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## By the Courts, For the People

**Rajindar Sachar**

**If a climate is created against judicial activism, it may lead to loss of faith in law as instrument of social change.**

The threat held out to the judiciary by some politicians because of the interim stay of the OBC quota shows a lack of maturity and understanding of the role of the judiciary in our constitutional set up. The charge that courts do not understand the sensitivity of the matters affecting the masses is a bogey politicians put forward to conceal their own ineptness.

May one query the politician as to why the higher education quota was not included while introducing reservations in government jobs for OBCs in 1990?

In 1951 the SC held that reservations could also be given in promotions but in 1992 it took the contrary view. Parliament amended the Constitution to facilitate reservations in promotions. The court upheld the amendment; thereby accepting that this was a policy matter and therefore respected the mandate of Parliament.

Again when the Supreme Court held illegal the accelerated seniority given to Scheduled Castes, Parliament amended the law to reverse that view. The challenge to that amendment was negated by the court.

Again the SC conceded to Parliament the exclusive right to expel MPs for any alleged misbehaviour within the precincts of Parliament.

But now, suddenly, when the SC stayed as an interim measure the implementation of the OBC quota for this session, the court has been lampooned as indulging in adventurist incursion. So much was the gimmickry and arrogance of the executive that it was not willing to exclude the creamy layer segment even for this academic year.

Is it that the OBC leadership is in the hands of the creamy layer, and hence a stand that might have found acceptance by the court and helped non-creamy layer poor OBCs was not even considered, even when urged by non-OBC parties from within the front?

Politicians seem to think that the courts ought to give all Parliament's decisions an automatic seal of approval. But judges cannot keep silent in face of illegality.

French philosopher Montesquieu said that "when the legislative and executive powers are united in the same persons or body, there can be no liberty because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to enforce them in a tyrannical manner".

Judicial activism has always invited controversy from the executive, but at the same time it has invited kudos from the public. But the judiciary also cannot run riot.

But then as Chief Justice Rehnquist of US (...on page 9)

# "Institutionalisation of Torture and Post-Conflict Situations: The Experience of Punjab"

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## India, Police and the People

• India has inherited the legacy of Police Act of 1861 in letter and spirit which was a legal instrument meant to facilitate and legitimize oppression on the people of India by the colonial power. Since then, the relationship between the police and the public has been a difficult one.

• Even after 60 years of independence the Police Act has largely remained unchanged under the influence of corrupt, inefficient insensitive and power hungry politicians, lawmakers and bureaucracy enabling them to use police as an oppressive instrument against opponents and common people, pointing to limitations of Indian democracy which has failed to develop a healthy police public relationship.

• There is a widespread public mistrust of the police as police is frequently partisan in their functioning, corrupt, favouring the politically and economically powerful, harassing innocent, weak, deprived, poor, illiterate and socially backward section of the society. The post-colonial Indian police have miserably failed to the demands of a growing democracy and to progressively increasing public awareness and consciousness of human and civil rights.

• A mixture of apathy, lack of initiative and disregard for considered public welfare and opinion has in fact institutionalised police brutalities, torture, high handedness, human rights violations and custodial deaths which generally fail to evoke any response from the State.

**Experience of Human Rights violation in Punjab can be discussed in relation to four eras:**

## • *Post Independence Era*

### • *Pre Militancy Era*

### • *Militancy Era*

### • *Post Militancy Era*

**Post Independence Era** witnessed very less human rights violations, police torture and custodial deaths because of largely honest, dedicated and committed breed of politicians who them selves have faced British brutalities and bureaucracy which followed the rules.

In **Pre Militancy Era**, torture and custodial violence gradually increased in the name of fighting Naxalites and continue to be regularly reported in Punjab.

**Militancy Era** of 1980s-90s witnessed drastic increase in human rights violations, police brutality, custodial deaths, fake encounters, extra judicial killings and disappearances largely because virtually none of the police officers responsible for a range of human rights violations were brought to justice, making police believe that they can violate people's fundamental rights with impunity.

Another important reason was collapse of criminal justice system. After custodial deaths, the police organized post-mortems and cremations before any independent investigation could be carried out into the cause of death. Disappearances were frequent.

In a decade of violence about 10,000 civilian lives were reportedly lost lives, while hundreds of people were detained without charge or trial. The unchecked use of torture eroded police professional and investigative skills.

**Post Militancy Era** witnessed continued serious human rights violations in Punjab largely due to a legacy left by functioning of

Punjab Police during the militancy period, which opened the way to a continuing misuse of police powers and made a section of police officers vulnerable to corruption.

After February 2002 State elections all the themes related to justice and impunity had disappeared from the political debate in the State, including human rights violations during the militancy period and the issue of accountability of the police force.

The Chief Minister stated his government's intention to "forget the past and think about the future", but also indicated that "the State government would fight the legal cases of those police officers who fought against terrorism and secure their release". (*Tribune*, 1 March 2002).

Such measures potentially establishing channels of influence for the government on the police force leading to the political use of the police force by the State government (*Tribune*, 11 November 2002) irrespective of political affiliations to crack down on political opponents and in turn institutionalising the police brutalities.

## Why Torture

• Torture is often used in Punjab to "solve" criminal cases quickly, without investigations, to obtain a confession or the information needed to solve a case. Torture rather has increased today because police lack investigative capabilities which are also as a direct result of inadequate resources: insufficient budget, poor investment in infrastructure, training, research, modernization of investigative techniques and unaccountability.

• Torture occurs more frequently during unlawful and arbitrary arrests. As such

detentions are not acknowledged by police, there is no judicial scrutiny of these cases. Police often use torture to pursue personal interests, to teach a lesson to personal enemies, to favour business friends or to assert their power and extort money.

- Particular pieces of legislation (The Narcotic Drugs and Psychotropic Substances Act (NDPSA) and the Arms Act) are frequently misused by police to detain suspects for lengthy periods, during which torture frequently takes place.

- News, media, and social commentators widely report that recruitments, transfers, and promotions within the police are influenced by cash or kind. So the police officers are often compelled to return favours to the influential people or try to recover bribes paid by demanding more bribes. (Amnesty International, January 2003)

#### **Torture Methods**

- Torture methods often include kicks and blows with sticks and leather belts. Detainees have been strung up, usually with their hands behind their back or their head down.

