

**Analysis by Vrinder Grover, Lawyer
Nanavati Commission.**

I, Vrinda Grover aged 38 years d/o late Shri P.P.Grover, Saket, New Delhi do hereby solemnly affirm and declare as under:-

1. That I am an Advocate by profession I also undertake law research I was residing at Delhi, at the relevant time in 1984.
2. That I have done a research study on the responses of the legal system i.e the police and courts, to the massacre targeting members of the Sikh Community on 31st October 1984 and thereafter in Delhi. While examining this, I have relied primarily on secondary data viz Report of the J.R. N.Misra Commision of Inquiry the Reports of the Committees constituted by the Government thereafter citizen reports like 'Who Are the Guilty' prepared by PUDR and PUCL and judgements pertaining to cases lodged in relation to the 1984 violence and killings. For purposes of analysis, I have documented a representative sample of 137 judgements, comprising of 120 Trial Court, 7 High Court and 4 Supreme Court judgements.
3. That my knowledge of the events relating to the violence is based largely on the documents cited above in paragraph 2, and more specifically on the judgments documented by me. I obtained certified copies of 126 Trial Court judgements from Tis Hazari court, Patiala House Court and Karkardooma Court.
4. That my research and analysis will have a bearing on the following Terms of reference of this Hon'ble Commission-clause (c), whether these heinous crimes could have been averted and whether there were any lapses or declaration of duty in this regard on the part of any responsible authorities/individuals, (e) no recommend measures which may be adopted to meet the ends of justice and (f) to found relevant in the court of the inquiry.
5. That in the representative sample of cases complied by me a majority of them are judgments of the Trial Court as in my study I was keen to focus on the proceedings of the Trial Court. In the sample of 126 Trial Court cases, as many as 99 judgements relate to trials for the offence of murder under Sec 302 IPC. In the representative sample of 126 cases I found that only 8 cases resulted in conviction while the remaining 118 cases ended in acquittals. Of these 8 convictions, two were overturned by the Hon'ble Delhi High Court. On

the question of sentencing the death sentence awarded in three cases was reduced to life imprisonment by the Hon'ble Supreme Court.

6. That I have carefully read these judgements and it is clear that a combination of grave lapses of investigation, shoddy investigation, inordinate delays, insufficient collection evidence, non-compliance with legal procedures by the police led to a majority of cases concluding in acquittals. The acquittals were to a very large extent a direct consequence of the incompetent, unprofessional and casual investigation by the police.

7. That a large number of the judgements perused by me cited lapses in police investigation as the reason for acquittals. That in the judgement of State v. Ram Pal Saroj, (Karkardooma Court, Delhi, S.C. No.57/95) FIR No.426/84), ASJ S.N.Dhigra, the learned Judge remarked that;

“the police investigation in each of the riot cases filed in the court has been wanting in quality.”

He further denounced the entire process of investigation and prosecution of the violence of 1984, stating that,

“In Nov. 1984 within first week after the assassination of Mrs. Gandhi more than 3000 Sikhs were brutally murdered on the streets of Delhi by the lumpen elements in the full view of the police force and under the very nose of the powerful Central govt. The police not only failed to protect the poor and innocent persons but showed total inaction in apprehending those who were responsible for this orgy of violence. However, after much hue and cry by the victims and publicity by the national and international media, the Govt. went on appointing Commission and Committees one after another. The crime had taken place in 1984. The report of the crime was with the state and its law implementing machinery in November 1984 itself. The investigation continued in these cases for about 10 years without there being any investigation being done by anybody. The trial of this case started in Nov 1995 after 11 years of the commission of crime. The criminal law justice system in this country totally failed the justice. While the criminal law justice system moved of the snail's pace and had no calendar to keep, the death kept its calendar and Santokh Singh whose three sons were brutally murdered by the rioters died in Nov. 1992. The manner in which the trial of the riot cases had proceeded is unthinkable in any civilised country. In fact, the inordinate delay in trial of the rioters had legitimised the violence and the criminality. A system which permits the legitimised violence and criminals through the instrumentalities of the state to

stifle the investigation, cannot be relied upon to dispense justice uniformly cannot be relied upon to dispense basic justice uniformly to the people. It amounts to a total wiping out of the rule of law". (page 3-4).

In State vs. Amir Chand (Karkardooma, Delhi S.C. 39/95, FIR No.426/84) ASJ, S.N.Dhingra, who had presided over several cases relating to the violence of 1984, observed that.

"While in Nov.1984 democratic values were slaughtered and soul of Indian constitution was burned daylight by the rioters, what happened after the riots was still worse and the justice itself has been slaughtered by sheer non investigation and total absence of concern. In the name of investigation only an eye wash has been done. The manner in which the prosecution has proceeded and the trial in these cases has proceeded speaks volumes about the health of criminal justice system. By simply delaying the trial and delaying the investigation, aged and old witnesses have either become extinct or untraceable and the accused get benefit." (page 4)

8. That I would like to draw the attention of this Hon'ble Commission to First Information Report No. 426/84, P.S. Kalyanpuri, under Sections 188/148/302/149 IPC that recorded by the police on the night of 2nd November 1984. Trilokpuri was one of the worst affected areas in Delhi. As per officials figures almost 200 people were killed and 100-150 jhuggies were burnt and looted in Block No.32 of Trilokpur, within a span of 72 hours, between 1st to 3rd November, 1984, ASJ S. N. Dhingra in State vs. Kishori (Karkardooma, Delhi S.C. No.52/95 FIR No.426/84) observed that "despite all of these facts coming to the knowledge of police, day after day from 1.11.84 till the investigation of this case going on, the police did not investigate the murders of several persons properly and carefully nor did it register the separate cases." The police evolved a unique method to record and investigate the criminal offences and killings, a method that is totally contrary to the Criminal Procedure Code 1973 and the Indian Panel Code, 1898, a single omnibus FIR was recorded for almost all the killings, arson and looting in Block No.32 of Trilokpur. This ensured that the investigation and the prosecution of these offences would be no more than an exercise in futility.

