preventing the spread of riot to the Nauchandi fair which was in full swing at that time. Curfew had to be imposed and CRPF was called. But even before the condition became completely normal the district administration prematurely withdrew the additional force that was deployed in the town. It is in this continuing tense atmosphere that, a dispute between a tenant and a landlord, who belonged to two different communities, led to the murder of Ajay sharma on May, 16, 1987. Which immediately assumed a communal colour. The next day when his body was

taken for cremation there was a large crowd to participate in the procession. However, the situation was kept under control and was not allowed to aggravate.

On 18th, May a temporary shop (khoka) which belonged to a Muslim was burnt by some miscreants. This provoked the Muslims to take retaliatory action resulting in murder of a Hindu shop owner.

The Hindus become furious at this incident and a crowd collected which pressed the district officers to take action against the persons responsible for arson and killing. An FIR was lodged naming some persons from a particular mohalla. The district authorities decided to make a search of the mohalla for making the arrests. This search was organised at about 2 or 3 am on May 19th. This was resisted by residents of the mohalla and highly inflammatory speeches were made from a loud speaker installed in the mosque to incite the muslims. During these searches a girl was crushed by a police jeep and some women were injured. This further infuriated the mob and violence started. The police opened fire at about 4 am but within an hour a mob of 10,000 Muslims collected and the riots spread to a large area of the city. Various incidents took place at a number of places repeatedly after a short gap of time. This proved that no effective action was taken to prevent recurrences, and the police pickets and patrolling

parties were not able to contain the spread of rioting.

The incidence that took place on the 16th and 18th of May shows that the people had no faith in the Criminal Justice System. The fact that each time a crime is committed the people have to compel the administration to render justice or take the law in their own hands proves this point beyond doubt. Moreover, the timing of the search and arrests at the Mohallah was inappropriate because at that time practically the entire muslim community was awake for taking sehri (meal taken before Roza). The police perhaps were compelled to make the searches because the mob of Hindus which had collected was clamouring for the apprehension of the accused persons.

On May, 20th and 21, 1987 Hindus were aggressive and members of the two communities clashed and exchanged fire. A number of muslims accused PAC for not preventing the Hindus to indulge in violence on these two days. Search operations later were carried out with the help of army to unearth illicit arms.

In Hashimpura too, The police arrested over 300 people who were taken to the thana and severely beaten and were then sent to Fatehgarh jail where they were subjected to third degree method with the result that five persons died.

On 23rd May the city was quiet but in village Malliana a

large muslim crowd gathered which was dispersed. It is alleged that the PAC indulged in large scale killings and arrests in Malliana. The PAC also took 40 persons in a truck to Moradnagar and they were allegedly shot and thrown in the canal.¹¹⁴ A separate judicial inquiry was ordered into this incident but its report has not been made public. However, with reference to the communal riots in Meerut. The Gian Prakash Committee made some general observations. It pointed out that the district administration failed to control the riots even after getting sufficient additional police reinforcements.

The DM and SSP in their defence however said they repeatedly asked for more force from the state Home Secretary and Director General of police but it was not sent until 15th May. It was only after 18th May that the district administration had eleven companies of PAC at its command.

The DM asserted that he had enforced the Riot Scheme on May 16 but the committee found that the force was not deployed in a planned manner and the Riot Scheme did not give due consideration to the local availability of police force. Even the prohibitory orders passed on 16th May were not strictly

¹¹⁴ A number of national dailies reported this incident on 29th May, 1987 with the figures of those killed varying from 50 to 150. The actual number of those shot has not come to be known as the Report of the Commission - Justice Srivastava Commission **was not made public**

enforced. Effective and timely steps to round up bad characters were also not taken and no attempt was made to seize illegal arms. Some goondas and antisocial elements, who were apprehended, due to their political clout, had successfully secured their release on bail.

