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## Federal Framework And Organisational Culture Of The Indian Police

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### Introduction

Riots broke out in London following the killing of an Afro-Caribbean resident Mark Duggan on August 4, 2011 in ethnically mixed neighbourhood Tottenham (dominated by 'coloured' communities) by police teams dealing with gun crime, leaving 26 policemen injured. About 300 people gathered in front of the police station in a peaceful demonstration demanding justice, which turned violent.<sup>1</sup> This first major ethnic/racial riot since 1985 exposed the policing methods of the world renowned London Bobby, which came under tremendous pressure and a fair bit of criticism for mishandling the situation. In fact, the Scarman report following the Brixton riots of 1981, found that the police had lost the consent of the community in the run-up to the disturbances.<sup>2</sup> Obviously, with greater pluralisation of the

society in the UK, the policing methods come in for greater scrutiny, specially in cases of ethnic conflict. Prime Minister David Cameron thought that the initial police response in Tottenham was 'too few, too slow, too timid', other reports described the police corrupt and confused.<sup>3</sup>

Without getting into the way the riot was handled, the experience clearly showed the difficulties of handling social violence in complex social situations by best of the police organisations, particularly where a violent conflict or riot is identified with race, ethnicity and identity needing a rare delicate response. This also stressed the need to keep the police and the law enforcement agencies concerned ready for such challenges through social sensitization and political education, for battles within in any democratic society could exacerbate due to high handedness of security agencies and

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police. UK is a unitary polity where the system of police and policing, though not centralised, are entirely different from India, where federal principles create institutional division of power and bring in a different political dynamics. Yet the debate on where the police failed and how the policing faltered in the face of the challenge of dealing with social violence would perhaps go beyond the Scarman report.

Obviously, a plural society such as India, striving to adopt multiculturalism in its public sphere, has had a challenge at hand since independence.<sup>4</sup> More particularly because social violence has a long history here and it continues to be among the major banes of India's social and political life.<sup>5</sup> The problem gets compounded because the police designed by the British colonial masters in 1860 was never upto the challenges and since independence social and political challenges for the police have been mounting.<sup>6</sup> To make matters worse police reform in India since independence has been a much discussed subject, yet it has remained an ignored phenomenon.<sup>7</sup> No wonder, each and every case of social violence since independence has been embroiled in controversies of police incompetence, lack of professionalism, highhandedness, and, above all, politicised ethno-

religious bias that exacerbates and complicates the impact of violence. Last but not the least, politicisation since independence has much larger ambit in determining police behaviour in India, and the Indian police has increasingly been blamed for acting under political influence since independence.

In India's strong-centre federal framework, which K.C. Wheare defined as quasi federal due to the provisions of Article 356 that empower the Union government to dissolve an elected Legislative Assembly in any state and take over its governance (commonly known as President's rule),<sup>8</sup> police is a state subject; i.e., a responsibility constitutionally entrusted to the Indian states.<sup>9</sup> Though the Union Government does not have the responsibility of maintenance of law and order, it does have the special responsibility to 'protect' the states from external threats and internal disturbances. Following the end of the political era of one party dominance, the political map of India has become more plural and, in the views of some, more federal. Naturally, contestations and debates on the role of the Union Government arises from time to time. This necessitates an analysis of the engagement of the police with social violence and the implication of the

federal set up on its behaviour and work culture.

The analysis in this essay has been attempted broadly in three parts. First, it puts in perspective the federal framework of policing and police in India, i.e. division of power in the constitution and its evolution. Second, through the lens of some prominent cases of social violence their complexities and how the concerned state governments, the Union government and political parties dealt with them, it situates the police role in social violence. Finally, connecting the two sections, it attempts a review of the existing operational complexity of the police role and federal framework of social and political control of social violence.

### **Federal Framework and the Police: The Indian Design**

In a federal framework, every aspect of power arrangement is so organised to situate responsibilities at an appropriate level. Whether or not the 'subsidiarity' principle is invoked, as in Germany and the European Union, power distribution is governed by the logic of 'where it should appropriately be'. Yet federal arrangement in the contemporary world is a mosaic that has begun to be accepted as diverse needs and

experiences of diverse societies. The two broad approaches to power distribution in federations, the dualist and integrated, respectively assign jurisdiction to either to each order of government exclusively; or provide for many shared competences under which the constituent-unit governments often administer centrally legislated programmes and laws. In either case, federal theory does not indicate which set of powers, jurisdictions and responsibilities should be located at what level. This is borne out by coexistence of principles of exclusivity and concurrence in federal powers. Obviously, there is no precise prescription or thought on what level or levels the police powers of the state should be located and what are the powers that could be shared.

Given increasingly diverse security requirements at different levels in society, there are paradoxical demands of devolution, federalisation and centralisation. Threats from international terrorism have increasingly created need for federal capabilities to deal with the menace. The US Department of Homeland Security is a result of such a specific need. India too has created a National Investigation Agency (NIA) following the 26/11 attack on Mumbai in 2008. Similarly, internal disturbances too at times call for

federal intervention. Such situations demand both political and institutional responses. In the first case a bipartisan approach would go a long way in maintaining efficacious functioning and high morale of the police and in the second case a response based on constitutional arrangements would avoid partisan tiffs between the federal government and those of the constituent units and help in maintaining order in accordance with the rule of law.

### **Indian Approach**

India has incorporated elements of both dualist and integrated approaches in its federal arrangement and has organised political power incorporating principles of exclusivism and concurrence. Police powers of the state in India have been organised on the principles of exclusivism with a sprinkling of concurrence. That is, while the day-to-day maintenance of law and order has been entrusted to the State government and their police organisations, the Union Government retains certain internal security functions, without the right to interfere in the law and order duties. This framework has to be seen in the context of strong-centre federalism that the Indian constitution adopted as a result of the concern for 'national unity and

integrity' emanating out of partition of the subcontinent.

It is not surprising, therefore, that despite entries 1 and 2 of List II (State List) in the Seventh Schedule placing public order as the responsibility of the States and assigning police as the instrument for the purpose at their disposal, several constitutional provisions outlined the role of the Union Government in the internal security too. As the constitution was inaugurated and the government began functioning, '(p)rotecting national integrity through preserving political stability was thought to be in conflict with the democratic rights to freedom of expression and personal liberty(.)', which led to the reconsideration of certain freedoms granted through Fundamental Rights, particularly in Article 19.<sup>10</sup> The disputes related to the deployment of the central forces during the late 1960s were part of the transformation of Indian polity from 'one-party-dominant' system, but the changes in the entry 2A of the List I and corresponding change in entries 1 and 2 of the List II in the Seventh Schedule brought about by the controversial 42<sup>nd</sup> Amendment and retention of these changes by the Janata Party Government, which undid many parts of the 42<sup>nd</sup> Amendment through 44<sup>th</sup> Amendment, were reflective of

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consensus on the role of the Union Government in internal security of the country.