ASJ S. N. Dhingra commenting on the dereliction of duty by the police in failing to register the criminal offences, noted in **State vs. Kishori and Shabnam** (Karkardooma, Delhi S.C. No.45/95, FIR No.426/84), that

"That FIR No.426 of 1984 which does not mention the names of any of the rioters. It is a general and vague FIR recorded by the police

deliberately. Despite the fact that several injured Sikhs were there, several victims whose husband, sons and sons-in-law were killed, were available, police did not record FIR on the basis of statement of those victims. Riju Singh (First Informant) although living in the area, had been able to save himself and his family. His statement is only that rioting had taken place in the area and several Sikhs houses had been burnt and Sikhs had been killed. The information of several Sikhs houses having been killed, was with the police even before Riju Singh met (SI) Manphool Singh. In fact, the information which was received at the police station from then Addl. Commissioner of Police Nikhil Kumar was that cutting of Sikhs was going on in Trilok Puri and when SI Manphool Singh SHO Shoovir Singh Tyagi and several other senior officers reached at block no.32, they with their own eyes had seen burning of Sikhs houses, rioting was still continuing, and they had also seen the dead bodies of Sikhs. 95 dead bodies were removed on that very night. The information which was available with the police officers of their own seeing the scene of occurrence was sufficient to form the basis of FIR. But despite all this, the statement of Riju Singh was recorded by the police officer of his own knowledge also which he gathers from the sport or from circumstances also. If a person is found having been murdered by police officer and there is nobody to tell who murdered him, then would the police officer not get the FIR recorded simply because there was no one to say that that man has been murdered? The kind of recording of FIR by the police simply shows that the police officers did not want to convert their own information of the riots and their own knowledge of the burning of Sikhs houses which they had seen their own eyes into the FIR itself.” (page 4-5).

9. The FIR was registered on the basis of the statement of one Riju Singh and was converted into an omnibus FIR for nearly all the incidents that took place in the area. The police however recorded very brief, vague, general, cryptic and fragmented statements of riots widows separately and annexed all such statements with the main challan filed before the court in respect of FIR 426/84. Despite the recommendation made by the J.R. Misra Commission and the Jain Aggarwal Committee, a single challan was filed in the court in respect of the killings of 200 after almost 8-10 years. The Court to which the case was assigned scrutinized the statements of riot victims and identified individuals' cases of murder/arson, dacoity etc and directed the police to file separate challans in respect of each such case.

10. The investigation of this case was originally with Inspector Manphool Singh from 2.11.84 upto 23.11.84 but during that period neither he nor the SHO Tyagi did anything to investigate any particular murder. Thereafter the case

was handed over to the Vigilance Branch and Inspector Badam Singh was handed over the investigation of the cases FIR No.426/84 on 4.12.84. He too did nothing did nothing specific about any particular murder case. He prepared lists of burnt houses, burnt jhuggis, Gurudwaras and of some of the persons killed during the violence. He also got photographs taken of some of the burnt houses. According to him about 200 persons were killed in Trilokpuri area and about 150 houses were burnt and looted. Two Gurudwaras were also burnt. He recorded statements of different victims about lootings, burning and killing and thereafter these statements were attached to FIR No.426. No separate FIR was registered, and no separate challan were filed in respect of the incident which had taken place at the house of different victims and killings of different persons.

In State vs. Kishori, (Karkardooma, Delhi S.C. No.42/95, FIR No.426/84) ASJ, S.N.Dhingra quoting the deposition of Inspector Badam Singh noted that, “*he stated that there were oral instructions of his Senior Officers that all incidents of riots are to be clubbed together and to be dealt under FIR No.426 of 1984 and no separate case was being registered.*” (Page 6-7).

11. Similar observations regarding the manner in which FIR No.426/84 was recorded and the killings and violence pertaining to Block No.32 of Trilokpuri were investigated are made in **State. Vs. Amir Chand** (S.N.Dhingra, Karkardooma, Delhi S.C. No.39/95 FIR No.426/84) **State Vs. Kishori** (S.N.Dhingra, Karkardooma, Delhi S.C. No.42/94 FIR No.426/84). **State Vs. Kishori** (O.P. Dwivedi, Karkardooma, Delhi S.C.s Nos 78/95, 10/96 and 1/96 (FIR No.426/84) **State V Ramu Dhol Wala and Ors.** (S.N.Dhingra, Karkardooma, Delhi S.C. No.FIR No.426/84), **State vs. Abdullah Khan etc.** (S.N.Dhingra, Karkardooma, Delhi S.C. No.40/95, FIR No.426/84). **State v. Kishori & Ors.** (S.N.Dhingra, Karkardooma, Delhi S.C. No.38/95, FIR No.426/84), **State v. Ved Prakash etc.** (S.N.Dhingra, Karkardooma, Delhi S.C. No.70/95, FIR No.426/84), **State v. Kishori & Ors.** (O.P.Dwivedi, Karkardooma Delhi S.C. No.53/95, FIR No.426/84), **State vs. Kishori and Shabnam** (S.N.Dhingra, Karkardooma, Delhi S.C. No.45/95, FIR No.426/84), **State vs. Ashok** (S.N.Dhingra, Karkardooma, Delhi S.C. No.12/96, FIR No.426/84), **State vs. Satyapal @ Satti** (O.P.Dwivedi, Karkardooma, Delhi S.C. No.4/97, FIR No.426/84), **State v Babu Lal & Ors.** (O.P.Dwivedi), Karkardooma, Delhi S.C. Nos 21/95, 29/95, 2/97, 3/97, 5/97, Fir No.426/84), **State v. Kishori & Ors.** (O.P.Dwivedi), Karkardooma, Delhi S.C. No.67/95, FIR No.426/84), **State v Kishori & Ors.** (O.P.Dwivedi), Karkardooma,

Delhi S.C. No.67/95, FIR No.426/84).