The committee noted that everyone in the district was aware that the force was inadequate to handle the situation, this gave the lawless elements a freer hand. The authorities did not make any attempt to create an impression that force was adequate and the situation would soon be under control. There was no instance reported in which any officer with a mobile party may have faced a riotous mob and tried to control it. Thus, the leadership which is expected of the senior officers was totally lacking.

It was also stated that the district authorities took no effective action like use of tear gas, Lathi charge or firing to disperse the rioting mobs. Even the eight occasions on which the police or PAC resorted to firing, there was not a single injury to anyone as mentioned in the various FIR's. The DM and SSP stated that the persons who were killed in the firing were dragged away by the mob. The committee says that it is most unnatural that when firing is taking place the rioters should be taking away the bodies of those killed rather than running away to save their own lives. This

depicted the lack of effective action on the part of police, The committee remarked the authorities also did little to contradict the spreading rumour and did not arrest those who were indulging in rumour mongering and precipitating communal hatred. The district administration failed to formally requisition the army in aid of civil power. Instead they approached the local Brigade commander to render army assistance. The delay resulted in considerable spread of violence.

The arrival of political leaders to the town also distracted the attention of district authorities from the riots and they could not exercise supervision and control.

The committee recommended a number of measures to avoid such outbreaks in future including the increase of strength of police in Meerut city, development of the newly emergent areas of poorer sections, evolving of a code of conduct for political parties to prevent misuse of cast and communal affiliations for political purpose, revision of the Meerut Riots scheme, regulating the use of land speakers with proper licensing system, unity of command at district administrative level and setting up special courts for trial of cases and raising of special force for riot control.

It also suggested that the police personnel should be trained in the skilful use of lathis and other crowd control

measures. Such training should be repeated every two or three years. In riot prone areas such training and mock exercises should be organised regularly.

From the foregoing observations and remarks made by the Gian Prakash Committee it can be concluded that the police handled the situation relatively more effectively till 19th May 1987. It was able to avert rioting in the most volatile conditions. The control exercised over the mob on the cremation day of Ajay Sharma and later the mob frenzy of Muslims as a sequel to the burning of temporary shop, bears testimony to the police efficient handling of the situation.

Nevertheless, earlier the withdrawal of the force after the April riots displayed the complicit attitude of the police. However, the District Magistrate and the Senior Supt. of Police's defence in this regard was that they demanded additional force which was denied to them. It is relevant to elaborate, here, the administrative hierarchy and decision making process in the state.

The police department functions under the Home Minister of the state. It is the constitutional obligation of the head of the department^{as} in charge of the police, to ensure that the police discharge their functions and exercise their powers properly and diligently. He is accountable to the legislature, not for any particular case but in cases of general in

aptitude, inefficiency, and want of Skill or honesty on the part of the police.

District Superintendent of Police is under the general control and direction of the District Magistrate. Thus, apart from the political boss the police works under bureaucratic bosses namely the DM and the Home secretary. The DM has come to assume a role of authority, command and control over the discharge of police functions in the district. Thus, there is dual control over the S.P even at the local level. One, the hierarchial control exercised by his superiors and another operational control exercised by the DM. Legally section 4 of the Police Act provides for this operational control. Para 7(b) of UP Police Regulation says that "whenever a situation likely to have a bearing on the general law and order siltation arises in the district, the SP will immediately inform the DM by the quickest means available and seek his instructions in regard to the steps to be taken to meet the situation, unless circumstances make it impracticable to do so. Further action to meet the situation will be taken according to the instructions of and in close and continuous consultation with and guidance from the DM".¹¹⁵

These provisions create serious lacune in the system. The

¹¹⁵ Quoted by Saksena, N.S., Communal Riots in India, (Noida; Trishul, 1990) p. 64.

quantum of force required to contain a situation, the police force to be deployed and their actual location are decided by various officers. Besides, the action to be taken by a particular posse is also to be decided by a separate officer. These conditions often result in eschewing responsibility and problems in decision making.