- They have been subjected to the roller, a wooden pole or iron rod rolled over their legs by several police officers leaning on it with their full weight, which leads to crushing of muscle tissue and subsequent kidney complaints.

- Detainees have been tortured with electric shocks to the genitals and other sensitive areas such as ear lobes and fingers.

- They have been beaten on the soles of their feet, burned with a hot iron or boiling water and had chilli peppers applied to their anus or eyes. Police officers often threatened to kill them.

- As a result of torture, victims have suffered serious physical disabilities, deep states of depression, disturbed sleep and nightmares.

#### **Human Rights Violations in Punjab, Our Experience**

- Concept of human rights was introduced in our region by Mr Ved Parkash Gupta by formation of Nagrik Sabha in 1952 which took up social work particularly human rights violations, police atrocities upon poor and downtrodden. At that time nobody knew much about Human Rights.

- Mr Gupta was harassed, intimidated and threatened a number of times by the police and the State government for his activities against police repression during Naxalite movement in 1968-73. He was framed in a false "bomb case" and arrested under Explosives' Act and Arms Act by the police. He was sent to Amritsar Interrogation Centre and tortured there. His wife was tortured and two small kids were also arrested by the police. After a prolonged judicial trial, he was acquitted by the court.

- During this period Mr Ved Parkash Gupta founded Punjab Human Rights Committee, one of the first Human Rights body in Punjab. Subsequently AFDR & PUCL were organized in Punjab to fight for human rights.

- In March, 1980 Punjab Human Rights Committee took up the case of two rag picker poor women Mrs. Kasima and Tressa who were threatened by railway police to get a young girl for them. Consequently the police arrested Kasimas' husband and Tressas' son in a fake case. After protests against police officers, both women were released. No action taken against the police officers. (Manushi, May-June 1980)

- Punjab Human Rights Committee protested against inhuman and savage police torture in village Kot Fatta and Kot Bhara in 1982, which led to fleeing of about 50 farm labours and harassment of those remained there. (*Blitz* 17.4.1982)

- A report on Punjab Situation was published in *PUCL Bulletin* in

August 1990, stating that bureaucratic corruption, inefficiency, lawlessness, lack of social justice in judicial courts and police behaviour with common people are the more serious troubles than the occasional violent actions of terrorists in the State.

- A similar article about police *raj* in the State "Police Raj All The Way" was published in *The Frontier* of November 16, 1991.

- PUCL Punjab investigated and reported 41 cases of police atrocities in Punjab and submitted to National Human Rights commission in 1994 on its first visit to Punjab (*Indian Express*, 19.4.94).

- In 1994 Punjab Human Rights Committee took up the case of poor *Harijan* women who was striped naked and tortured by a police officer in front of her 12 year old son. After strong protests police officer was suspended (*Punjab Kesri, Jag Bani*, 13.6.94).

- PUCL investigated and reported the case of shooting down in cold blood of one Harjinder Singh by a police constable in broad day light in full view of hundreds of villagers to the NHRC in 1993. Case was registered against the accused police personals and compensation was paid to the widow of deceased. (*Tribune*, 3.8.94 & *Indian Express* 3.6.97).

- Mr Ved Parkash Gupta, Secretary PUCL Punjab did In-depth reporting after an investigation into the plight of Jammu and Kashmir militants lodged in high security prison of Sangrur district of Punjab by managing to get inside the prison in 1995. It resulted in reshuffling of the jail staff and introspection of jail conditions. (*Tribune*, *Indian Express*, 8.3.95).

- PUCL investigated and reported a case of torture of two innocent daily wage labourers Ram Singh and Jagit Singh by a police inspector in police station in

1996. Punjab and Haryana High Court considered representation as petition. Case was registered against the guilty police officer and was put on trial. (*Indian Express*, 10.7.1996).

- Three member fact finding committee of PUCL, Punjab investigated the case of molestation and attempted rape of poor women Renu Bala by a police officer on duty on 10.6.96 (*Tribune*, 8.7.96). Renu Bala, a resident of Bhatinda, was illegally detained along with her husband on the night of 10 June 1996 while they were searching for their son by an Assistant Sub-Inspector (ASI) in Bhatinda who reportedly took them to a nearby hotel. The ASI allegedly bit Renu Balas face and tore off her clothes while attempting to rape her in one of the hotel rooms. Other officers forced her husband to drink alcohol and restrained him. The couple escaped, after failure of rape attempt. The local police refused to register their complaint, but following PUCL intervention inquiries were initiated by the SSP and the Executive Magistrate in Bhatinda, which supported PUCL allegations against the ASI. Renu Bala and her husband began receiving threats from unidentified police officers. The Executive Magistrate noted in his report that, while he was recording witnesses statements, the accused ASI had sent a police employee to his office to threaten Renu Bala's husband. The police subsequently registered her complaint, but took no action. After about two years police filed an application to cancel the complaint and on 12 November 1998 the Chief Judicial Magistrate recorded that Renu Bala did not wish to proceed with her complaint, noted that a compromise had been reached between the parties and accepted the cancellation report. PUCL has lodged this complaint with the NHRC in June 1996 but received an initial response only in July

2001 asking PUCL to present Renu Bala at Delhi. By that time Renu Bala has suffered mental problems and was untraceable. This case was also reported by Amnesty International.

- In 1997 PUCL took up the case of police torture of a 16 years old kid who lost the kidneys because of police torture. (*Tribune*, *Indian Express*, 8.9.97)

- PUCL investigated, reported and organized mass protests and rallies against custodial death of one Baljit Singh of Village Burj Dhillawan in 1998. PUCL report indicted the police for Baljits death in custody (*Tribune*, 1.8.98).

- PUCL Punjab strongly protested against the police brutality and *lathi* charge upon women demonstrators at Talwandi Saboo near Bhatinda in 1998 (*PUCL Bulletin*, June, 1998).