12. In State v Kishori & Ors. (Karkardooma, Delhi S.C. No.53/95, FIR No.426/84), O.P.Dwivedi observed that,

“After the assassination of late Prime Minister Mrs. Indira Gandhi on 31.10.84 anti Sikh riots broke out in different areas of the capital killing thousands of Sikhs. Law and order machinery was completely paralysed because of inaction/connivance of the police. This is apparent from the fact that for hundreds of murders that took place in the area of PS Kalyan Puri only one single FIR i.e. 426/84 was registered and that too did not contain any specific details regarding the names of the persons killed or the names of the rioters who took part in the killings. In the name of investigation, a force was carried out. Cryptic statements of some of the victims were recorded. No attempt was made to trace the dead bodies or to get them identified. Even the formally of preparing a site plan of the places where various incidents occurred was not completed in most of the cases. Ultimately to show the compliance of law, an omnibus challan in respect of FIR No.426/84 was submitted to the court and along with it the statements of some of the victims were also attached. It was left for the courts to sort out specific cases which could be proceeded in accordance with law. It seems the prosecution expected that the trial will be equally a force and cases would be summarily disposed of thereby drawing a curtain on the legal drama” (page I).

13. That when the trial of all cases failing within the omnibus FIR No.426/84 began, the Court as observed by ASI S.N.Dhingra in **State v. Abullah Khan etc.** (Karkardooma, Delhi S.C. No.40/94 FIR No.426/84, found that,

“A perusal of the challan revealed that police had not done justice to the investigation and had clubbed all the different incidents to the investigation and had clubbed all the different incidents together. These events were spread over several places and were of three days. Because of this conduct of the police investigation done by police was not up to the mark and police had acted unlike professional force. It was also observed that police has wrongly clubbed several incidents into the FIR. Similar observations were made by Justice Jain Agarwal Committee and it was suggested to the police to file separate incidents together and trial of more than 200 accused involved in these incidents together, would not be a fair, smooth and proper trial passed an order directing the splitting up of the challan on the basis of incidents.” (page

3).

14. That in **State v. Kanak Singh**, (Karkardooma, Delhi, S.C. No.18/95, FIR No.426/84) ASJ S.N.Dhingra in relation to the role played by local level Congress leaders and the apparent reluctance of the police in investigating their role in the violence and killings, observed that,

"It is apparent that Kanak Singh and Ram Pal Saroj were the local Congress I leaders, they seem to have silently encouraged the riots and perhaps they were also part of conspiracy and had not gone into the aspect of conspiracy and had not gone into the conspiracy part of the riots. Then a conspiracy on the part of local leaders, local police and their of not allowing any outside help to reach block no.32 and of not sending any police force there to protect the innocent persons it would not have been possible for any group of rioters to Wipeout almost 200 Sikhs adult male members living in block no.32 and to burn their house systematically. Accused, therefore gets benefit of police and state apathy towards 1984 riot and in showing no interest by the state in investigation the conspiracy part of riots." (page 12).

15. That the casual, perfunctory, shoddy and negligent investigation conducted by the police into the violence and killings of November 1984 undermined the very foundation of the prosecution of the accused and in many trials the case against the accused could be proved beyond reasonable doubt.

In State v Ram Pal Saroj etc. (Karkardooma, Delhi S.C. No.57/95, FIR No.426/84) ASJ S.N.Dhingra

"the police investigation in each of the riot case filed in the court has been wanting in quality."

In State v. Kishori and others (Karkardooma, Delhi S.C. No.19/95, FIR No.426/84) ASJ S. N. Dhingra commenting on the manner in which investigation was conducted in cases relating to 1984 observed that,

"The investigation of this case and in other cases concerning 1984 riots which took place in Trilok Puri, has not been proper. In fact, circumstances show that there was reluctance on the part of police on conducting the investigation of the cases. This reluctance on the part of police in conducting the investigation is abundantly clear from the testimony of the witnesses as well as from the

circumstances. Mr. Agarwal the member of Jain Agarwal committee who appeared as PW-8, has stated that there were lots of complaints that in the riots of 1984 police had played a dubious and passive role in the riots. Similar complaints were against the administration also of indirectly helping the rioters... Initially, the recommendations were made by Justice Jain Committee on the basis of affidavits and police records for registration of cases against the accused persons allegedly involved in the riots. However, even in 1991 when these recommendations were being sent by Justice Jain and Agarwal Committee the recommendations were sent back by the Administration taking various pleas and one of the pleas was that either the deponent were not in existence, or they were disowning the affidavit. On seeing this kind of conduct of the Administration, Justice Jain Aggarwal Committee decided to call the deponent before it, and record the statement, and then sent back the recommendation so that the plea of deponent not available or disowning the affidavit could not be raised by the Admn. This effort was to thwart all attempts of booking those who were involved in the riots. Why this attempt was being made can be understood only from the historical prospects and can be smelted from the political background of those who were involved in the crime. In this background, when the police and the Administration all the time, were keen to protect the rioters, impartial and true investigation in the riots by the Admn. and the police was not possible, and it can easily be understood as to why there was no recording of independent FIR on the basis of statements. Why the statements of the victims were recorded after long time of the riots? Why these statement of the victims were short, brief and contained no details of the incidents and why every Investigating Officer, one after another performed his duty in a causal manner as if he has to just push the burden to the next 10?" (page 20)