In the original constitutional scheme there was no ambiguity about the task of public order and police as the custodian of this task to be the responsibility of States. Entries 1 and 2 of List II in the Schedule 7 (as part of division of power under Article 246) unambiguously allotted Public Order and Police to States. Though all-India services like the IAS and IPS, latter particularly, lurked in the background as institutions that could be used if the centre so desired, and entries 1-4 in List III dealing with criminal law, criminal procedure, preventive detention, etc., were put under concurrent jurisdiction, keeping in mind their use for the Centre's national security role and the need for maintaining uniformity of criminal law and procedure across the country. Discerningly, no entry or subject was put in the List I that cast its shadow on the States' role in maintaining public order and confusing jurisdictional domain of state police organisations.

However, 42<sup>nd</sup> Amendment to the Constitution of India (1976) brought by Mrs. Indira Gandhi during the emergency, which, sweepingly aimed at altering the constitutional balance in several fields, unambiguously created

a space for central intervention in internal security. Entry 2 in List I (Union List) was about defence forces and the armed forces of the Union. Entry 2A inserted in the List I by the 42<sup>nd</sup> Amendment read:

2A. Deployment of any armed forces of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers jurisdiction, privileges and liabilities of the members of such forces while on such deployment.

The implication of this insertion becomes clearer if we look at the List II (State List). Originally, entries 1 and 2 of the List II only mentioned 'Public order' and 'Police (including railway and village police)'. In order to make the Central role even more unambiguous entries 1 and 2 of the List II were also altered by the 42<sup>nd</sup> Amendment. The amended provisions now read:

1. Public order (but not including [the use of any naval, military or Air Force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).
2. [Police (including railway and village police) subject to the provisions of entry 2A of List I.]<sup>11</sup>

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The amendment unambiguously gives the Union Government scope to intervene on public order and internal security matters. This empowerment has not only strengthened the Centre's role by authorising it through List I, but also qualifying the List II with entry 2A of List I.

It is necessary here to contextualise the *Emergency Provisions* given in Part XVIII of the Constitution, which clearly tilt the balance in favour of the Centre even on issues related to public order when the nation faces a situation of national emergency. Article 352 (read with 353, which elaborates on its impact) deals with emergency situation arising out of war or external aggression and 'armed rebellion'.<sup>12</sup> It has been in operation thrice, first in the wake of the Chinese war in 1962, which also saw the country through the 1965 Pakistan war, during 1971 Bangladesh liberation war and in 1975-77. Since the first one was during the era when the Congress ruled in most States as well, whether or not the Central government issued instructions under Article 353, there were no reported controversy regarding the Centre overextending itself in any area, including in matters of public order.

Article 355<sup>13</sup>, which empowers the Union Government to deploy central

paramilitary forces in a State where public order is in jeopardy and out of control of the State police, gives a paternalistic responsibility, as it were, to the Union Government to protect the States. Similarly, Article 365 too gives greater responsibility to the Union government in internal security affairs.<sup>14</sup> In fact, in a way it complements Article 356. It empowers the President to dismiss an elected State government, dissolves or puts in abeyance an elected State Legislative Assembly and is a comprehensive one, under which the State is directly ruled by the Centre. This provision has often been misused politically and except for Punjab, the North East and Jammu and Kashmir, where the decline in law and order due to terrorism and emergency prompted imposition of the Central rule, public order related dismissal of State governments have been rare. Since Dr. Ambedkar was explicit in his response in the Constituent Assembly that the imposition of Article 356 is not related to good governance, public order as part of good governance cannot be used as an argument in using this provision. However, terrorism and insurgency are extraordinary situations, involving special techniques on the part of the security agencies, State or Central; thus, a use of this provision because of breakdown of public order due to

any such situation cannot be politically faulted. The provision, to this extent provides extra advantage the Centre and an additional constitutional instrument at its disposal, to take over governance in a State, obviously, including law and order.

Past two decades, however, have brought to the fore problems and issues – collective and communal violence arising out of ethnicity-based political mobilisation, political partisanship affecting the performance and professionalism of the state police, Maoist insurgency, terrorism and insurgency – that have raised questions regarding efficacy of the States and their police organisations in dealing with complexities of internal security. Since deficits in the maintenance of public order are mounting considerably, the States appear to have surrendered the turf to the Centre in dealing with Maoism and terrorism. Growing demands by the States for the deployment of Rapid Action Force (RAF) for dealing with communal violence is a clear indication of the fact that the States have been unable to equip its security apparatus to keep up with times.

### **Reviewing Federal Relations**

The Commission on Centre State Relations (Chair: Justice R.S. Sarkaria)

for the first time in three decades since the constitution came into operation reviewed federal relations in India. In considering the 'Rule of Union Supremacy' maintained that federal supremacy in legislative and administrative fields was the key-stone of federal power.<sup>15</sup>

Sarkaria Commission, thus, in principle, justified the letter and spirit of Articles 355 and 365. In fact, in response to the Commission's questionnaire most States too accepted the deployment of the armed forces of the Union as constitutional, but with the proviso that it was only 'with the consent of the State Government concerned.' As if protecting their domain, some States added a qualifier, as it were, 'It is only when national security or integrity is threatened and the State Government adopts an intransigent attitude, that the Union Government should deploy its armed forces *suo motu*. This power should be used sparingly.' There was also acceptance of the fact that the Union armed forces were needed by States because the States lacked resources to build their police forces to meet all contingencies.<sup>16</sup>

The second Centre State Commission (Chair: Justice M. M. Punchhi) in its report in 2010 too recommended that 'a whole range of

action on the part of the Union under Article 355 is possible depending upon the circumstances, the nature and the gravity of the internal disturbance. This may include suo motu deployment of Central forces in the State(s) albeit for the shortest required period of time and desirably with the full advance knowledge of the affected State(s).<sup>17</sup> Obviously, intervention of the Union government in cases of grave threat to internal security, including social violence, has gained wide acceptability. Indeed, this does not mean violating autonomy of the States.

### **Social Violence and Police in India**

Independent India was born amidst large scale collective ethnic violence between Hindus and Muslims, as decolonisation of the Indian subcontinent followed partition. The creation of Pakistan, made on religious grounds, was preceded and followed by unprecedented communal riots that left a permanent blemish on Hindu Muslim social and cultural relations. Obviously, it was likely to leave its scar on individuals, collectivities and institutions. Also, India's deeply entrenched social stratification – the caste system – derecognised by India's republican constitution with

the grant of fundamental rights of justice, equality and liberty and by abolishing untouchability and creating special provisions for the Scheduled Castes and Tribes – has not only been clawing back for a space, it has also paradoxically got a lease of life through the process of representative democracy, i.e., elections. In fact, ethnic mobilisation for elections has brought out other rough edges in society as well. Last but not the least, economic inequalities emerging out of entrenched social disparities and the post-independence political economy of the country, too has created spaces for social violence, manifesting in class and caste ward. Obviously, in such situations the police have more than a handful to handle. What queers the pitch further is the impact of politics on institutions, more particularly on the police.