- A joint report by PUCL and Insaaf International on police firing in village Jethuke in district Bhatinda was released on 2.2.2000. Two young boys of poor families were shot dead by the police in the village. The police also attacked peaceful men, women and children in their houses, broke their household goods (*PUCL Bulletin*, 2.2.2000, Punjab Kesari, Jag Bani, Indian Express, 4.2.2000).

- In Punjab two infamous cases of parole scams, one at Patiala and second at Bhatinda took place. PUCL along with Insaaf International worked very hard to investigate and expose a case of issuing bogus medical certificates by a senior medical officer to the kin of convicts for parole purposes in 2001. Punjab and Haryana High Court asked the DGP Punjab to conduct investigation and proper action. After long struggle the health department in regular inquiry indicted Dr. Ajit Pal Singh guilty of issuing bogus certificates in January 2006 and till date no action was taken.

- PUCL made an in-depth study in the methods and

instruments used for third degree torture in the police stations of Punjab. In 1997 PIL was filed (Criminal Writ Petition No. 27 of 1997 D/d 29.4.1998: entitled, "Dr. Vineeta Gupta vs. State of Punjab"), to ban instruments of third degree torture methods in police stations. The judgment given in the case by the Honourable Justice R L Anand stated: "I dispose of this petition with directions to the respondents to ensure that no third degree methods should be adopted in the various police stations, CIA staff offices, police posts or such other places where a suspect or criminal can be detained or taken for the purpose of interrogation... Let the copy of this order be sent to the respondents for strict compliance and the State is further directed that the copy of this order be sent to all the heads of the police departments of the districts. The directions of this court should also be complied with not only by the State of Punjab but also by the State of Haryana and Union Territory of Chandigarh." (Recent Criminal Reports' July 1998). No grass root change in situation has been observed till date.

- PUCL along with Insaaf International an NGO did a detailed report on the prison conditions in Punjab. The report "Caged Human Rights" was released on 12.7.03.

- A panel of Punjab Human Rights Committee conducted a thorough investigation into the inhuman and brutal third degree torture of one innocent young man Gurpreet Singh by Talwandi Saboo police near Bhatinda and reported on 24.1.04 (*Tribune*, 25.1.04, HT, 26.1.04)

- Punjab Human Rights Committee Team investigated and reported brutal torture case of one migrant labourer Romesh Kumar S/O Chotu Ram of U.P on 12.05.04. The role of Civil Surgeon and doctors attending on Romesh was most condemnable as their

connivance with the police brutality was crystal clear. The nexus between police and health officials was so strong that the orders of the Deputy Commissioners were brushed aside. No action was taken against the doctors in spite of representations to Medical Council of India.

- Punjab Human Rights Committee protested beastly conduct of policemen with a poor Rajasthani daily wagger Mrs. Pawani Devi at Bhatinda in police custody. According to her statement to the press a rod was thrust into her vagina to destroy rape evidence. Really it was very shameful on the part of district administration, police and the doctors of civil hospital Bhatinda that they were openly helping and protecting the rapist policemen. Public protests were organized to put pressure on the administration to act against the guilty but no action was taken.

- Punjab Human Rights Committee's Report on Cold Blooded Murder of a Muslim Youth was released on 30.9.06. The three member panel has held Special Task Force (STF) police men guilty of cold blooded murder of a Muslim youth Namim Khan in village Giana near Rama Mandi in District Bhatinda on the night of 20-21 September. The Punjab Human Rights Committee after thorough investigation, interaction with villagers, eye witness account of Jagsir Singh and circumstantial evidences has concluded that STF men were responsible of murder of youth Namim Khan. The PHRC panel expressed apprehensions that the powerful and mighty officers may be successful in hushing up the case, pressurize the victims for a compromise and retract statements given the press and the Panel.

- Punjab Human Rights Committee Report on Assault and Molestation of a Poor Dalit Family at Malout in District Muktsar (Punjab) was released on

09.04.07. The panel concluded that those who attacked the Dalit family and molested their women members repeatedly were in hand and glove with the police and enjoyed political patronage. The brutal torture of Prem in police custody is a flagrant violation of High Court directions against third degree tortures in any police station in the State.

#### **Punjab State Human Rights Commission (PSHRC) Data**

- The Punjab Police figures prominently in the list of cases instituted by PSHRC from 1997 till March 31, 2007, being involved in a whopping 55% of the total cases.

- Data shows PHRC is flooded with the complaints against the Punjab Police for violations of human rights. From 1997 till March 31, 2007, 48,288 cases have been instituted by the PSHRC against the police.

- In 1997, there were only 57 cases against the police and, in 1998 cases increased to 492, while in 1999 (1,094 cases), 2000 (2401), 2001 (3642) 2002 (4344), 2003 (6442), 2004 (9661), 2005 (9835) and in 2006, the number was pegged at 8,852. The current year has already (till March 31, 2007) witnessed 1,488 cases.

- The statistics reveal that the maximum number of the complaints (19003) against the police, (1997 till March 31, 2007), were related to 'failure in taking action' like laxity or refusing to register FIR.

- As many as 11,968 complaints have been filed against the force (from 1997 to 2007) for 'abuse of power'. In fact, till March 31 2007, 408 complaints have already been received by the commission (10.6.07, *Tribune*, Plethora of complaints against Punjab Police)

- In spite of progressive increase in awareness and sensitization about human rights among the public and very frequent utterance of judiciary and the government to uphold human

rights, all news papers and electronic media daily carry out several reports of human rights violations, police brutalities and torture, which shamelessly failed to evoke any response from the government or the political parties unless the case is supposed to give political mileage.

Editorial "SDM or Kickboxer" dated 11.5.07 really exposes the increasingly brutalization of police force and bureaucracy which is the symptom of State's latent violence.

- Couple alleges police torture *Tribune News Service*, Raj Kumar, who was allegedly tortured by the Ludhiana police and can barely walk, narrates the incident. (Ludhiana, May 8)

- Maid murder: 3 youths allege police torture Cops violate SC ruling on detention. (*Tribune*, October 15.)

- 3 Police Torture Victims Brought to City Hospital. (*Tribune*, Chandigarh, Feb. 12)

- Woman alleges inhuman torture by police (Chandigarh, September 26).