16. That in many judgements in my representative sample, the issue of dealing in recording of First Information Reports and statements of witnesses was discussed by the Courts. It has been recorded by the Misra Commission and Committees set up thereafter that very few FIRs were recorded by the police at the time of the violence and killings. It was only after the Misra Commission was set up in April 85, that the victims on the encouragement of civil liberties group came forward and submitted affidavits detailing the criminal offences committed against them, their family members, and their properties. Thereafter affidavits were also presented by victims to the Jain-Bannerji and Jain Agarwal Committees on whose recommendations several FIRs were recorded, and investigation-initiated Delays were inevitable in the prevailing political climate. The delays eventually ran into months and

years. Commenting on the situation prevailing in Delhi at the time of the violence.

The Delhi High Court in **Ashok Kumar v. State of Delhi** (1995 (1) Crimes 347) noted.

“But it must be remembered that at the time of the incident in question the Sikhs community was a target and they were afraid of their lives and they were taking shelters. The police machinery was completely wrecked and in these circumstances the witnesses did not go to the police immediately to give their statement under Section 161, as the situation was beyond control of the police and if the police did not immediately start recording of evidence and investigation after the commission of offence it could not be said that witnesses should be disbelieved and their evidence must be discarded”. (page 351, para 13)

17. During the trial of most cases, the Courts considered the dates that the affidavits were filed either before the Misra Commission or the committees as the date of registration of FIR. In many cases in representative sample, the delay on the part of the police in recording of FIRs and statements proved fatal and was one of the factors that supported the decision of acquittal of the accused. That in some other cases in the sample the Judge taking cognizance of the circumstances that prevailed in November 1984 and complaints of police inaction condoned similar delays in the registration of FIRs.

18. That in **State v. Kishori** and others (Karkardooma, Delhi, S.C. No.19/95, FIR No.426/84), the case was filed on the basis of an affidavit of Bhakti Bai filed before the Jain-Agarwal Committee naming the accused as members of a mob that killed her husband as well as his younger brother, Weighing the evidence, the Court noted the reluctance with which the police took action during the massacre and ASJ S. N. Dhingra noted that.

“But for the police apathy, the statement of Bhakti bai and other witnesses would have been recorded immediately after the riots and those involved in the riots, would have been immediately arrested and sent for trial. There would have been no necessary for the Jain Agarwal Committee to call Bhakti Bai in Feb. 1991 before it and to record her statement. I, therefore, consider that the plea of the counsels that the witnesses have been examined by the police and by the Committee much after the riots and this gave chance to the witnesses of embellishment and of falsely implicating the accused persons, is baseless. In fact, the witnesses have been knocking from one door to another door seeking

Justice but the Justice being denied to them by the police and the Administration in gross derogation of the constitutional mandate of equality before law and in gross derogation of the law of the land. "(page 20).

19. That, similarly in **State v Kishori Bhangi**, (Karkardooma, Delhi S.C. No.80/94, FIR No.361/91) ASJ S.S.Bal observed that,

"In the instant both the P.W.s have stated that they have gone to the police station and have made statement. P.W.2 has stated that her statement was recorded after the incident by the police. She stated that her statement was recorded by the police in PS Farsh Bazar Camp and PS Kalyan Puri after 10/15 days of the incident and according to the prosecution statement of P.W.s were recorded after registration of the case. Thus, no efforts was made to explain the delay in recording the statement to who why the FIR was not recorded and statement of P.W.s were not recorded earlier. However, looking into the circumstances and facts of the case, the kith and kins of the complainant P.W.1 & 2 were slain and they had been rendered homeless as their houses were burnt and looted and they had to take shelter in the relief camps and stay there for a long time and that there is complaint about the inaction of the police. The delay in giving FIR and recording statement of P.W.s can be condoned." (page 11).

20. That police inaction and complicity during the violence and killings as evidenced by their non-recording or delayed recording of FIRs and statements weakened the case of the prosecution and enabled the accused to secure an acquittal.

21. That in addition to the fact that the statements were either not recorded or were delayed due to police complicity, several judgements of my representative sample noted that statements that were recorded were brief, cryptic, benefit of details and inaccurate.

In **State v Kishori** (Karkardooma, Delhi S.C. No.42/95, FIR No.426/84) ASJ S.N.Dhingra said that,

"After the rioters had done their job, the rest of the job to frustrate the investigation was done by the police. The police during the investigation, saw to it that only inaccurate and short statements of the witnesses was recorded. In almost all the cases witnesses have stated that their statement was not correctly recorded. I therefore consider that there is no reason to

disbelieve the woman who and seen before her own eyes her son-in-law being killed.” (Page 9).

22. Similarly, in **State v Kishori & Others** (Karkardooma, Delhi, S.C. Nos 78/95, 10/96 and 1/96, FIR No.426/84) ASJ O. P. Dwivedi noted that,

“The police at the time recorded cryptic statements of some of the victims and one single FIR being FIR No.426/84 was registered. No investigation worth the name was carried out in respect of any of these murders.”

23. The courts in some cases also noted the deliberate collusion of the police in enabling influential and politically powerful persons to escape criminal prosecution by omitting their names from statements made by the victims. In **State v. Salim & others** (Karkardooma, Delhi S.C. No.43/95, FIR No.426/84) ASJ S. N. Dhingra noted that,

“Regarding the investigation of 1984 riots, it is well established from the findings of Justice Ranganath Misra Commission that the investigation was not done properly, and, in many cases, the investigation was not done at all. It has also been observed by the Commission that wherever name of some official person was there, FIR was not usually recorded and if it was recorded, the name of influential person was dropped. Several investigating officers have appeared before this court and the statements which have been recorded by these Investigating Officers of the victims of riot, are brief and give information only to the extent who was killed and when was killed. All the details about the riots as to when and how the riots happened are missing. This is the reason that the witnesses who had been appearing before this court, had been repudiating their statements u/s 161 Cr.P.C. allegedly recorded by the police.”