No wonder, authors like Ashis Nandy have claimed that the modern institutions of mass democracy and secularism, which has found assertion in the constitution and has yet been among the most debated and contested concept in India for the past three decades, distorted the modes of social relations of Indian society and were therefore responsible for the violence accompanying modern politics in

India.<sup>18</sup> Satish Saberwal<sup>19</sup> and T. N. Madan<sup>20</sup> have also argued that Indian society is governed by traditional and deeply religious norms which the modern state and its secular credo cannot easily accommodate. What these eminent scholars of Indian society and politics have attempted to establish is that the dynamics emerging out of the interaction of an essentially traditional but modernizing plural social order with processes and institutions adopted from western traditions, in most cases from the Metropolis, following decolonization, have generated new forms of friction, conflict and violence.<sup>21</sup>

Accepting the merit of extensive debate and research on various dimensions of identity politics and social violence, we will attempt in this essay to review the police role in specific cases of social violence from a dual perspective of state-police and society-police interface. It is worthwhile here to underline that both these interfaces have attitudinal and behavioural overlap, impacting the polity's institutional edifice.

In the context of social violence, the police are among the most important arms of a government with the legal and legitimized right to use violence under prescribed conditions.<sup>22</sup> They have the capacity to influence

outcome of a situation both by withholding their duty to use force and by actively (even proactively) using their legitimate duty of controlled violence illegetimately.<sup>23</sup> Jeffrey Ian Ross raises a very significant question regarding how variously police violence could be perceived and could have different impacts on society and polity given the situation in which it takes place and how very little is known about a comparative scenario in this regard:

[A]lthough many acts of police violence/use of excessive force are comparatively similar, the consequences, effects, impacts, implications, responses, and reactions ... by the media, community, victims, government, and police ... are probably different. When police engage in violence, it is uncertain whether individuals, groups, and institutions remain passive or press for changes in police departments and the political system. Unfortunately, little is known about the variety of responses of incidents of police use of excessive force.<sup>24</sup>

However, in any analysis of the police role in social violence, the perspective of the 'responsibility' to use violence in a legitimate fashion that state, legal framework and constitution entrust the police with must be factored in. For, when the

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police take sides in collective violence, which is considered and planned (even if spontaneous, biases are there), attempt to inflict personal injury by a group to another is the motive.

The Indian police hardly had any time to think of their political and institutional transformation from a colonial force created in the wake of the revolt of 1857 for a strong political (non military) control over the Indian society to a democratic organisation designed for a legitimized social control,<sup>25</sup> authorized to use violence only in case of a belligerent confrontational situations between two communities. The complexity in cases of social violence arises also because it could also be used as social control.<sup>26</sup> Thus, the situations of violence bring in legitimized and illegitimate social controls, one legally authorized to check deviant community behaviour and the other illegitimate collective behaviour aimed at controlling 'rival' community, face to face. The significant point to be underlined is that in situations of social and collective violence the police role is extremely significant, because socio-political, legal and constitutional legitimacy it carries. Therefore, in cases of partisan police participation in such an event, a complex situation from the rule of law perspective

arises that deserves attention of both the polity and society.

The new Indian state too had to manage the biggest politics driven, forced 'ethnic' migration in human history and violence that accompanied it with the machinery it had inherited from the colonial state. There was no time even to think of any change; not at least for the next decade, for controlling the communal frenzy. In any case rehabilitation of the 'refugees' from the other side of the newly drawn Radcliffe line took priority, followed by giving a constitution to the new nation. No wonder, there were cases and complaints of partisanship, even participation by the police in the atmosphere charged with communal hatred.<sup>27</sup> That indeed was an indication that unless organisational changes, better training and professionalization were brought in the police may not be able to handle situations of social violence in independent India in a non-partisan fashion.

Communal violence, a euphemism for ethnic riots between Hindus and Muslims, as well as other forms of collective violence became endemic features of the post-independence Indian society, particularly as political and economic competition grew enormously since the 1960s, and

police reform became a perpetual non-fulfilling agenda of the political class and hence of the Indian state since the 1960s,<sup>28</sup> the police came under both attack and stress in facing this challenge. Since the police and public order are assigned by the Constitution to the states, controversial actions of the police were put in the lap of state governments, except when for the first time in October 1984, the Delhi Police were indicted for being passive during the anti-Sikh riots following the assassination of the then Prime Minister Mrs. Indira Gandhi and the Union Home Ministry, which controls Delhi Police, for being both silent and defending the guilty policemen. The controversies in this regard have grown since the 1990s for two interrelated reasons. First, the Congress conclusively lost the space to be the party with a natural claim over popular support and political power in India. Second, the rise of the Hindu majoritarian Bharatiya Janata Party (BJP) since the mid-1980s had brought in both ethno-religious mobilization based on political strategy and the concept of Hindutva. It also resulted in continuous 'otherisation' of Muslims and Christians, the two religious communities the party and its larger organisational network known as Sangh Parivar (the Sangh family, which included the BJP and various

political and cultural affiliates to Rashtriya Swayamsevak Sangh or RSS that provides ideological and cultural support to these organisations) consider alien to the country and its culture.<sup>29</sup>

Hindu Muslim riots in India have witnessed transformation in anger, attitude, the scale of violence, interests, interplay of actors and state role over decades since independence. Since our focus here is police role, we will pick significant incidents, mostly since the 1980s and evaluate the police role. Two significant points would be necessary for our analysis here: i) the political scenario, i.e., the party ruling at both the levels at the time of the riot and reactions and actions on complaint and, ii) was any federal action possible and anything was contemplated or any action taken.

Certain cities of India, particularly in the state of Uttar Pradesh (UP), have what Paul Brass describes as 'institutionalized riot systems', referring to recurring riots on trivial or supposedly vital issue and then psychological preparedness of a life under curfew with restrictions imposed on daily routine life by the civil administration and enforced by the police.<sup>30</sup> Hypersensitivity in religious matters and a view of each other as an antagonistic 'other' as well

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as a rather hostile perception of the police has often elicited avoidable violent reaction leading to riot. This is brought out clearly by a riot in 1980 in Moradabad, a city in UP known for brass metalware and with 45 per cent Muslim population. Muslims gathered in a mosque for *namaz* during Ramadan get upset by a pig straying into the mosque. They complained to the police on duty, who could have averted a catastrophe by taking action, but they refused saying it was not their work. An angry crowd attacked the police with 'kill the police' chant, beat them up, snatch their weapons, burnt one of them alive in police station. A reinforcement arrived next day, but by then a Hindu-Muslim riot broke out in eighteen cities of the state. Obviously, the police and paramilitary forces subsequently acted in a partisan fashion.<sup>31</sup>

Available research on the police role in communal riots brings out two interesting aspects – an active and passive partisan role during the riots as well as partisan implementation of the curfew orders, lax for the Hindus and strict for the Muslims. An interesting account of this facet has been perceptively captured by Ashis Banerjee. Analysing quite a fierce riot in 1986 between the two communities in Allahabad, a major and significant city in Uttar Pradesh

where India's first Prime Minister Jawaharlal Nehru was born and the city is still identified with the contribution of his family to Indian nationalism, he details the preparations for violence amongst the two communities, the attitude of the government in such situations during the 1980s and the partisanship of the police during the riot in imposing the curfew. When Bannerjee spoke to a senior police officer with a good reputation about it, while admitting the necessity of some of the messy drills, admitted partisanship of the police and communal attitude of the state armed unit Provincial Armed Constabulary (PAC). He attributed the communal attitude of the PAC to their background and inadequate education, because of which they shared all the prejudices which were commonly prevalent in society. Referring to 'lenient' to the Hindus and 'inordinately strict' with the Muslims attitude of the PAC, he 'good-humouredly' described it as 'comparative curfew.'<sup>32</sup>