- Dalit youth's death due to police torture alleged, Valmikis say they were discriminated against by cops (By Ruchika Mohindra *Tribune*, 25.10.2000).

- Man Accuses Police of Torture (*Tribune*, Ludhiana, May 27, 04)

- Dharna against "Police Torture, Jalandhar, Jan 8 2000 (UNI)

- Dalit Alleges Torture in Police Custody, (*Tribune*, Ludhiana, April 16, 06)

- Police Torture: Guilty Remain Unpunished (Our Correspondent Fatehabad, April 7, 02)

- Man Alleges Torture, Police Denies, (*Tribune News Service*, Ludhiana, May 10, 01)

- Death due to Police Torture, says Rights Body, (Khanna, March 30, 01)

- Police Torture, Rights Body Seeks Report, (*Tribune*, Chandigarh, May 22)

- Villagers Allege Torture at Politicians' Behest, (*Tribune*, Bhatinda, June 3, 07)

- Two Women Miscarry after 'Police Torture', 12 Sep, 2002 | ISTI TIMES NEWS NETWORK

- Police Harassment, Death of the Innocents

- A Punjab Police officer, keen to protect the interests of the influential, drove three members of a Dalit family to suicide in the State's Doaba region, 23.6.07

- Death of Cong Worker in Custody Sparks Protest. (*Tribune*, Moga, April 21 2007)

- *Institutionalisation and political acceptance of police torture as a powerful tool to victimize political opponents irrespective of political affiliations can be judged from this statement of Chief Minister.*

- Badal reminds Cong of torture of ex-Akali ministers (29.4.07, *Tribune News Service*), Chandigarh, March, 28

Launching a sharp political attack against the previous Amarinder government, Chief Minister Parkash Singh Badal said today in the Assembly that "dark period of mega corruption was over" and a new beginning had been made with the coming of the SAD-BJP combine to power. He reminded the Congress the way former Akali ministers were treated by the Amarinder government in police stations. "Third degree methods were used to torture former Akali ministers in police stations. Former Akali minister Ajit Singh Kohar was made to stay in a barrack where night soil was deliberately kept to torture him. We would not spare police officials who did so", he said. "Now Congress leaders were giving advice to us not to do this and not to do that. Why they remained silent when former Akali ministers were being tortured in police stations by the Amarinder government, he asked.

#### **Post Conflict Situations**

- All the factors contributing to the widespread violation of human rights in India are interlinked to the role played by the police, civil administration, judiciary, doctors, the National or State Human Rights Commissions and most importantly the NGOs and human rights activist which in turn determine the out come of a case in post conflict situations.

- Post conflict situations depend upon the courage, determination and persistence of the victim and to the extent to which victim is prepared to fight and cope will horrors of torture.

- Post conflict situations also depend largely on the efforts of NGOs and human rights activists to supplement and support victim's efforts to fight injustice and give psychological support.

- Other important factors on with the Post conflict situations depend are the honesty, sincerity, dedication of the concerned authorities to expose and punish the human rights offenders.

- It is a common observation that most of the victims belong to the deprived, poor, illiterate and weaker section of the society especially the minorities, scheduled castes, scheduled tribes, backward classes, tribal women, migrant workers, landless laborers being most venerable. Most often it is those with little power or status disadvantaged by poverty, who suffer the consequences of the widespread abuse of power.

- Post Conflict Situations really present a miserable and shameless picture of governance where different organs of the system gang up in a determined effort to camouflage the human right violation and exert all types of pressure on the victim not to pursue the case.

- In most of the cases the system prevails and succeeds to protect the offender as the national power structures perpetuate corrupt practices and provide

virtual impunity for those who violate human rights. Some times the system succeeds in even implicating the human rights activists by turning the victim against the activists or NGO.

- Cases where the victims show courage, persistence and are sincerely supported and guided by human rights activists, victims mostly succeed exposing and punishing the offender.

#### **Role of NGOs and Human Rights Activist**

- Role of NGOs and human rights activist is the only factor that has helped spread awareness among people motivating and sensitizing them of their human rights.

- In Punjab only NGOs and activists come to the aid of the victims as that is the only hope victims can rely on. Otherwise there is no hope of justice because the administration goes all out to protect the offenders.

- Most of the times government and police consider NGOs or human rights activists as their adversaries and not partners in fighting human rights abuse collectively. This fear is the main stumbling block in curbing human rights violations.

- The government aided human rights commissions or bodies have miserably failed to carry out their most important agenda investigate, identify the guilty and punish them, to coordinate and cooperate to spread awareness, identification and documentation of human rights violations, and the development of specific recommendations.

#### **Role of the Government**

- Role of the government is of paramount importance in curbing human rights violations as it has a complete control over all the organs of the system.

- Almost all State governments with support of Central governments irrespective of political affiliations have indulged

and supported extra judicial violence at one stage or other, at different times, be it fight against dacoits, Naxalites, Muslim or Sikh militants or mafia.

- Government's intensions to retain the unchallenged control of the police has been reflected in non compliance or half hearted response to Supreme Courts directions on police reforms which are aimed at establishing a long-cherished independent and responsive police force in the country by insulating the police from politicians, separation of law and order machinery from the investigative apparatus, fixed tenure for police officers starting right from the station house officer.

- I strongly feel that there is an urgent need to improve the basic working conditions of the police like grossly inadequate police population ratio, poor infrastructure, inhuman long working hours, inadequate pay structure and budget.

- Government's role in initiating administrative and judicial reforms is also under scanner.

- Extra judicial violence exposes multiple failures of the system and governance that can allow such violence to take place and then conveniently bury it.

- Ruling Legislature under the influence of petty vote politics, caste, corruption and criminals has found various innovative means to circumvent or bypass the law and suppress the opposition, as is evident from the news "DGP asks his men to mend ways" dated 31.8.06 where the DGP has observed that cases are registered under political influence or money power in order to intimidate people on the basis of their political alignments.

- Editorial of Tribune "Letter from DGP" dated 1.9.06 really exposes the political and money power which influenced working of Punjab police at the cost of innocent citizens and that too with the knowledge of the DGP.