24. In some cases, the judges noted that the statements were deliberately recorded inaccurately by the police, which resulted in discrepancies and inconsistencies in the statements under Section 161 Cr. P.C. and the depositions of the witnesses before the Court.

In **State v Ram Pal Saroj etc** (Karkardooma, Delhi, S.C. No.57/95, FIR No.426/84) ASJ S. N. Dhingra.

“Police had not made any other person as witness in this case. In fact, there is no investigation done by the police except recording the statements. Statements recorded by the police are also very sketchy and

sometimes the statements are actually not made by the victims but they have been recorded by the police officials sitting in the police station and it is alleged that these statements were made by victims.” (page 3)

“In most of the cases it is found that in order to help the accused persons police has given wrong facts in the statements. The victims of the riot cases when appeared in the court had given altogether a different story. They named not only those accused persons who are mentioned in the challan but even other persons who were part of the rioting mob and the court had to amend the charge or call more accused persons to face the trial.” (page 3).

Similarly in **State v. Ved Prakash etc.** (Karkardooma, Delhi S.C. No.70/95, FIR No.426/84), ASJ S.N.Dhingra observed that,

“There is no doubt that there are contradictions in the statements recorded u/s 161 and the statement made in the court but these contradictions are due to the unfortunate attitude of the police and the Administration.” P.11.

As already observed by me in different riot cases that there was a total apathy of the police in investigating these cases and the sole attempt of the police was to help the rioters and to discredit the victims, therefore, the statements U/s 161 Cr.P.C. recorded by the police are very brief, inaccurate, and imaginary, missing most of the details mentioned by the victims and not giving several facts given by the victims. Even justice Rang Nath Misra Commission and Jain Agarwal Committee had observed that true statements of the victims were not recorded Investigation was perfunctory and unfaithful. Under these circumstances, when the police and the accused joined hands against the victims, there is no wonder that there are contradictions, but I consider that truth and justice cannot be made casualty because of the victims nexus between the police and the accused persons. I, therefore, consider that witnesses cannot be discredited because of the non-recording of accurate statements by the police. I believe that witness must have stated to the police about the death of her husband as well as about the other circumstances of riots, but police did not record the same.” (page 12).

25. That again, in **State v. Kishori and Ors.** (Karkardooma, Delhi S.C. No.53/95, FIR No.426/84) ASJ O.P.Dwivedi observed that,

“The witness reportedly stated that at that time the police was not recording the statement correctly. The police used to call the victims and would ask

them one or two questions and made some brief record. There was a general complaint among the victims that their statements are not being properly recorded. He did not try to approach any higher authorities because at that time nobody was prepared in the Relief Camp for about 3/4 months and thereafter he shifted to Tilak Vihar. Some newspaper reporters that police is not recording true facts and is not doing justice. He asserted that he had given various details regarding the arms carried by the mob from his house and also the names of all the accused persons including Abbas and Budh Prakash but the police did not record the same. The explanation offered by this witness regarding the variance between his statement made before to court and his purported statement u/s 161 of Cr.P.C is quite satisfactory. Every court, commission of enquiry or committee has lamented the role played by the police during these days. I need not waste time in reproducing the conclusions of different courts, commissions and committees regarding the inaction/connivance of the police during the riots.

26. That in several cases, the statements recorded by the police were devoid of any details and were brief.

In Manohar Lal alias Munna and Anr. V The State (N.C.T of Delhi) 2000 1 AD (S.C) 52, the Hon'ble Supreme Court noted that,

“Another criticism is that she did not divulge all the details of the occurrence when she gave a statement to the police on 17.11.1984. We perused the said statement attributed to her. A reading of a makes the position clear that the police officer was not inclined to elicit from the bereaved mother any details of the horrendous episode. He felt that she was not in a mood to speak out the details as the interval of time was not sufficient enough for a mother like her to regain mental equanimity. He should have postponed questioning her to a future date. In the said statement he recorded just two sentences. It would be unfair and we may say uncharitable to her if we use that cryptic statement dated 17.1.184 to discredit the valuable testimony of the most natural eye witnesses of this horrendous crime. : (page 55 para 7)

In State v. Kishori and Shabnam, (Karkardooma, Delhi, S.C. No.45/95, FIR No.426/84), ASJ S.N.Dhingra noted that,

“A riot victim who could describe the narration of the incident in the court in vivid manner depicting the entire picture of the riots, must have described the same picture of the riots to the police also. But, invariably all the statements

U/s 161 Cr.P.C. recorded by the police, are bereft of the details as to how the riots had taken place and how the victims were attacked. In view of the observations of Justice Rang Nath Misra Commission that the police was dropping the names of miscreants while recording the statements, the statement U/s 161 has become meaningless and cannot be used to discredit the witness.” (page 9).