What comes out clearly from the available analyses is intensification of sectarianised attitudes of the political parties across the ideological spectrum (barring the Left parties) and naturally of governments in states as well as at the Centre. Beginning with a positive attitude

towards the Muslim as the largest minority under the leadership of Nehru after independence, the Congress under his daughter Indira Gandhi leaned towards soft Hindutva, his grandson (the elder son of Indira Gandhi) Rajiv Gandhi contributed to the aggravation of the Ram Janma Bhoomi issue in Ayodhya and the party's non-family Prime Minister P.V. Narasimha Rao was accused of snoozing when the Babari mosque was demolished by the Hindutva congregation on 6 December 1992. Nehru himself considered minority communalism less dangerous than majority communalism. In fact, his Deputy Prime Minister and Minister of Home Affairs and he differed on this issue. In any case while focusing on majority communalism, at no stage did he seem tolerant to sectarian attitude of any section of the Indian society. Yet, electoral considerations and nursing of vote banks have over the years allowed communalism to grow, which do not only find manifestations in politics today, but also in the administration and the police.

The police in India have been increasingly used by the power that be on political considerations since the 1960s, its worst manifestation was witnessed in 1978 in a countrywide police agitation, which was followed

by some more in subsequent years.<sup>33</sup>

The 1980s were a turning point, as the Janata Party did not come upto people's expectation and the Congress (I) under Mrs. Indira Gandhi returned back to power with a convincing majority. Since despite harping on the age-old Congress formula on secularism, she attempted to please the Hindu right amongst the voters, some of the most gruesome and massive riots during her five year tenure before her assassination on 31 October, 1984 – Moradabad (UP) 1980, Allahabad (UP). Godhra (Gujarat) 1980-1, Ahmedabad (Gujarat) 1982, Biharsharif (Bihar) 1981, Vadodra (Gujarat) 1981-2, Pune and Solapur (Maharashtra) 1982-3, Hyderabad (Andhra Pradesh) 1983, and Bhiwandi-Bombay (Maharashtra) – witnessed police complicity in inflicting damage on the Muslims. In her speech, for example, on 15 May 1983 at Haridwar she avoided blaming the PAC for its communal role in Moradabad. All through the 1970s and 1980s in all major cases the PAC in UP the police was involved in terrorizing the Muslims by actively participating in violence and arson. Even in Jamshedpur in Bihar (now Jharkhand) in 1979 the Bihar Military Police played a similar role. Obviously, Mrs. Gandhi was also protecting the Congress government in UP and Bihar from attack over their inefficiency.

From the above facts a few questions arise regarding the Indian state, its institutions (including the constitution and legal framework) and democratic processes and social violence, because the violent riots we have discussed above can be tackled only within the democratic framework laid out here. We notice an emerging constitutional anomaly here – despite freedom of religion guaranteed as a fundamental right, supported by equality before law and equal protection of law, the Muslims receive a political hint to understand that the Hindus are in majority. How would the agencies of the state, particularly the police in situations of social violence and collective violence, function when the idea of the state turns majoritarian? In the context of Brass's institutionalized riot system (n. 33 above) arises the nature and efficacy of the institutions of Indian democracy, that have been cynosure of institutional experts across the developing countries. Naturally, federalism that creates an institutional arrangement for dividing and separating political power, too gets affected. This observation here is significant, as move from the 1980s that laid the foundation for the idea of majoritarianism, which the post-independence power duumvirate Nehru and Patel, despite their

considered differences on the threats from majority and minority communalism (unlike Nehru, Patel considered communalism per se as dangerous, whosoever indulged in it), the Indian polity acquires greater federal character, even the party system gets federalised,<sup>34</sup> in the 1990s and in the new millennium.

The politics of the 1990s got considerably influenced by what Rajiv Gandhi did in the wake of the Ram Janma Bhoomi movement of the Vishwa Hindu Parishad (VHP), politically supported by the BJP. He permitted the doors of the disputed shrine in Ayodhya to be unlocked (it was locked since 1949), allowed '*shilanyas*' (foundation laying) and declared on the eve of 1989 general elections that he would bring '*Ram Rajya*', the mythical rule of the Lord Rama, epitomized with good governance. His party still lost the elections. Post-elections, the new National Front coalition government headed by V.P. Singh, Minister of Finance and Defence in Rajiv Gandhi government, was supported by the BJP too. The government lasted just for eleven months. It was witness to the BJP leader L.K. Advani's '*rath yatra*' (pilgrimage on a chariot) and by the time the V.P. Singh government acted against the *yatra*, the country had experienced considerable communal violence. These

developments deserve underlining because they laid the foundation of the politics of the 1990s and beyond, particularly in relation to communal violence and a chain reaction of terrorist attacks and violence against the Muslims. Also, the nature of politics and governments was bound to have an impact on institutions, including the police. It is important to factor in the impact of coalition politics and state based small parties on institutions such as the police. Also, the emerging significance of the Hindutva politics as well as parties such as Shiv Sena with a strong anti-Muslim and anti-minority stance has impacted the role of police, for it creates a dilemma when such parties come to power either in the state or share power at the Centre.

Post-Babri mosque demolition violence deserves a mention in this context. There was in fact a cycle of violence; first a riot by Shiv Sena in December 1992 (soon after the demolition) lasting till January 1993 and then in March there were serial blasts in Mumbai organised by Dubai/Karachi based Indian don Dawood Ibrahim in retaliation. Justice B.N. Shrikrishna Commission Report (1998) on the 1992-93 riot in Mumbai on the one hand indicts Shiv Sena, the sectarian Mumbai/Maharashtra based party thriving on

violence, its leader Bal Thackeray and the police. He points to a 'built-in bias of the police force against Muslims, which became more pronounced with murderous attacks on the Constabulary and officers.' This bias 'manifested in their reluctance to firmly put down incidents of violence, looting and arson which went on unchecked.' 'The response of police to appeals from desperate victims, particularly Muslims, was cynical and utterly indifferent. On occasions, the response was that they were unable to leave the appointed post; on others, the attitude was that one Muslim killed was one Muslim less.'<sup>35</sup>