- Common man like me is compelled to think, if politicians are acting as stumbling blocks in implementation of judicial directions to improve public safety, human right situation and justices system, is there any need for politicians to exist.

- In spite of Punjab and Haryana High Court judgment against third degree torture and keeping of torture instruments in police stations, government has shamelessly failed to implement the orders of Hon'ble court.

#### **Role of Police**

- When the law enforcers become law breakers, it does not augur well for the State. What is done without punishment, can be repeated without fear. Fear of law is the most important deterrent for any human rights violations.

- There is wide scope for the abuse of power within the confines of police stations in India. Successive National Police Commissions have acknowledged that torture and police brutalities are encouraged by many factors, like the lack of investigatory machinery, proper police training, human rights education, colonial mindset, pressure on police to mete out instant punishment, the inability of the criminal justice system to deliver justice promptly and effectively; corruption; poor wages and working conditions.

- All the bravery of police is shown before poor, innocents, tribal, dalits, before them police give the pose of heroes. Whereas, they are simply like scarecrows before VIPs, influential, politicians and rich crooks or need political backing to flex muscles in front of political opponents.

- Rare convictions of those responsible for torture, rape or deaths in custody and the length of legal proceedings, further encourages the perception that torture is acceptable and instutionalised.

- In violation of Indian law and police procedure, the practice of

unrecorded police detentions is common and there is little doubt that it facilitates police abuse such as beatings and other forms of ill-treatment or torture and rape. (Amnesty International, January 2003)

- Most torture and ill-treatment occurs during the first stage of detention in police custody, when access to outsiders is routinely denied. Indian law is virtually silent on the procedures for questioning suspects in police custody, and no provisions exist detailing safeguards in the Code of Criminal Procedure.

- The police use violent, crude and antisocial methods during routine law enforcement like public protests, in evictions from illegal settlements, or when land is acquired by the government. There are several documented cases where the police have acted in collusion with other power brokers in civil society, facilitating the torture and ill-treatment of people.

- The police is rarely required to give a public account of their actions. No independent groups or agencies have the authority to visit police stations or inspect police records, and it appears that the judiciary seldom undertakes this function. There is no independent police complaints mechanism to encourage transparency and accountability in day-to-day policing. Although the NHRC has investigated complaints against the police, it cannot enforce its findings.

- We must appreciate a few honest police personnel who are silently doing their duties in spite of pressures, harassment by political bosses & corrupt superiors, in spite of frequent transfers, promotion hold-ups, etc. overcoming the lure of bribe, those few are silently doing their duties without any publicity or fanfare. What ever faith common people have in the system is because of such honest officers who help turning the wheel of democracy in

India. (Amnesty International and India, March 1996).

### **The Role of the Judiciary**

- During the militancy period the functioning of the courts in Punjab came to a standstill.

- After the militancy period stimulated by activities of human rights activists and lawyers both at district-level courts and High Courts and greater human rights awareness and public opinion Judges have slowly begun to assume their proper and proactive role. Isolated convictions of police officers for human rights violations, torture, rape, and custodial deaths, although very few in number, convey the message that the police can be held accountable for their actions to the judiciary and the public.

- The lower judiciary does not take a proactive role when police officers are charged with torture or ill-treatment of a detainee: Police officers openly intimidated witnesses or improperly induced or bribed a complainant to withdraw their complaint. Police often file a cancellation report on the case before the Chief Judicial Magistrate in the hope that the court may accept or agree to delay prosecution until an informal settlement has been reached between the police and the victim or their family.

### **The Role of Doctors**

- To prove or document any torture, rape, police brutality and custodial death cases proper medical examination, medico legal report and the role of a doctor is of immense importance without which it is rather impossible to label a case of police brutality. Evidence emerging from torture cases in Punjab, as well as from doctors and lawyers practicing in the State, suggests that health professionals have often alleged to have provided incomplete or false medical evidence, sometimes under pressure from the police, but also pursuing their own interest or

as a result of inadequate inducement.

- Doctors are sometimes threatened, pressured or bribed to exaggerate or dilute the objective findings of a medico-legal examination, often to alter evidence. The post-mortem is often delayed, by which time decomposition has begun, making signs of torture difficult to detect or which cannot be challenged by further examination of the body. The criminal law has not been invoked against doctors who have submitted false or incomplete medical reports to the courts. In a few cases, disciplinary measures have been taken by the Health Department but no information is available on their implementation.

### **Role of the Punjab Human Rights Commission**

- The PHRC has so far failed in its mission largely because PHRC has not been given the powers, investigating infrastructure, resources or institutional autonomy to function effectively as a check on torture, human rights violations and ill-treatment in police custody.

- PHRC's powers to investigate individual cases of human rights violations are very limited as PHRC's has only recommendatory powers and almost non existence investigative staff. PHRC seeks reports from district authorities or ask them to investigate the case in which often the police are both investigators and suspects and base their observations on reports by district authorities raising serious concerns about authenticity and conflict of interest. The PHRC allows the State ample time to file its reports in response to allegations of torture and deaths in custody. Even in cases in which the PHRC recognizes that there is *prima facie* evidence of torture, it usually tends to recommend monetary compensation for the victim or their family but does not

recommend the prosecution of any officers involved.

- However, redress should not take the form of monetary awards alone but should include the prosecution of those responsible. Prosecutions of officials should be pursued more vigorously and other aspects of reparation for victims.

- Every one who visits PHRC's office has observed that functioning of the PHRC is bureaucratic and unhelpful towards the victims of human rights violations. Complainants require the services of a lawyer simply to file their complaints, which the poorest and weakest sectors of society finds difficult. People can be seen sitting outside the rooms of chairman and members with their lawyers waiting to be called as in courts. Each member of PHRC holds a court separately and giving out dates like in courts unconcerned about how the poor and illiterate afford travelling from far off places and affords other secondary expenses. Most people repent sending a representation to PHRC when they observe and encounter courts live situation. These weaknesses have limited the effectiveness of the PHRC, in delivering justice to the victims of torture and human rights violations.

- According to information from human rights sources, no police officers were recommended for prosecution in connection with the 26 cases of deaths in police custody taken up by the PHRC between 1997 and 2001. (Amnesty International January 2003).