I State v Satypal @ Satti (Karkardooma, Delhi, S.C. No.4/97, FIR No.426/84) ASJ O.P.Dwivedi

“PW-13 Insp.Badam Singh was posted at Vigilance Branch in Dec. 1984 when the investigation of the original case FIR No.426/84 PS Kalyan Puri was handed over to him... He stated that he did not register separate cases regarding each murder because there were instructions from Sr. Officers to club all riot cases pertaining to PS Trilok Puri in one FIR. In cross-examination, he conceded that neither the parentge nor the residence of accused Satpal figured in the statement of witnesses, nor any TIP was arranged yet he arrested accused Satpal because he was being generally named in the riot and was well known to the local police.” (page 5)

27. That the courts also noted that the investigation conducted by the police was no more than a farce as is noted by ASJ S.N.Dhingra in **State v. Kanak Singh** (Karkardooma , Delhi, S.C. No.18/95, FIR No.426/84) that,

“After receiving this affidavit along with the letter of Jain Agarwal Commission for further investigation, the police instead of doing any investigation translated affidavit in Hindi into a statement of jassi bai. That was taken an statement u/s 161 and a separate challan was filed reproducing what was given in the affidavit. Practically there was no investigation done by the police. The investigation does not mean translation of an affidavit from English language to hindi language and asking the witness to sign it. The investigation implies going into the facts and circumstances, finding and the truthfulness of the allegations, collecting necessary and material evidence. As there has been all other riot cases the police was not at all interested in investigation but was interested in only bushing up the things, so the best thing for police to do was to translate the affidavit and complete the investigation.” (page 4)

28. That as the police did only perfunctory investigation, often no effort was made to join any other witness apart from the complainant in the case. It must be mentioned here that particularly in cases related to Trilokpuri,

Sultanpuri and several other localities, which were the scenes of large-scale violence and killings, the offences took place in full view of the public and the houses, often of 25 sq yrd. only, were adjoining each other. However, no attempt was made to join either other family members or neighbours as witnesses.

In **State v. Mangal** (Karkardooma, Delhi, S.C. No.51/95, FIR No.426/84) ASJ O.P.Dwivedi noted that.

"Besides in a case where a court has to deal with the evidence pertaining to commission of offences by a large number of offenders and the number of victims is also large, Hon'ble Supreme Court has prescribed the test that the conviction could be sustained only if it is supported by two or more witnesses who gave a consistent account of the incident... In the present case, according to Satnami Bai PW3, the riotous mob which had killed her husband, had killed many other also in the area. Obviously, there must have been large number of victims also. In fact, in S.C. No.11/96 wherein Nathu Khan and Chhotey Lal were prosecuted for the murder of Mohan Singh, three ladies were cited as eye witnesses and Satnami bai was one of them. But surprisingly in the present case, no other eye witness has been cited except Satnami Bai whose testimony, as already observed, is unreliable. So for this reason also the verdict of guilty cannot be returned against any of the accused persons." (page 18).

Similarly, in **State v. H.K.L Bhagat** (Karkardooma, Delhi S.C. No.54/95, FIR No.426/84) ASJ Manju Goel also noted that,

"In the scene that can be visualized on the basis of evidence on record it cannot be said that there could not be any other witness to the arrival of the Neta of the place. The report of the Justice J D. Jain Committee says that the riots of October 1984 took a toll of about 2733 lives belonging to the Sikh Community in Delhi apart from valuable articles and properties worth crores of rupees belonging to that community. Undoubtedly, the number of rioters as well as number of the victims/targets was quite large. Following the judgements of the Supreme Court I find it difficult to base conviction of the accused in the facts of this case on the sole testimony of Darshan Kaur. " (page 46).

29. That as witnesses were summoned to give evidence before the Court only after a period of 10-12 years after the violence, by which time some old and aged witnesses passed away. The absence of any other witnesses perforce resulted in the acquittal of the accused. As in **State v. Ram Pal**

Saroj etc. (Karkardooma, Delhi, S.C. No.57/95, FIR No.426/84), where ASJ S.N.Dhingra observed that,

“Since the prime witness whose three sons had been killed by the rioters is no more in this world and the police did not make any other person as witness nor there is any other circumstantial evidence on record to proceed further with the case, the accused persons are hereby acquitted.” (pages 4-5).

30. That according to some judgements in the representative sample, the witnesses accurately identified the accused, in Court, even after a lapse of 10-12 years. However, as no Test Identification Parade (T.I.P.) as required by law had been conducted by the police at the time of investigation, the identification of the accused for the first time in Court was held to be of no value. The failure of the police to conduct T.I.P gravely affected the verdict in several cases, some of which are cited below.

In **State v. Ashok** (Karkardooma, Delhi S.C.No.12/96) FIR No.426/84, ASJ S.N.Dhingra noted that,

“From the testimony of above two witnesses it is apparent that the husband and Devar of Harbhajan Kaur were killed during the riots. At that time when the riots had taken placed she was able to identify two of the persons but due to lapse of time now she was not able to identify those persons. Had the investigation done properly and had the accused persons subjected to TIP. Soon after the incident the witness would have been able to point as to who were the persons who had killed her husband and Devar and if the trial had been expeditious and the time of 11 years had not been wasted by the Administration deliberately, the neighbours who had mercilessly killed innocent persons would have been brought to book and punished according to law. It is sorry state of affairs that criminals are let loose on the society because of acts and deeds of those who are supposed to bring the criminals to nook and get them punish according to law.” (page 5-6).

In **State v Latif Ali and Ors.** (Karkardooma , Delhi S.C. No.36/94, FIR No.60/91) ASJ, S. S. Bal.

“He has simply pointed out towards him saying that he was also present in the mob. There is no identification at all in the eye of law in the absence of T.I.P.” (page 9)

In **State v. Om Prakash & Ors.** (Karkardooma Courts, Delhi, S.C. No.46/94) ASJ S.S.Bal held that,

"To identify the accused persons for the first time in the court as the persons who were the members of the mob which indulged in participation of killing, looting ,damaging the house is of no value... Moreover, merely pointing out towards the accused persons that they were the members of the mob for the first time in the dock does not fix the identity of the accused persons in the absence of TIP."