This is further substantiated by other analyses. For example, contributions in John McGuire, Peter Reeves and Howard Brasted edited volume focusing on a Muslim dominated neighbourhood Behrampada<sup>36</sup> point out that '...communal violence is based on unreal fears, constructed by a regressive political process that must be fought.... The day to day life of communities which had been gradually built up over a long period of time were suddenly torn apart in the wake of Ayodhya. Muslims who had lived alongside Hindus in relative harmony were overnight perceived as enemies, as aliens in their own homeland.' (p. 8). Herein

comes out with some complex factors and explanations that get intertwined – land, commercial interests, political imperatives, and so on. While the people allow their emotions to be manipulated by the politics of otherisation played out, the police become a tool. Interestingly, while the police play the politics of leaders, groups and parties not having electoral mandate, those in power quietly allow this to happen. The Union government makes right noises, appoints a commission (one of the innumerable such commissions since independence), but does not attend to inaction by the state government and the police, which it is constitutionally authorised to do.<sup>37</sup>

### **Caste Violence**

No discussion on social violence in India and the role of the police would be complete without the mention of caste violence. Caste, a birth-based social stratification in India is mainly a characteristic of the Hindu society,<sup>38</sup> but has spilled over amongst the Muslims and Christians too, mainly due to conversions from amongst the Hindus over ages as well as due to the impact of little cultures over larger cultures.<sup>39</sup> Though occupational in a limited sense, it emerged as a structured hierarchised stratification with an

oppressive culture.<sup>40</sup> It was harsher on the lower castes, particularly on the untouchables, who were outside the *varna* system that envisaged the division of society into four *varnas* – Brahmin, Kshatriya, Vaishya and Shudra. Even lower ranked shudra indulging in menial task such as cobblers and so on, too have had to bear the brunt of violence.

However, with independence, democracy, the Constitution, the guarantee of fundamental rights, universal adult suffrage, abolition of untouchability constitutionally and other guarantees such as affirmative action, the caste equation has substantially changed. Analysts have brought out the dynamics of a 'silent revolution' in process in the country through the ballot, giving the marginalised and the 'lower' castes a share in, even a hold on, political power at different levels.<sup>41</sup> Thus the structural violence of the caste system has been accentuated over the years, though the mechanisms of resolution too have emerged.<sup>42</sup>

Violence naturally brings in the police at the scene to manage the conflict. Like in the cases of communal violence, the police have been found wanting in impartiality, efficiency, professionalism and discretion. The social composition of the police has come in for discussion many a times;<sup>43</sup> it has indeed been

changing, but not sufficiently. The police are reported to be avoiding registering of cases on atrocities on Scheduled Castes and Tribes and there is a huge pendency also in investigation of such cases. Obviously, 'grave aspects of atrocity are committed, when police and enforcement machinery not only fail to protect them but commit atrocities themselves.'<sup>44</sup> The just-quoted report of the National Human Rights Commission (NHRC) clearly shows how the police are both complicit and participant in this violence and their role emerges out of the power structures at the local level. This is a clear indication also of the fact that the police in India lack both in professionalism and institutional dimension of their organisational role, which must at all times be answerable to the constitution and the rule of law framework that it creates. Political leanings, commitments and allegiance have affected the police role.

### **Federal Framework, Social Violence and Police**

Our earlier discussion on federal framework has indicated three things clearly: i) the framers of the Constitution of India made a clear choice in making the States responsible for the police and public order; ii) they also entrusted the

Union government the responsibility to protect the States; iii) during the imposition of emergency, the Union government gets a larger role in internal security and police functions; iv) Forty-second and Forty-fourth constitutional amendments brought in a more assertive role for the Union government, if it decided to play such a role. This brings out two considerations for our discussion. One, an objective consideration of security breakdown, or a serious mix of internal and external security threat and, second, political considerations arising out of indiscretion by a State government, or an indiscrete act by the Union government on political consideration. Also, the Union Government has the power to issue directive to a state, which would include a directive on matters relating to police and public order. However, till now a directive has not been issued in a single case, though the Central government has issued advisories in a few cases. In fact, the Union Government has exercised its constitutional power more in political silence, we shall bring this in later.

The recent Supreme Court (SC) judgment<sup>45</sup> on Salwa Judum (SJ),<sup>46</sup> the tribal vigilante group supported by Chhatisgarh government in its counter insurgency operations against the Maoist rebels, has

tremendous significance for federal relations on policing.<sup>47</sup> This widely debated judgment, which has mostly received brickbats for its rhetoric against 'neo-liberalism' than bouquets for its statement on public security in India, is significant in analysing social violence and police. The learned judges of the apex court in the process of striking down the creation and maintenance of the SJ raised several questions on the manner in which the Indian, i.e., both the Union and State governments were dealing with this manner.<sup>48</sup> The main plea before the SC bench was that the creation and deployment of illiterate (or semi-literate), untrained and ill-paid *adivasi* (tribal) youth violated their fundamental right to life and liberty. The Chhatisgarh government countered the complaint by saying that it was a voluntary movement that the government was supporting; the movement has been given legal sanction by appointing the members of the SJ as Special Police Officers (SPO) under the Chhatisgarh Police Act (CPA) 2007; the youth were given six weeks of training in arms before being deployed; they were paid ₹1,500 as monthly salary/stipend.<sup>49</sup> Both the governments also stressed the utility of the SJ as a 'force multiplier' and an 'auxiliary force', all local *adivasis* familiar with the terrain in the state, as a great help to the security forces

in their counter insurgency operations against the Maoists.<sup>50</sup>

The Government of India's (GOI) affidavit before the SC virtually supported the Chhatisgarh government, though with a safe distance. Justifying the appointment of the SPO under the Indian Police Act 1861 and the CPA 2007. It said that the appointment was legally made in order to offset the deficit of the police force and the state governments were free to appoint SPOs in accordance with the law as per their needs. The role of the GOI was 'limited to the approval of upper limit of the number of SPOs for each state for the purpose of reimbursement of the honourarium under the SRE (Security Rated Expenditure) scheme and that the "appointment, training, deployment, role and responsibility' of the SPOs are determined by the State Governments concerned. The Union of India categorically states that the State Governments 'may appoint SPOs in accordance with law irrespective of Government of India, Ministry of Home Affairs approval.' These explanations did not satisfy the SC, which faulted both the Union and state governments on procedures. Important argument raised by the apex court was that in order to persist with this scheme despite its shortcomings, the governments

ignored the safety of the SJ members (or the SPOs) and with such an ill-trained and unorganised militia, jeopardised the security of the citizens.<sup>51</sup> Despite police and public order being state subjects, the court was not convinced about the Union Government's responsibility in the matter. It reminded the Union Government of its responsibility under Article 355 of the Constitution of India to protect the states.<sup>52</sup> Obviously, in India's federal context the SC gave a discreet hint that in such a situation the Union Government can exercise its federal power to issue directives for public security, rather than go with a state.

One significant point that emerges in this debate is that the concern here is the use of police powers of the state, which in a democracy is significant for a discreet use of legitimised violence under the umbrella of the rule of law. In this case, we are linking the right to 'self-defence' in a situation in which the state agencies designated for the purpose have proved unequal to challenge with the police powers of the state. The resulting anomalies and distortions have been discussed from time to time and the judgment too highlights this. The honourable judges have stressed that the SJ was not equipped to use legitimate, controlled, coercive violence that the Indian state is supposed to use in this situation.

