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INQUIRIES: AN INSTRUMENT BLEEDING TO DEATH **~ Vipul Dixit**

ABSTRACT

Inquiries can serve as an important instrument in dealing with the misconduct of the higher echelons of the society but the delays in tabling the information in the Parliament and lack of action on the recommendation given by the Commissions raises some serious questions about the functioning of these commissions. In light of these issues, it becomes necessary to analyse the nature of these Inquiries and the viability of spending on them from the public exchequer. The paper discusses the structural-functional aspect of Inquiry Commissions and points out the death of the instrument due to the myriad challenges faced by the Inquiry Commission in India.

KEYWORDS: Inquiry, Commission, Public, Constitution,

“The total expenditure on the Commission of Inquiry appointed so far, must be well in excess of Rs. 300 crores (on Librahan Commission itself, a whopping Rs. 7.2 Crores had been spent till August 2007) could it not have been spent for a worthwhile purpose?”

(- Madhav Godbole, *The Judiciary and Governance*, pp.355)

“...The glaring publicity which attaches to such inquiries both its strength and weakness... Such publicity exposes the wrongdoer to the public eye and there lies its strength... But such publicity results in unmerited mudslinging on some innocent persons who are denied the safeguards of the ordinary judicial procedure to vindicate themselves and here lies its fatal weakness [ii]”

(Viscount Kilmuir J. in English case popularly known as the *Water case*.)

INTRODUCTION

Commission of Inquiry Act, of 1952 owes its genesis to the colonial English law titled as the Tribunals of Inquiry Act, of 1921. Initially, all such inquiries were held by the committee of Parliament of Great Britain. Indian and English statutes are almost alike in their nature except one major point of difference. The English Tribunal (Commission) of Inquiry gives the Tribunal the power to start a contempt proceeding within the term of reference that defines its jurisdiction whereas such power had not been provided to the commission in India. Inquiries in India can only be commissioned by the “appropriate government” by an executive order or by a resolution of the house/legislature. The appropriate government, thus mentioned strictly means the Central/Union as well as the State Government and the subject matter on which such commission can investigate depends on the enlisted entries in the Union, State and Concurrent List of the 7th Schedule of the Constitution of India. While the Union government can set up a Commission of Inquiry over the subject matter as mentioned in any of the entries; the State (federal or provincial) government can do so for both List II (State List) & List III (Concurrent List). An important exception to the scheme of the Indian Act, is sec 5AA, the West Bengal Act, 49 of 1980 where, unlike the central legislation, it empowers the commission to try certain offences summarily adding considerable weight to the judicial proceedings and the findings.

Section 3 of the Act specifically confers power of civil court in regard to the ‘power to summon and enforcing attendance of the witnesses and examining on oath’.

The initial traditions set up during the early years of Independence, regarding acting up to findings/recommendations of such inquiries cannot be regarded as negative. With reference to the Mundhra Inquiry [iv], It has to be appreciated that T.T. Krishnamachari had to resign from the coveted position while the Congress was the only electoral force in the Country.

In Madhav Godbole, *The Judiciary and Governance in India*, 2009, Rupa & Co., New Delhi, (Chapter 5: Commission of Inquiry: A blunted Instrument pp. 331-399), the author deals extensively with the nature and scope of the Commission of Inquiry as envisaged within the Commission of Inquiry Act, 1952 (referred to herein as the Act) and analyses the fate of such inquiries in the history of Independent and Modern India. It is largely based on the English law- Tribunal of Inquiry (Evidence) Act, 1921; the Canadian statute- The Inquiry Act, 1927 and the Sri Lankan Commission of Enquiry Act, 1948.

Commission	Issues
Justice M.C. Chagla Commission- Mundhra Inquiry, 1959	<ul style="list-style-type: none"> • First of its kind Commission • Finance Minister had to resign due to public pressure
Justice Shah Commission of Inquiry on emergency excesses, 1977	<ul style="list-style-type: none"> • Non-cooperation by the ministers under the pretext of being bound by the oath of secrecy • Poor subsequent follow up by the concerned central and state machinery • Report dropped from circulation since Congress (I) came to power in 1979 yet again.
Sarkaria Commission on DMK excesses in TN, 1974	<ul style="list-style-type: none"> • Formed in 1974 but Submitted in 1978 • Sarkaria Commission observed the evidences are very convincing about the politico-criminal excesses • Central Govt. didn't approve the recommendations

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<p>Justice Dani Commission on death of 113 Gowari tribals, Nagpur, 1994</p>	<ul style="list-style-type: none"> • Fined by State government • Death of 113 Gowari tribals in a temple stampede • Extensions upto 4 years and submitted the report in 1998
<p>Justice K.K. Mathew on the murder of LN Mishra, 1976</p>	<ul style="list-style-type: none"> • Took more than 2 years for submitting the report • The trial court took up the action and the trial concluded in 40 years
<p>Justice Liberhan Commission on Demolition of Babri Mosque, 1992</p>	<ul style="list-style-type: none"> • Took nearly 20 years in submitting the report • The Govt. has spent more than Rs. 7 Crores till Aug, 2007
<p>Justice Kurdukar Commission on Enron Power Project, 2001</p>	<ul style="list-style-type: none"> • Untimely winding up of the Commission • SC stayed its proceedings
<p>Justice Sawant Commission on Allegation against Ministers in Maharashtra govt. 2003</p>	<p style="text-align: center;">Recommendation frustrated as the State govt. established another committee/ a task force in 2005 by senior bureaucrat in order to establish a prima facie case against the ministers</p>
<p>Commissions of Inquiry on Anti-Sikh Riots in Delhi (since 1984)</p>	<ul style="list-style-type: none"> • Multiple Commissions-Justice Ranganath Mishra Committee to Justice G.T. Nanavati Committee (submitted in 2005) • Eye witness accounts have been disregarded no action was ever done against any politician connected thereto
<p>Commission on Tehelka expose, 2001</p>	<ul style="list-style-type: none"> • Change of judges from Justice Venkataswami to Justice Phukan • Govt. disregarded the functioning of Phukan's enquiry and handed over all of the 15 cases to CBI • Wound up the commission in Oct. 2004