Similarly in **State v. Umed Singh Saini & another** (Karkardooma Courts, Delhi S.C. No.60/94) ASJ S.S.Bal again held that,

"Persual of the testimony of P.W.6 & 7 and 11 shows that PW 6 has mentioned the name of accused Umed Singh and had failed to identify the other accused Tej Pal Singh PW7 also only points out in the Court towards Umed Singh and stated that both accused Umed Singh and Tej Pal Singh were the members of the mob... There is nothing on record to show that any TIP in respect of the accused was involved... The identify the accused persons for the first time in the court as the persons who were members of the mob, which indulged in participation of killing, looting and damaging the house is of no value as per observation made by the Supreme Court."

In **State v Arjun Dass** (Karkardooma, Delhi S.C. No.32/94, FIR No.112/91) ASJ S.S.Bal noted that,

"Identify of this accused has not been proved and the dock identity for the first time in the court is insignificant. Identification of a person by a witness for the first time in the court without being tested by proper T.I.P has been held to be valueless."

In **State v. Suresh & Ors.** (Karkardooma, Delhi S.C. No.33/94, FIR No.182/91) ASJ S.S.Bal stated that,

"P.W.3 made a bald statement in the court saying that all the accused were present in the mob which I fear to accept and act upon in the absence of TIP and corroboration from any other source." (page 6)

In **State v Ved Prakash etc.** (Karkardooma , Delhi, S.C. No.70/95, FIR No.426/84) ASJ S.N Dhingra noted that the investigating officer himself averred to his failure in holding a T.I.P in his deposition.

"P.W-5 is Manphool Singh SI... He stated that he had arrested about 141 accused persons in this case. He did not get TIP done in respect of any of the accused persons." (page 5)

31. That another lapse on the part of the police in investigating the cases relating to the violence and killing of November 1984, that finds mention in some of the judgements in the representative sample, was the illegal method adopted by the police in recovering looted property. The Police announced that looted property should be deposited on the road or at the police stations and that no action would be taken against them. This enabled the rioters to escape prosecution altogether. This is borne out by the statement of the accused himself in **State v Ved Prakash** etc. (Karmardooma, Delhi S.C.No.70/95, FIR No.426/84) where ASJ S.N.Dhingra noted that,

"In his statement u/s 313 Cr.P.C accused Kishori had stated that police made pronouncements in the area that those who have looted the houses of Sikhs, they should put out looted articles on the road. These statements were made by Inspector Rathi who was from Special Staff. These announcements were made after police had come to block number 32. Thus, from this statement of accused u/s 313 Cr.P.C. It is clear that police was in league with the accused persons and riot was a consequence of this league." (page 12-13).

Again in **State v. Kishori and Shabnam** (Karkardooma, Delhi S.C. No.45/95, FIR No.426/84) ASJ S.N.Dhingra noted that no effort was also made by the police to recover weapons, the recovery of which would have strengthened the case of the prosecution.

"It is submitted by the counsel for accused that nor recovery of any arm has been made by the police. The alleged Khanjar or any arm from the rioters has not been recovered. True this is exactly (what the) police has done to help the rioters. The police did not recover either looted property or arms and how could the police recover all these things? All along during the riots police of Trilokpuri had been tacitly encouraging the rioters and after the riot, it had been tacitly encouraging the rioters and after the riot, it had been announcing that the looted property should be deposited on the road and police will take it away. The role of the police all along the riots was that of tacitly helping the rioters by nor implementing the law and remaining absent from the spot most of the time. Non recovery of the instruments of crime is therefore of no consequence in this case." (page 9-10)

32. That the negligence of the police was not just limited to the manner in which the investigation was conducted as in **State v. Abdul Aziz and others.** (Karkardooma, Delhi S.C. No.35/94 FIR No.340/84) ASJ S.S. Bal), which was one of the few cases where the police had seized looted property from the custody of the accused. The Court was shocked to note that prior to the disposal of the case the police has auctioned off the case property, the benefit of which went to the accused.

“They also recovered TV transformer box white colour and one girder iron from the accused Abdul Aziz vide memo Ex. PW 4/C but these articles were not produced in the Court as they were auctioned as per report submitted by PW.6. In these circumstances the witness was unable to identify the case property recovered from the accused Abdul Aziz... It is amazing to note that the case property in this case has been auctioned by Nazarat of the District Court while the case was still pending trial in court. Neither the prosecution, nor Incharge Mohrar Malkhana, nor SHO PS concerned, nor IO of this case took care to preserve the case property till its production in the Court. This amounts to gross negligence and grave dereliction of the duties on the part of the officials concerned on account of which the guilty has escaped the rigour of law and the prosecution case could not succeed. Copy of this judgment be sent to the Home Secretary for information and necessary directions to all the Police Stations to avoid recurrence such omission of duty in future.” (page 5).

33. That the casual and shoddy manner in which the police had deliberately conducted the investigation tainted every aspect of the prosecution evidence, including the nor preparation of site plans, the non-collection of corroborative evidence, failure to conduct post mortems to ascertain cause of death with a clear view to scuttle the cases.

In **State v Babu Lal & Ors.** (Karkardooma, Delhi S.C. Nos 21/95, 29/95, 2/97, 3/97. 5/97. FIR No.426/84) ASJ O.P.Dwivedi noted the statements of the investigating officer that,

“P.W.-14 SI Badam Singh was entrusted with the investigation of this case on 20.4.93 after the receipt of recommendation from Jain Agarwal Committee... In cross examination, he admitted that he did not prepare any site plan of the spot nor applied for holding TIP of accused persons.” Page 8

Similarly in **State v Mangal** (Karkardooma , Delhi S.C. No.51/95, FIR No.426/84) ASJ O.P.Dwivedi noted that,

“As already stated, neither any inquest proceedings were conducted nor even dead body of Mohan Singh or of any other riot victim was got identified nor the postmortem examination reports were filed on record. Even a rough site plan of the scene of crime was not prepared. Investigation was conducted in a most perfunctory and casual manner.” (page 4).