Very often the provision made in UP Police Regulation results in dilution of the authority of the SP of the district. Apart from the factors enumerated by the Gian Prakash Committee certain other observations are worth stating. A number of senior officers had reached Meerut to take stalk of the situation and give direction to the local administration to contain the riots. This resulted in delayed action and the situation took a more serious turn. It appears that each level of hierarchy waited for instructions to come from its superiors. A similar situation had developed in Moradabad in 1980 when the IG, chief secretary of UP, Home secretary of Government of India, Chief Minister of UP and Union Home Minister all reached the town during riots. In such conditions the district level authorities were hesitant in taking stern action for fear of annoyance of the Senior bureaucrats and wrath of political bosses.

The case study shows that there is a fixed impression in the minds of Police Officers that while they can resort to

firing to save human lives, they can not do the same to save property.¹¹⁶ Thus, they did not resort to firing even when arson and looting took place in front of their eyes with the result that this weakness encouraged the law breakers. Moreover, the fact that a crowd of 10,000 muslims collected on 19th May and similar large mobs of Hindus on the consecutive days proves that the riots were well planned. This fact has also been accepted by Gian Prakash panel in respect of these riots. If this is so then why was the police hesitant in dealing with such antisocial elements who come out all prepared to attack preset targets at planned moments of time. Police officers are very often accused of using excessive force if they resort to firing. It is viewed as 'state highhandedness' and labelled as repression by the state machinery, This kind of an approach has led the officers to believe that firing should be avoided as far as possible even at the cost of a lot of material loss. How can one explain police inefficiency? Is it on account of police ineffectiveness or is it the system itself that is endemic to order maintenances?

One major hurdle in the assessment of police performance is that while the police deficiencies are very much publicised and discussed its effectiveness in dealing with particular

¹¹⁶ Ibid, p. 41.

riot situations do not get any publicity and naturally people remain ignorant of these occasions. It is only when these occasions become numerous enough to be visible in public eye in the form of long peaceful periods that the efforts of police are appreciated.

It is necessary to discuss here another important issue viz, . PAC communalism. The partisan attitude of the police force was glaringly visible in the Meerut riots. Both the incidents of Hashimpura and Malliana prove this. But the question is who is to be blamed for this police notoriety? The cause of PAC's communal attitude is indiscipline and lack of good leadership. More often than not officers who are corrupt or with devious records are posted in the armed wing. This most certainly leads to poor leadership and inefficient functioning of the force. However, it is also to be kept in mind that not all of the PAC men are communal. It is only some sections of it which were responsible for Moradabad or Meerut massacres. The inability of the government to take action against these sections has kept the whole PAC in shadow of doubt.

Even while looking at PAC's communal attitude it needs to be reiterated that the growth of communal politics in the state of UP and the growing spirit of 'Hindutva' in the larger national arena has its impact on the police too. PAC men or

any policemen for that matter is not just a member of the force but of the social system as well. He, therefore, engrains social values from the system outside the force as well. In the defence forces these degenerate values are checked through rigorous discipline and good leadership. This is totally lacking in the police system of the state specially if it is viewed in the light of the growing communalisation of politics.

There is a tendency on the part of officers to think that the solutions to communal riots lies in packing the streets with para military forces. (as the attitude of the DM and SSP of Meerut shows.) They fail to realise that the solution to the problem lies in arrest and prosecution of offenders and not in merely terrorising the public. It is the anti-social elements, criminals and instigators of violence who are to be apprehended and brought to book so that there is a kind of faith generated in the law and order enforcement machinery and this faith would deter potential offenders.

The police also possess sufficient powers to arrest persons who wilfully incite hattered between two communities and yet seldom the police use these powers. This policy emboldens the person who habitually and brazenly violate the law against incitement to violence through inflammatory speeches or writings to become more defiant and irresponsible.