Another significant point is whether this militia was constituted with consent or coercion. This is extremely significant to determine whether the Indian state had judiciously passed on its responsibility to a 'citizens' militia'. Since the truth is somewhere in the middle, the apprehensions expressed in the judgment were not misplaced.

Since this significant statement from the Supreme Court of India stresses initiatives based on discretion on the part of the Union Government to nudge, even direct, a state government in cases of a possible breach of security or public order, it is possible to extend the arguments in other cases of social violence discussed earlier in this essay. Indeed, it is possible to discuss case by case where and how the Union Government was too cautious, if not partisan and/or remiss, to use its constitutional responsibility to direct a state government to be more effective in dealing with the violent situation without disturbing the federal balance the Constitution of India has designed. Of course, the question of police reforms brings a wide gulf in the Union Government's unfulfilled responsibility, also because the funds for police modernization are specially allocated by it. Therefore we will focus on two major events separated by a decade,

but both recognized as turning points for India's secular image – demolition of Babri Masjid in Ayodhya and 2002 Gujarat riots.

In December 1992, there was a huge congregation of volunteers (*karsevak*) in the temple town of Ayodhya in central Uttar Pradesh.<sup>53</sup> Accepted as the birthplace of Lord Ram and the capital of his kingdom, it is considered holy for the Hindus. In 1528, Mughal emperor Babar's general Mir Baqi constructed a mosque, known as Babari Masjid, at the site that was believed to be the Lord's birth place. After independence the dispute ensued and in 1949 the site was kept locked under court orders. A complex of developments ensued following Ram Janma Bhoomi (Lord Ram's birthplace) movement started by Vishwa Hindu Parishad in early 1980s. The Hindu nationalist party Bharatiya Janata Party (BJP), which had a disastrous outing in the 1984 general elections (only 2 seats in the Lok Sabha), joined in to provide political support in mid-1980s. December 1992 congregation was a part of the developments. The BJP by then was in power in Uttar Pradesh. On December 6, 1992 the Hindu zealots demolished Babari Masjid, with the UP Chief Minister Kalyan Singh, who had instructed the police not to intervene, and all the

senior BJP leaders watching. BJP President Lal Krishna Advani, who later (1998-2004) was the Deputy Prime Minister and Home Minister of India, too was there. Prime Minister P.V. Narasimha Rao was reported to be in his afternoon siesta when this happened. The Central Reserve Police Force had a battalion stationed at an operational distance waiting for orders. The Union Government at the level of the Prime Minister decided not to intervene. The consequences were disastrous.

### **Conclusion**

The modern Indian police and the criminal justice system are the legacies of the British colonial rule. Significantly, aside from the two central cadres – the Indian Civil Service (ICS) and the Imperial Police (IP) – the colonial rule developed the police province wise as their rule spread across the country. They did not touch the princely states. Indeed, the legal framework of the criminal justice system developed after the revolt of 1857 – the Indian Police Act, 1861, the Criminal Procedure Code, 1861, the Indian Penal Code, 1860 and the Indian Evidence Act, 1972 – and it was applicable in the entire British India. But the police cadres were organised province wise. Thus, the development of the Indian police was 'federal' and the structure, except

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the merger of the cadres of the Princely states in respective states and the central cadre of the IP that was renamed the Indian Police Service (IPS), the police in India developed federally. However, the colonial repressive organisational culture of the police continued and there has been little change in that.

Despite the provincial organisation, the police also imbibed a sectarian psychology, which was further strengthened by the partition and the police, particularly in the north India, behaved with partisanship while dealing with communal riots sparked by the partition.<sup>54</sup> This was carried over and was strengthened further due to the compulsions of Indian politics over decades since independence. Along with the repressive, if not violent, organisational culture that continued after 15 August 1947, this reflected

in all the cases of sectarian, caste and communal violence in the country.

The Indian constitution, despite its strong centre bias, laid out a federal structure and assigned the police to the states. However, with the 42<sup>nd</sup> Amendment to the constitution brought during the emergency in 1976, the Union government also got a role in the law and order administration. But the bias with the entry in the List 1 of the Seventh Schedule, did not necessarily witness the Union government intervening even in serious cases of communal or collective violence. The cases such as the Babari Masjid demolition on 6 December 1992 and the Gujarat riots 2002 needed the intervention of the Union government, which did not come. The inaction of the Union government in each one of them, in which the constitutional instruments were not used despite alleged partisan uses of the police, were due to different political calculations.

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### Endnotes

1. *The Times of India*, August 8, 2011, p. 16.
2. Sir Leslie George Scarman found unquestionable evidence that the police used disproportionate and indiscriminate powers of 'stop and search' against black people. The use of arbitrary roadblocks, the stopping and searching of pedestrians and mass detention (943 stops, 118 arrests and 75

charges) were critically examined by the report. The police operations were without any consultation with the community or the home-beat officers and liaison arrangements between police, community and local authority had collapsed before the riots. Further, the local community mistrusted the police and their methods of policing. Scarman recommended changes in training and law enforcement, and the recruitment of more ethnic minorities into the police force. According to the report 'institutional racism' did not exist and positive discrimination to tackle racial disadvantage was 'a price worth paying. The report and its recommendations have significant lessons for the Indian context. Sir Leslie George Scarman, *The Scarman Report: The Brixton Disorders, 10-12 April 1981 : Report of an Inquiry*, Penguin, 1986.

3. Martin Innes, 'Corrupt and Confused?', *Prospect*, 24 August 2011, <http://www.prospectmagazine.co.uk/2011/08/corrupt-and-confused/> (Accessed on September 5, 2011)
4. Plural social compositions have invited different concepts for public policy on social coexistence. While French '*laïcité*' completely separates religion and state and through its republican ideal insists on equal recognition of and treatment to its citizens irrespective of their religion, which is not recognised in public sphere, other concepts such as 'melting pot' and salad bowl look for 'integrative/assimilative' and 'coexistence-with-distinctive identity' models. Multiculturalism, on the other hand, normatively implies 'a positive endorsement, even celebration, of communal diversity, typically based on either the right of different groups to respect and recognition, or to the alleged benefits to the larger society of moral and cultural diversity.' Andrew Heywood, *Political Ideologies*, Fourth Edition, Palgrave Macmillan, 2007, p. 313. To Bhikhu Parekh multiculturalism 'is about the proper terms of relationship between different cultural communities.' He, thus, emphasizes the standards by which the communities resolve their differences. Bhikhu C. Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Harvard University Press, 2002, p. 13. Canada is only country in the world that has reinforced multiculturalism as a policy since 1970s and 1980s. Its 1982 'Charter of Rights and Freedom' (section 27) and 'Canadian Multiculturalism Act' (1988) emphasize social relevance of immigration and work for the preservation and enhancement of the multicultural heritage of Canadians.

The Indian Constitution declares the republic to be secular in the Preamble and has elaborate protection of minority rights in the chapter on Fundamental Rights. However, despite using words like 'national integration', the Indian state does not interfere in religious and cultural affairs of communities.