- The PHRC's lenient attitude is sending a signal to the public and to the police that a police officer who violates human rights will suffer no adverse consequences. Such a message allows the cycle of violence to continue, in which impunity leads directly to further torture.

### **Conclusion**

- We conclude that there was no improvement in the human

rights standards in Punjab as compared with the previous years, in fact our observations, media reports and PHRC data shows that human rights violations, police brutalities, torture, rapes, custodial violence and deaths have rather increased.

- The primary institutions responsible for promoting, protecting and fulfilling human rights like police, civil administration, the courts and human rights commissions and their performances during this year in Punjab remain at a dismal low.

- Delays in courts, the widespread use of torture, the lack of accountability of the police and the pitiful performance of the prosecution department, have literally alienated the poor and helpless in the State.

- Sixty years after independence politicians, police and bureaucrats retain the trappings of a colonial bureaucracy, enjoy discretionary

powers without accountability serving their own interests exposing the increasingly brutalization of police force and bureaucracy which is the symptom of State's latent violence. □

(...from page 1) Supreme Court said "Judges, so long as they are relatively normal human beings, can no more escape being influenced by public opinion in the long run than can people working at other jobs". As was put down by Chief Justice Patanjali Sastri in 1952, "we think it right to point out what is sometimes overlooked, that our constitution contains express provision for judicial review of legislation as to its conformity with the Constitution. If, then, the courts in this country face up such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution...

While the court naturally attaches great weight to the legislative judgment, it can not desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the courts... are out to seek clashes with the legislatures in the country."

Present-day judicial activism has been brought about as a consequence of political misfeasance. It will be a pity if ever a climate was created against the exercise of judicial activism, because such an eventuality may lead to the loss of faith in law as an instrument of social change and justice.

*(The writer is a former Chief Justice of Delhi High Court).*

**Report Presented at:** National Conference on Prevention of Torture in India 25 June 2007, India International Centre, Delhi. □

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# Knighthood for Salman Rushdie and Muslims

Asghar Ali Engineer

Knighthood conferred on Salman Rushdie by queen of England a few weeks ago has raised a great controversy throughout Islamic world. Some have conferred, in reaction to this title of *Saif Allah* (Allah's Sword) by a group of extremist 'Ulama in Pakistan. The conferment of knighthood on Salman Rushdie has revived the controversy which raged in nineties on his novel *Satanic Verses*.

Ayatollah Khomeini of Iran who brought about Islamic revolution in Iran in 1979 had issued a *fatwa* to kill Salman Rushdie for insulting the Prophet of Islam (PBUH). It really became a serious confrontation between Western and Islamic world and it appeared as if the self-fulfilling prediction of 'clash of civilizations' is taking place. The western countries defended Salman Rushdie on grounds of human rights and Islamic World condemned Rushdie for his insolence against the Prophet (PBUH) and his wives.

Salman Rushdie was provided with security by the British government for years at a heavy cost as his life was in danger after Ayatollah Khomeini issued the *fatwa*. Later on however, though *fatwa* was not withdrawn it was almost treated as non-existent by authorities in Iran.

Now with conferment of knighthood the controversy has again been revived and angry demonstrations are taking place in many Muslim countries. However, it must be said that these demonstrations are not as extensive and intensive compared to what happened in early nineties. Nevertheless Muslims in general have been offended. It once again raises the question about right of expression and its limits.

Freedom of expression is a sacred right but it does not include right to insult founder of a religion

who is held in high esteem by millions of his followers. But west does not agree. It recognizes no such limit. In the west films, novels, plays are written on Christ which go against the Christian beliefs. But Christians in Eastern countries like India do protest against such novels or films. When a film which did not conform to Christian beliefs was shown in India the Christians protested and demanded ban on it. It was allowed to be shown on certain conditions only.

In the West liberalism on one hand and indifference towards religion on the other are almost a way of life. No one takes seriously anything written critical of religion or even anti-religion but it is very different in Asiatic countries, particularly in Islamic world in Asia and Africa. Liberalism in these countries is limited to few intellectuals and these intellectuals also often refrain from expressing their views publicly for fear of being ostracized.

Salman Rushdie's book is not even serious critique of Islamic beliefs but ridiculing them. There is difference between attempting a serious critique disagreeing with certain beliefs and very much different to ridicule those beliefs. Rushdie uses technique of magic realism and transforms various characters considered to be sacred by Muslims into radically different forms. For example Jibrail Farishta is transformed into a Bollywood character. One can certainly use these techniques for ordinary characters but not characters like Jibrail through whom, Muslims believe, Prophet (PBUH) received revelation which was compiled in the form of Qur'an. Even Prophet's wives are subjected to this treatment.

This can be hardly acceptable in the cultural and religious ethos in Asia in general and in Islamic

world, in particular. Though there is no clash of civilizations but there are significant differences in civilizations and these differences should be respected and accommodated. The limits of freedom of expression are different in degree between western and eastern civilizations.

The latest development in Punjab also throws enough light on this question. It is not only Muslims who get agitated if their religion is ridiculed but also others like Hindus and Sikhs. The controversy between Sikhs and Dera Saccha Sauda assumed huge proportions and Sikhs came out on the streets with swords drawn. The Sikhs felt that the Chief of Dera Saccha Sauda by donning clothes of Guru Gobind Singh has insulted their religion. And even apology from Dera Saccha Sauda does not seem to satisfy them and they are insisting on arresting him and prosecuting him. This is the reality in our countries. The west must appreciate this reality and cannot insist on its own standards of liberalism and individual rights.

Having said this I would like to insist that Salman Rushdie, no doubt has exceeded the tolerance limit of Asians but one should also appreciate his creative talents which cannot go unrecognized. Except his novel *Satanic Verses* his other novels like *Midnight Children* and several others are highly appreciated and one has to recognize his talent. It is also true that he is not anti-Muslim. As someone very aptly put it Salman both fights Muslims and fights for Muslims. It is literally true. He is committed to minority rights and he fights for their rights in U.K. and other countries. We should not judge him by one single novel.