The state government does not religious processions and such leaders, even in times of communal tension.

Another thing which is lacking is the system of post riot analysis and appraisal. The police and district authorities do not try to learn from past experience with the result that all situations get an identical response and similar mishandling takes place each time a flare up occurs.

Thus, the study of Meerut clearly brings out that the methods of maintaining law and order have not failed. If every doctor in India was first to investigate the political beliefs of his patient, to report these to his health minister and get orders whether it is desirable to kill or cure the patient it would not be the failure of the science of medicines but that of the doctors and the government, ^{who} devised this system. This applies to police, as well. It is the system devised to handle crisis and not the methods that have been provided in the law, which are endemic to police functioning as far as riot control is concerned. Lack of will on the part of police to control communal violence is the basic cause behind the widespread material and human loss that these communal riots register.

CONCLUSION

To conclude the study it is necessary to highlight the findings. It is true that the police today is facing new areas of conflict due to socio-economic and political changes. The problems are aggravated by fast changing patterns of crime and the slow processes of law. The area of conflict is getting widened and politics of confrontation is increasing. The revival of fundamentalism is leading to tensions on trivial issues and subsequent communal riots. This volatile and surcharged atmosphere has led to enormous pressure on the police, and hence, police management of collective violence, in general, and social violence in the form of communal riots in particular, has assumed increased importance.

Since very few scholars have devoted their attention to this aspect of police functioning, an attempt was, here made to make an indepth study of the subject, viz., role of police in controlling social violence. Social violence in this study was defined as collective violence committed by five or more persons and generated due to caste or communal mobilization. However, it was neither possible to study all types of social violence nor to discuss the police response on an all India basis. Therefore, this study was confined to communal riots in Uttar Pradesh between 1981 to 1990 and the police response to these riots. The objective was to study these riots in the

state in the backdrop of police powers and role, in this regard.

The data was mainly collected from the crime statistics published by the Bureau of Police Research and Development. The Census reports were also used for collection of data on socio-economic correlates.

Instead of dealing with ideological questions the concentration was on analyzing why the law and order apparatus was failing to curb the growing communal riots? During the course of study it was discovered that two major factors were in favour of peace, namely, state possesses ample resources to curb communal violence and legal power available to the police are enormous, which can help in dealing with any kind of disorder causing activity.

The statistical inquiry showed that the police system which was devised by the British during the colonial era and which still functions largely under the same Act and legal provisions is not able to handle communal violence effectively.

Although, communal conflicts are the products of factors like high urbanisation, larger household sector and demographic variations in respect of proportion of Muslim population. The police role becomes important when these

conflicts assume the form of riots which threaten public peace and order. The police can not contribute much to curb communalism, since its causes are not within the ambit of police activity. However, it can to a large extent curtail the violence that is inherent in such conflicts.

The legal powers which are provided to the police in order to control riots are enormous and there is no need to further increase these power. Moreover, if these powers are increased any further they would become arbitrary and susceptible to misuse. This will be vehemently resisted by the human rights supporters. The powers available under the Police Act, IPC, Cr PC, Unlawful Activities Prevention Act, Arms Act, Explosive Substances Act, Explosives Act and Terrorist and Disruptive Activities (Prevention) Act are wide and varied. The powers and provisions, if correctly used and implemented can cope with any kind of communal riot. However, the case study of Meerut has thrown up some significant points in this regard. Firstly, there is a lack of will on the part of police to take stern action against the instigators and abettors of communal violence. the police doesn't effectively use the powers provided under sections 153 and 505 IPC. Secondly, the power to disperse unlawful assemblies by use of force is used very sparingly even if the situation warrants such action. The approach of the police officers is to delay, such act till the time the unlawful assembly poses a serious threat to human

lives. This kind of an approach leads to considerable material loss when no effective action is taken to control and disperse mobs which are indulging in arson and looting.