5. Brass, Paul R. 2003 *The Production of Hindu-Muslim Violence in Contemporary India* Seattle: University of Washington Press. Van der Veer, Peter. 1994. *Religious Nationalism: Hindus and Muslims in India* University of California Press, 1994. Wilkinson, Stephen I. 2005. *Religious Politics and Communal Violence*. New Delhi: Oxford University Press.
6. (on Police and Social Violence) Ashish Banerjee, *Comparative Policing*.
7. Ajay K. Mehra, 'Police Reforms in India: Imperatives, Discourse and the Reality', in Ajay K. Mehra and René Lévy, *The Police, State and Society: Perspectives from India and France*, Delhi/Cheennai/Chandigarh: Pearson Longman, 2011, pp. 263-86.
8. K.C. Wheare, *Federal Government*, Oxford: Oxford University Press; 4th Edition, 1970.
9. See *Constitution of India*, VII Schedule, List II (State List).
10. Granville Austin, *Working a Democratic Constitution: The Indian Experience*, New Delhi: Oxford University Press, 1999, ch. 2.
11. The texts in parenthesis in both the entries were inserted by the 42nd Amendment.
12. A reference to 42nd (1976) and 44th (1978) Amendments is imperative here; the latter attempted to undo some of the undemocratic parts introduced by the former. In attempting a post facto justification of the national emergency declared by Indira Gandhi in June 1975, the former added 'internal disturbance', thereby creating a possibility of a future 'abuse' of the provision. The latter substituted 'internal disturbance' with 'armed rebellion', obviously to check any future misuse. In addition, it also added in explanation presidential 'satisfaction' as a condition. The 44th Amendment also provided that 'The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting

of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

13. It says, 'It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.
14. Article 365 says: 'Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

The essence of the rule embodied in Article 257(1) is that, in case of conflict, the valid exercise of Union executive power must take priority over the valid exercise of State executive power. Indeed, it is an 'executive' facet of the principle of Union Supremacy.

16. Ibid, p. 195.
17. <http://interstatecouncil.nic.in/volum5.pdf>
18. Ashis Nandy, 'The Politics of Secularism and the Recovery of Religious Tolerance', in Veena Das (ed.), *Mirrors of Violence: Communities, Riots and Survivors in South Asia*, 1990, pp. 69–93, Delhi: Oxford University Press and Ashis Nandy and Dhirubhai L. Sheth (eds.), *The Multiverse of Democracy*. New Delhi: Sage. 1996.
19. Satish Saberwal, 'On the Diversity of Ruling Traditions', in Sudipta Kaviraj (ed.), *Politics in India*, Delhi : Oxford University Press , 1997 , pp. 124-40.
20. T. N. Madan, 'Secularism in Its Place', in *Politics in India*, Sudipta Kaviraj (ed.), *Politics in India*, Delhi: Oxford University Press, 1997, pp. 342–48.
21. For how India's plural mosaic and competitive politics leads to community conflicts how it complicates the role of the state in India, see Amrita Basu and Atul Kohli (eds.), *Community Conflicts and the State in India*, New Delhi : OUP, 1998.

22. E. Bittner, *Aspects of Police Work*, Boston: Northeastern University Press, 1990.

23. Bayley has made these observations about the Indian police in his landmark study, highlighting growing politicization of the police in India. Significantly, this was barely two decades after India's independence. See David H. Bayley, *Police and Political Development in India*, Princeton NJ: Princeton University Press, 1969.

24. Jeffrey Ian Ross, *Making News of Police Violence: A Comparative Study of Toronto and New York City*, Westport: Praeger Publisher, 2000, p. 9.

25. We are referring here to a qualitative change that transcends police role from one that exercises political control on behalf of an alien and non-democratic rule to an organisation that is a repository of public trust in a democratic context and exercises and enforces social control in accordance with the rule of law. In the latter situation the police can function well only in a condition of public cooperation, which is dependent on their image, performance, behaviour and community relations. On this count the Indian police began on a huge social deficit and defaulted too.

The analysis by Bradford and Jackson of the London Police shows that working in the same social situation could give the police different image from location to location. This buttresses the argument about a serious task ahead of the Indian police on 15 August 1947. Ben Bradford and Jonathan Jackson, 'Cooperating With the Police: Social Control and the Reproduction of Police Legitimacy', Working Paper Series (July 16, 2010), Available at SSRN <http://ssrn.com/abstract=1640958>.

26. In an excellent analysis Roberta Senechal de la Roche points out that a unilateral and nongovernmental collective violence operating as social control 'appears in four major forms – lynching, rioting, vigilantism, and terrorism – each distinguished by its system of liability (individual or collective) and degree of organization (higher or lower).' She offers ten propositions that predict and explain the likelihood and severity of collective violence in general and four forms of collective violence in particular. Roberta Senechal de la Roche, 'Collective Violence as Social Control', *Sociological Forum*, 11 (1), March 1996, pp. 97-128.

27. Omar Khalidi, *Khaki and the Ethnic Violence in India: Army, Police and Paramilitary Forces in India*, New Delhi: Three Essays Collective, 2003.
28. For a comprehensive discussion on police reforms in India, see Ajay K. Mehra, 'Police Reforms in India: Imperatives, Discourse and Reality', in Ajay K. Mehra and René Lévy (eds.), *The Police, State and Society: Perspectives from India and France*, Delhi: Pearson, 2011, pp. 263-86.
29. I use 'otherisation' as a process that becomes part of a political (even societal) strategy to consolidate an identity by projecting a (or a few) particular identities as different, in the sense of being juxtaposed to (or even being in a permanent state of animus against) the dominant identity. The process of exclusion inherent in this course of action, continuously points out commonalities in the dominant identity, underplaying differences as cultural phenomenon, and highlights, even invent, differences in the 'other' communities, completely ignoring common prosaic similarities. The politics of Hindutva is based on such a process of 'otherisation' against minorities such as Muslims and Christians in India.
30. Paul Brass, 'Collective Violence, Human Rights, and the Police of Curfew', in *Journal of Human Rights*, 5, 2006, pp. 323-340.
31. George J. Bryjak, 'Collective Violence in India', *Asian Affairs*, 13 (2), Summer 1986, p. 44.
32. Ashish Banerjee, "'Comparative Curfew": Changing Dimension of Communal Politics in India', in Veena Das (ed.), *Mirrors of Violence: Communities, Riots and Survivors in South Asia*, Delhi: Oxford University Press, 1990, pp. 37-68. See particularly p. 63 for 'comparative curfew' remark.
33. See my *Police in Changing India*, New Delhi: Usha, 1985. 'What Ails Indian Police?', *The Indian Express*, July 3, 1978; 'Fair Pay, Yes; Agitation Never: A Sane Approach to Police Problems', *The Hindustan Times*, June 17, 1979; *Overseas Hindustan Times*, June 28, 1979; 'Policemen Fight for their Rights in Tripura', *The Independent*, 17.11.1992; 'Chinks in the Armour', *The Hindu*, January 10, 2001; 'Police Accountability', *The Hindu*, May 28, 2001; 'An Ambivalent Police', *Mainstream*, October 13, 2001.
34. See Ajay K. Mehra, D.D. Khanna and Gert W. Kueck (eds.), *Parties and Party Systems*, New Delhi: Sage, 2003, particularly the chapter by Balveer Arora.