It is also to be noted that it is the right of the U.K. government to confer honour on its citizens. We cannot dictate government of any

sovereign country on whom to confer or not to confer honours. No sovereign government will like to be dictated. One can certainly make one's feelings known through proper channels but should not take to streets and burn flag of that country. Flag represents dignity and sovereignty of a country and insulting someone's flag amounts to insulting that country. It does not benefit thinking people to tread over some country's flag or burn it.

It is also important to remember that a creative writer is nothing if not subversive of established values, beliefs and practices. Only thing is that one must be conscious of decent limits of subversion, when it involves religious beliefs. Many beliefs are thought to be religious but are not religious. They pertain more to customs and traditions and social ethos. A writer has to be free to subvert such beliefs or practices.

If one does not have such freedom nothing in the world will change. All great thinkers have been subversive. Even in the Qur'an Prophet Ibrahim (Abraham) (PBUH) has been shown as subversive of beliefs and practices of his people. Prophet Muhammad (PBUH) himself attacked superstitions around idols which Arabs worshipped and showed them the right path.

Thus all prophets have been subversive in one way or the other. Great poets and thinkers like Milton and Iqbal were attracted towards the character of Satan for his; challenging authorities and subverting establishment. His subversiveness makes Satan dynamic and this dynamism makes him attractive to some. But Satanic subversion of course is world apart from prophets' subversion. Satanic subversion is totally negative whereas prophet's subversion is positive in character. Prophetic subversion leads to creation of new world, a world that benefits whole humanity. Satanic

subversion, on the other hand, only destroys. Both challenge established authority but prophets challenge authority which is oppressive, exploitative and unjust. Satanic subversion, on the other hand, challenges just authority and leads to darkness and leads to more oppression and exploitation.

Salman Rushdie, in his western environs totally confuses between prophetic and satanic subversions. He is an atheist and does not believe in religion, any religion. And like some other atheists assumes the character of atheistic character and thinks truth is only in his grip and ridicules those who do not agree with him. Thus he ridicules one kind of beliefs to establish another set of atheistic beliefs. And it is in this arrogance of possessing 'truth', he begins to ridicule all those who do not agree with him.

A sober atheist would not disregard truth in others' beliefs. One set of truth should not be set against another set of truth and ridicule it. It is sheer arrogance. A serious atheist like Bertrand Russell attacked certain religious beliefs and practices of the Church only in philosophical sense. Bertrand Russell was himself a great subverter but also believer in the other world based on justice and compassion. He was firmly against war and stood for peace. He courted arrest during First World War opposing Britain's entry into it and shocked whole country. He organized, along with Jean Paul Sartre, trial of war crimes against America committed in Vietnam. He was great peace activist.

Also, if we are true Muslims we should represent best in Islam. Among fundamental values of Islam are wisdom and tolerance. We should make our opposition known in most civilized manner. We should argue with the opponent on the basis of reasoned arguments and never use abusive language. *Qur'an* warns us not to

abuse those who worship other than Allah; they will abuse Allah out of ignorance (6:109).

Thus our protest should be dignified and based on reason. Some politically motivated people exploit religious sentiments by organizing violent street demonstrations, burning effigies and flags. It does not represent best face of Islam and gives an impression Muslims are a fanatic and intolerant lot. It wins more sympathy for Salman Rushdie in the West and defeats the very purpose.

The purpose should not be to demonstrate violently but to convince western people that we are responsible and tolerant people and our religious sensibilities have been hurt. One should go for dialogue not for confrontation. Confrontation takes us nowhere and pays only some power hungry politicians, does not uphold cause of Islam, tolerance and freedom. Freedom of conscience is as central to Islam as to western world. We are, however, failing to communicate this central value of Islam. □

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# The Missing Girls

Sreedurga T N\*

(This report is based on the newspaper clippings available in the PUCL reference Library)

“Why water the plants in neighbour’s garden?” The people in Jhunjunu, asked because they did not want to grow up their girls who will go away once to another home. Isn’t the question quite strange? Not strange. It is rather shocking and shameful. India today has achieved considerable development and progress in social sector. Woman has shown achievements in every aspect of society. However, there is one dark side of our society, which we are least bothered about. Here she is struggling for the basic human right to life. Nay, forget about life. She is even denied the right to come into being. The sex ratio in India is rapidly becoming masculine.

## Skewed Ratios

The sex ratio today in India is 960 women per thousand men. This explains the intensity of the problem. The recent survey on this problem published in *The Lancet*, an international health magazine reveals the shocking picture. It reports that **every year about 5, 00,000 unborn girls are aborted and in 20 years, Female foeticide has crossed 1 crore in India.**<sup>1</sup>

The Statistical data that shows the sex ratios of different States is given below<sup>2</sup>:

States	Sex Ratio
Kerala	1058
Karnataka	964
Gujarat	921
Punjab	874
Haryana	861
Delhi	821

The sex ratio is low in northern States of Punjab, Haryana, and Delhi. Kerala has a very good sex ratio.

The State of Punjab stands out with one of the worst sex ratios in the country. After the passing of

PCPNDT Act, there has been just one conviction in Punjab. Recently in Punjab 100 aborted fetuses, mostly female were recovered from two wells close to a private hospital in Patran town.<sup>3</sup>The strange fact in such cases is that none of the parents come forward to complain.

The capital of the country is also notorious for sex selective abortions and female infanticides. **Delhi** records the worst sex ratio in the country with zero convictions under PCPNDT Act. Many such killings are the incidents in which parents themselves kill their infant daughters.

Sikhs and Jains figure the worst among the religious groups in terms of sex ratio. The method of sexual choice is high among Hindus also. While Christians and Muslims seem to be less bothered about sex selection.<sup>4</sup>

Religion	Sex Ratio
Sikhs	786
Jains	870
Hindus	925
Buddhists	942
Muslims	950
Christians	964

The recent reports prove that education plays an inverse role in sex determination practices. According to the interpretations of a recently released fertility series data of 2001, the female sex ratio is lowest among the children of educated mothers. For example in Delhi where among illiterate mothers the sex ratio is 905, among literates it is just 815.<sup>5</sup> This is because the more educated the mother is, the more she uses modern techniques.