In common parlance, it is also referred to as the judicial commission of Inquiry. The Act enables a public inquiry to be held in 'any definite matter of public importance' generally held in an open and transparent manner- without the undue restriction of procedural laws of the land- as a matter of fact, it is and had been held as a 'purely fact-finding and not as an adjudicatory body'. Enquiry under the Act does not require a plaintiff or the defendant as there is no lis (lawsuit) and has no power to pass an order which can be forced proprio vigore (in its own strength).

So, in a nutshell, it merely:

- Investigate and record the findings
- Inquisitorial rather than accusatory
- Make recommendations based on such investigations
- Strictly has no power to penalise anyone directly- besides recommending the same to the appropriate authority- the one which commissions/appoints it.

So, in the strictest of its sense, investigation under a Commission of enquiry is quite different from a trial at a court, as the standard of proof on which reliance is made differs in principle. All things said, the most concerning feature of the commission's functioning, as learnt during the democratic years of Indian governance, had been that of its operations rather than its findings. The Indian Government has failed to materialise on the investigations of Judicial Commissions on a number of occasions. There are delays in submitting the final report and failure to make it public even when the commission itself has not (expressly or impliedly) said so. The delays in submitting and thereby presenting it in the legislature whether Parliament or the Assemblies can be attributed to the political urgency in which the commissions are born. So, sudden prudence warrants a commission to keep the public outbursts in checks and balances.

As a matter of fact and judicial understanding, it has to be presumed that the legislators made a conscious choice in devising such an instrument which is not as powerful as the English or Canadian inquiry Commissions (it is not absolutely powerless as many may contend). It could even be suggested that our legislators devised it while simultaneously learning their lessons from the English and Canadian experiences.

It is often said that the 'life of the law is not logic but experience', and so far as the Indian experience goes, it commands the change of basket as there are too many rotten eggs in it! The tabulated information is regarding the Commission of Inquiry that had been established since the independence of India and all its inputs had been copiously derived from Godbole's work. There had been umpteen numbers of Commissions formed either on the behest of the Union or of the State government and hence the table is not exhaustive.

CONCLUSION

For the sake of brevity, it is being stated that in the present state of affairs the sanctity of the commission is being challenged which does not make the chairperson personally liable, but the failure to comply with the scheduled period of enquiry, submission and tabling it on the floor of the legislature does raise some serious concerns on the efficacy of having them in the statute books. Another reason why we can't afford to brush it aside is that these commissions are chaired by Hon'ble justices of the higher judiciary and in each of the event of non-addressing of the issue concerned, it raise, my necessary implications, a serious doubts over the impartiality of our courtrooms as well. It has a serious implication on the constitutionally mandated independence of the judiciary. The two arguments mentioned at the beginning of the monograph are actually the two strands of the long debate that range over the Commission of Inquiry or judicial commission as such. Author went to the extreme end of saying that "...the Commission of Inquiry" had been used "as a political weapon wielded by any power, as it suit its narrow political aim...[v]" A.G. Noorani argues against the findings of Jain's Commission (investigating assassination of Rajiv Gandhi), on the basis of the flawed conclusions that it drew from the deposition. While passionately refuting the finding, he remained cautious to not assault the institution called the Commission of Inquiry.[vi] He quoted Justice Y.V. Chandrachud dealing with the sudden death of Deen Dayal Upadhyaya- "...I could not reject the evidence on the grounds of inadmissibility under the Evidence Act but that does not mean that I must accept it as good evidence." Noorani asserts that to seek refuge in suspicion is unjust.

J.B. Monterio [vii], questioned the power of the executive to define the terms of reference (ToR) of such Commission of Inquiries, in the backdrop of the

investigations by Das Commission over the corruption charges on Sardar Pratap Singh Kairon, the ex-CM of Punjab.

THE CHALLENGES BEFORE THE COMMISSIONS

- Terms of reference or ToR as defined by the government officials. A poorly defined ToR can thus allow the executive to dodge the uncomfortable questions. So such misuse of power tantamount to frustrating the whole exercise ab initio; (But terms of reference being decided on an inquiry-by-inquiry allows for the commission to receive the resources and powers it needs according to the matter at hand. The Terms of Reference also have to be agreed to be mandate enough by both houses, the process being in place to ensure that the mandate is appropriate and powerful)
- Follow up of action taken in compliance/recommendations of the commissions is essential. The ATR (Action Taken Report) reports to be fixed by a strict scheduling;
- Monitoring such follow ups by the Standing Committees of Parliament of State Legislature: the amendment of 1986 to the Act, in the backdrop of allegations of corruptions to the highest office over defence deals, mandating the government to withhold Commission's report in the 'interest of integrity, sovereignty, public order and the likes, has to do away with, as it is too sweeping and hence has to be bought within the realms of the fundamental freedom to information as enshrined in the Constitution and there by laid out systematically through the Right to Information Act, 2005
- The financial implications of forming the continuation of such commission has to be taken into account prior to their investigation.

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