35. Praveen Swami, 'Shrikrishna Commission Report: A Searing Indictment', *Frontline*, 15 (18), August 29 - September 11, 1998.
36. Madhushree Dutta, a documentary film maker and social activist made a film titled 'I Live in Behrampada', after 1992 Mumbai riots on the Muslim dominated (10 acres, 70,000 population) slum settlement in south-west Mumbai parallel to the railway track. Behrampada is a large slum settlement with land prices rising and land sharks in league with politicians, officials and the police vying for piece of the pie; 'communal violence based on unreal fears' (John MacGurie and Peter Reeves, 'From Ayodhya to Behrampada: The BJP and Hindutva – An Interpretation', in John McGuire, Peter Reeves and Howard Brasted (eds.), *Politics of Violence: From Ayodhya to Behrampada*, New Delhi: Sage, 1996, p. 8), and is an effective instrument to scare and drive away the Muslim 'zari' workers. This self-explanatory documentary can be watched on [http://www.youtube.com/watch?v=iwJkztt\\_0k](http://www.youtube.com/watch?v=iwJkztt_0k) (accessed on 28 October 2011).
37. See the essays in John McGuire, Peter Reeves and Howard Brasted (eds.), *Politics of Violence: From Ayodhya to Behrampada*, New Delhi: Sage, 1996. Particularly essays by  
Flavia Agnes, 'Behrampada: The Busti that did not Yield', pp. 49-69; Jim Masselos, 'The Bombay Riots of January 1993: The Politics of Urban Conflagration', pp. 111-26; Lance Brennan, 'The State and Communal Violence in UP' pp.127-41.
38. See J.H. Hutton, *Caste in India*, Oxford: Oxford University Press, 1963; V. Ketkar, *History of Caste in India*, Delhi: Low Price Publication, 1909, reprinted in 1990.
39. Some of the representative studies that discuss the dynamics of caste amongst Muslims and Christians are given below: Imtiaz Ahmad (ed). *Caste and Social Stratification among Muslims in India*. New Delhi: Manohar, 1978. James Massey,  
*Dalits in India: Religion as a Source of Bondage or Liberation with Special Reference to Christians*, New Delhi: Manohar, 1995. Satish Deshpande (with the assistance of Geetika Bapna), *Dalits in the Muslim and Christian Communities: A Status Report on Current Social Scientific Knowledge*, Prepared for the National Commission for Minorities, Government of India, January, 2008. <http://ncm.nic.in/pdf/report%20dalit%20%20reservation.pdf>. Prakash Louis, *Caste-based Discrimination and Atrocities on Dalit*

*Christians and the Need for Reservations*, Indian Institute of Dalit Studies, Working Paper Series, Vol. II, No. 4, 2007. <http://dalitstudies.org.in/download/wp/0704.pdf>.

40. See André Béteille. *Caste, Class, and Power: Changing Patterns of Stratification in a Tanjore Village*. Berkeley and Los Angeles: University of California Press, 1965.

A detailed study of caste in relation to social power in a South Indian village, this classical study by a pioneer of Indian sociology shows both the linkage between caste and class as well as how it impacts power. Organisation, production and distribution of power. Despite changes over half a century, the study has not lost relevance. The differences are both qualitative and quantitative.

41. *Christophe Jaffrelot*, India's Silent Revolution: The Rise of the Lower Castes in North India, *New York: Columbia University Press, 2003*; *Sudha Pai*, Political process in Uttar Pradesh: identity, economic reforms, and governance, *New Delhi: Pearson Longman, 2007*.

42. For a discussion on caste conflict in India see, Ajay K. Mehra, 'Caste Conflict in India', in K.M. de Silve (ed.), *Conflict and Violence in South Asia: Bangladesh, India, Pakistan and Sri Lanka*, Kandy, Sri Lanka: International Centre for Ethnic Studies in association with The Netherlands Institute of International Relations, Clingendael, The Hague, The Netherlands, pp. pp. 131-178.

43. Ajay K. Mehra, 'What Ails Indian Police', *The Indian Express*, 1978.

44. K.B. Saxena, *Report on the Prevention and Atrocities Against the Scheduled Castes*, New Delhi: National Human Rights Commission, <http://nhrc.nic.in/Publications/reportKBSaxena.pdf> (Accessed on November 2, 2011).

45. The judgment can be seen at: <http://supremecourtindia.nic.in/outtoday/wc25007.pdf><sup>46</sup> Salwa Judum means purification or peace march in the local tribal dialect. Its the beginnings are unclear. According to one report, SJ began in June 2005 when the tribals of nearly 25 villages in Bijapur police district held a spontaneous anti-Naxal rally at Mathwada weekly market, declining the Naxal diktat to pay to them more rent and enhanced

wages to labour for Tendu leaf picking, This is when Mahendra Karma, the then Congress MLA from Dantewada, took over as the leader and subsequently the State Government, and from behind-the-scenes the Union Government, stepped in to organise them further into an armed militia, if not a vigilante army under the Indian Police Act 1861 and Chhatisgarh Police Act 2007. This was later mixed up with the shifting of the tribals from villages in the areas of Maoist influence into special camps and the youths from these camps, both boys and girls, were enrolled into it.

47. See my 'Supreme Court 's "No" to Salwa Judum: Significance of the Judgment', Uday India, 9 July 2011; 'Supreme Court, Naxalims and Salwa Judum: The Judgment Beyond the "Neo-Liberal" Rhetoric', Mainstream, XLIX (34), 13 August 2011 (Independence Day Special) and 'Public Security and Federalism', Geopolitics (New Delhi), September 2011.

48. The bench questioned the pursuing of 'policies whereby guns are distributed amongst barely literate youth amongst the poor to control the dissatisfaction in such segments of the population would tantamount to sowing of suicide pills that could divide and destroy society.

49. For a discussion on the phenomenon of SPO, its evolution and the legal sanction for it under the Police Acts see my. 'Supreme Court, Naxalims and Salwa Judum: The Judgment Beyond the "Neo-Liberal" Rhetoric', (ref. fn 59) and 'Special Policing: Implications of the Supreme Court Ban Order', *The Statesman*, 18 August 2011.

50. For a detailed analysis of the Maoist movement see Ajay K. Mehra, 'Old Revolution, New Context: Maosim in a Globalizing India', Jorge Heine and Ramesh Thakur (eds.), *The Dark Side of Globalization: The Role and Regulation of Civil and Uncivil Society*, Tokya: United Nations University Press, 2011. (This research paper was extensively quoted in the Supreme Court of India 's judgment referred above).

51. See the judgment, <http://supremecourtfindia.nic.in/outtoday/wc25007.pdf>, particularly its section III pp. 20-29.

52. Article 355. Duty of the Union to protect States against external aggression and internal disturbance: It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure

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that the government of every State is carried on in accordance with the provisions of this Constitution.

53. See for details: <http://en.wikipedia.org/wiki/Ayodhya>.

54. Khalidi, 2003, op. cit.