In **State v Kishori & Ors.** (Karkardooma, Delhi, S.C. No.53/95 FIR No.426/84) ASJ O.P.Dwivedi observed that,

“From the above it seems that all that the police did in the name of investigation was recording of a brief statement of Mansa Singh dt. 17.11.84 by Insp. R.P.Tyagi. It may be that since most of the dead bodies were burnt, it might not have been possible to identify them and that is why no postmortem examination was done but from the statement of IO it appears that he did not even make any effort in that direction.” (page 7)

In **State v. Mahender Sharma & Ors.** (Karkardooma, Delhi, S.C. No.54/94 FIR No.346/84) ASJ S.S.Bal commenting on the gross negligence on the part of the police collecting corroborative documents noted that,

“But in the present case, surprisingly, no corroborative evidence was collected by the police in shops of ration cards or any other type of evidence i.e voter list to establish beyond shadow of any reasonable doubt that at the time of occurrence at least Sunder Singh was living in the hut in question. In the case in hand the prosecution has relied upon the testimonies of P.W. 2 and 3 to prove the death of the deceased persons, who have stated on oath that the deceased in this case were killed and burnt by the mob. Their testimony is direct to prove the death of the deceased namely Gurcharan Singh, Gurbux Singh and Shanker Singh. However, it is (hard to) imagine that no other evidence except bare testimony of these two P.W.s in the form of death certificate and ration card of voter list to show their existence has been placed on record by the prosecution.” Page 7.

In **State v. Shyam Vir** (Karkardooma, Delhi S.C. No.34/95, FIR No.426/84) ASJ S.N.Dhingra noted that,

“It is not only that police did not do its duty of investigating the crime properly but it is that police deliberately did not collect the evidence against the accused persons who were involved in this fiendish act of murder of more than 200 persons in one Block. The record filed with the court shows that the police was

a party in protecting the accused persons and in wiping out the evidence against the accused persons." (page 38-39)

"If it is believed that upto 3.11.84, the situation was such that it was beyond the control of the police... then the subsequent investigation of these crimes would have been done honestly by the police and the criminals and rioters, would have been brought to book. But the subsequent conduct of the police, in saving the rioters and in destroying the evidence would compel any court to draw an adverse inference against police and the investigating agency being hand in glove with the rioters and acting under the direction of those unseen powerful persons who were behind all this."

34. That the international reluctance of the police as the investigating agency to examine avenues such as the laws of conspiracy to tackle the complexity and scale of the crimes committed in November 1984 enabled those whose had engineered, and master minded this orgy of violence to escape judicial scrutiny. In State v. Mangal (Karkardooma, Delhi S.C. No.51/95 FIR No.426/84) ASJ O.P.Dwivedi noted that,

"The riots in Delhi followed definite pattern which indicated that there was some planning, prior conspiracy but the conspiracy angle was totally overlooked during investigation. Thus, 'eye of the storm' remained elusive. Even after the riots were over, nor serious effort was made to book the guilty with an honest intention of getting them punished through a Court verdict. The dead bodies were not identified, no inquests were held. The statements of victims were not properly recorded/catalogued. Even the formalities of preparing a site plan of the scene of occurrence was not observed. The Courts have shown full sympathy for the victims but within limits, constraints prescribed by law. The Court cannot pronounce a verdict of guilty against any one when the proof is not of the requisite standard." (page 19)

35. That upon a careful consideration of all the 137 judgements in the representative sample, it is clear that the lapses in investigation detailed in the preceding paragraphs are indicative of the police functioning not as an agent of the rule of law but as an agent of the ruling party. That undoubtedly the Delhi police force displayed an institutional bias against the Sikh Community in the investigation of these cases. Similar partisan behavior of the police force against minority communities has been documented in detail in the Justice Sri Krishna Report on the Bombay riots of 1993-93 and can be seen once again in

the recent outbreak of violence in Gujarat. It is pertinent to note that the Police Commissioner of Ahmedabad, Mr. P.C. Pandey when questioned on police inaction in controlling the violence, has stated on record, that the police are not immune from communal sentiments.

36. That in their quest for justice, hundreds of victims have been appearing before the Courts of Delhi. However, the machinations of the police, to please their political masters at the time the Congress (I) compounded by the inordinate delays in the trials, ensured that justice eluded most of the victims of the violence and killings.

In **State v. Shayam Vir** (Karkardooma, Delhi, S.C. No.34/95, FIR No.426/84) ASJ S.N.Dhingra noted that,

"It is tragic that criminal justice administration has been administered differently for different persons. It has been nothing but a paper tiger against anti-social combinations, against rich and influential offenders, and it has proved to be a paper bonanza for socially oppressed and suppressed victims. 49 years after independence, our guilty by default or dubiety on the charge of ineffectiveness of criminal justice system against (the) rich, (the) influential or those who wield political power has been proved beyond reasonable doubt as the cases against these either do not reach to the courts and when they reach... are seldom finalized and the blood, tears cries of victims go unheard."

37. That it is imperative that the police force, which is increasingly becoming a threat to the democratic institutions of the country, is insulated from political interference made accountable to the people and effective steps taken to ensure that delinquent police officers no longer enjoy impunity.

38. that if the confidence of all peoples and communities is to be restored in democratic governance and the legal system, justice must necessarily be a precursor to reconciliation.