Another important conclusion that can be drawn from the case of Meerut riots is that the people lack faith in the system of justice administration. The fact of interminable delays in courts and delayed investigation by the police have made the people aggressive and revengeful. Attempts are either made to coerce the administration to take action when a crime is committed or to take the law into their own hands by punishing the actual or perceived offenders.

The study also revealed that the decision making process in the police is marred by red tapism and lack of accountability.

Therefore, it is essential that a balanced and integrated strategy recognising the vital linkages of the various components in the criminal justice system is adopted if any changes are to be made in the police efficiency. Efficiency of the courts in the form of timely disposal of cases will also help considerably in this regard.

The right type of leadership combined with the right kind of training of policemen can go a long way in tackling social violence. There is also a need to establish an

institutionalised mechanism of accountability, which is totally lacking in the law enforcement agencies. The changes in training pattern of police personnel can include the following:

Firstly, to inculcate secular and sympathetic attitude in dealing with the victims of communal violence because the law enforcement officers must play an active role in national integration.

Secondly, the police should be highly sensitive to and familiar with trends of social change and their implications for the society, and

Thirdly, the development of a proper attitude and ability to anticipate, analyze and take decisions to meet difficult situations.

This kind of training is specially required for the lower rank officers and the constables since the growth of social violence has meant the involvement of a much larger number of police constables, sub-inspectors and inspectors in handling a given public order situation. They are expected to act with restraint and not use coercive methods. These lower level police personnel constitute more than eighty five percent of the police force and, therefore, need to be better trained to handle riotous mobs. Any mishandling on their part can lead to

aggravation of riots as the incidents of Meerut display. The crushing of a girl under a police jeep led to precipitation of crisis in the town. Similarly the incidents of Hashimpura and Malliana bear testimony to the fact that there is a need for better training and control over these ranks of police force.

As far as accountability is concerned, in the existing circumstances there is no reason to subject the district police administration to the control of the District Magistrate. Infact, for the maintenance of public order. Police should have a self-contained organizational structure so that there is no distortion of command and no dilution of accountability. This will insure operational autonomy coupled with clear accountability.

Stern and decisive action is needed when a disturbance begins, swift detection and apprehension, prompt prosecution and proper and certain punishment act as useful crime deterrents. These can only be used if the authority in command is clearly accountable for its acts of omission and commission.

Another point which has to be reiterated here is that actual police efficiency lies in reduction of disorders and crime and not merely visible evidence of police action in dealing with them. Thus, the changes that can be suggested for

a more effective and efficient police functioning, that have been highlighted during this study are :

- (a) Statutory changes i.e. making laws more responsive to the dynamic social set up;
- (b) Reducing organizational rigidity and introducing flexibility in organizational structure;
- (c) Decentralising operational units to improve decision making;
- (d) Increase organizational effectiveness;
- (e) Motivating the police personnel;
- (f) Bringing attitudinal change in police personnel through training and indoctrination; and
- (g) Redefining police role in the emerging social order.

It is apparent that despite enormous strides being made in science and technology, education, industry, agriculture and commerce, the government has paid little attention to bring about qualitative improvement in the law enforcement agencies. The fact that the Police Act which was introduced during British times continues to form the basis of the Police in democratic India despite 46 years of independence, is a clear indicator in this regard. In a democratic society the problem of assuring that the police is organised in such a manner so as to be a reliable instrument for the maintenance of order and the prevention of crime, while at the same time ensuring that it exhibits restraint and sensitivity to the

citizens rights means, that the organisation of police can not be like that of an assault battalion which on command can be relied upon to do its duty regardless of the cost to itself, its opponents or the surrounding social fabric. Nor can it be organised to respond purely to external stimuli in an automatic and programmed fashion. Police organisation involves elements of military command from the centre as well as elements of automatic response to stimuli at the periphery. Such a system sensitive to social needs has to be evolved in our country if the police is to control the growing tide of social violence.

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