## Causes

**The reasons for the dipping sex ratio are as follows:**

### 1. Market Economy and Globalisation

Donna Fernandez of *Vimochana*, a forum working for women’s rights in Karnataka, points out that the declining sex ratio is the reflection of market economy and globalisation. The mindset of the people is such that they think it is more economical to abort or kill them rather than to spend lakhs for their dowry later.<sup>6</sup>

### 2. Low Status of Women

The cruel economic and social forces working in the country for many years, have given a very low status to women. They are not considered an asset but a curse to the society. They are considered just an instrument for procreation of sons.

### 3. Rampant Sex Determination Tests

It was in 1970s that ultra sound scanning became popular in India and people started using it for sex determination and abortion. The Central Government banned pre natal sex determination and Parliament passed the PCPNDT Act in 1994. But still, there are rampant sex determination tests, especially in the northern States like Punjab, Haryana, Delhi etc.

### 4. Increasing Violence against Women

Violence against women is increasing day by day. There is a sense of insecurity for them everywhere. Unfortunately, our society is unable to protect women from these tortures. This is also a reason for increasing female foeticides and infanticides in the country.<sup>7</sup>

### 5. Low Conviction Rate

The Central Government passed the PCPNDT Act in 1994. But how many cases have been registered so far? How many have been convicted? There has been just one conviction in all these years.

## 6. Lack of Proper Official Records

All these abortions mostly take place in private hospitals and clinics. There are many unlicensed clinics and unauthorized doctors working all over the country to perform such abortions. Sometimes these operations are performed by half-trained mid-wives who act as agents to these doctors. The hospitals never keep proper record of all these abortions and sex determination tests. Most of the cases of infanticides go unrecorded in police stations. Why to say more, there are no proper registrations of births and deaths in many places.

### Measures Taken

It is very unfortunate that such a serious national issue has not been given enough importance by the Government. However, few steps were taken by Central Government, which need to be mentioned.

- The Central Government enforced the *Pre-conception and Pre-Natal Diagnostic Techniques (Regular & Prevention of Misuse) [PCPNDT] Act in 1996.*

- In 1997, the Government in which Mr I.K. Gujral was the prime minister came out with *Balika Samridhi Yojana, a post delivery grant of Rs 500/- to the mother of a daughter and a modest scholarship for her schooling.*<sup>8</sup>

- In 2005, the Central Government announced a scheme of free education for the only girl child. Then the government renewed it by giving 50% waiver if there are two daughters.

- In 2006, the Central Government announced a sum of Rs. 5000 as assistance to families that have girl children.<sup>9</sup>

- Ms Renuka Chowdhary, the present Union Minister for Women and Child Development has launched a nation wide campaign and decided to observe next 10 years as the decade of the survival of the girl child.<sup>10</sup>

- Health Ministry also has promised to tackle the problem of female foeticide. The Minister for Health and Family Welfare Mr Anbumani Ramadoss also assured that mobile ultra sound machines will be banned in five States.<sup>11</sup>

- Moreover, the Central Government has asked the Supreme Court to intervene in the matter of declining sex ratio.<sup>12</sup>

The Government of Andhra Pradesh has introduced a *Girl Child Protection Scheme*. According to the Scheme, a sum of Rs 1 lakh will be given to every girl who is the only girl child of the family and a sum of Rs 30000 Rs if there are two girls.<sup>13</sup> Aware of the declining sex ratio, the Gujarat Government recently conducted raids all over the State and sealed nearly 159 sonography machines working in violation of PCPNDT Act.<sup>14</sup>

The country's first ever conviction under PCPNDT Act was held in Palwal in Haryana in which a doctor and his assistant were sent for 2 years imprisonment and a fine of Rs. 5000 was imposed.<sup>15</sup> Moreover the Supreme Court has warned the Centre, the States and the Union Territories for proper implementation of this Act.<sup>16</sup>

A considerable role in this matter is played by various NGOs and Social Groups. NCW (National Commission for Women) has played an active role in organizing nation wide campaigns and protests. NCW also took initiative in sealing of many illegal clinics in Delhi. In Rajasthan, about 35 doctors were found engaged in sex selective abortions. Then the women's groups all over Rajasthan demanded the arrest of doctors<sup>17</sup>. Their effort to create awareness among the public is praiseworthy. National Commission for Women also demanded for strict implementation of laws.

There is a belief that religion promotes these infanticides and foeticides. It is true. However, when in Gujarat various religious leaders joined hands to fight against this cause it was a new beginning. They showed their concern for the girl child and decided to unite for her upliftment.<sup>18</sup>

Another important development in this respect took place in Punjab, the State with one of the worst sex ratios. Two villages in Punjab, Jalahmajra<sup>19</sup> and Kothran<sup>20</sup> have achieved something impossible. They have more girls than boys. There is no sex selection there.

Now the concluding question is: Are these measures sufficient to tackle the upcoming disaster of a highly imbalanced sex ratio? The answer is that the life of girl child is still in peril. The laws and schemes are still on paper. Prenatal sex determination and abortions and infanticides are widely prevalent both noticed and unnoticed. In order to avoid an upcoming disaster which was pictured in Manish Jha's film *Mathrubhumi - A Nation without Women* it is necessary to take proper measures.

*Manusmriti* says (3, 56: Translation by Arthur Coke Burnell):

**"Yatra Naaryastu pujiyante ramente tatra Devata, Yatrai tastu na pujiyanate sarvastatra asphala kriya"**

"Where women are honoured, there godliness rejoice, Where women are not honoured, there all the rights are futile".

<sup>1</sup>*Hindustan Times*, January 9, 2006, Delhi; <sup>2</sup>*Census Report* 2001; <sup>3</sup>*The Indian Express*, August 20, 2006, Delhi; <sup>4</sup>*Hindustan Times*, October 12, 2005, Delhi; <sup>5</sup>*Hindustan Times*, October 31, 2005, Delhi; <sup>6</sup>*The Times of India*, May 12, 2005, Delhi; <sup>7</sup>*Hindustan Times*, an article by Maxwell Pereira July 6, 2006, Delhi; <sup>8</sup>*The Indian Express*, September 23, 2005, Delhi; <sup>9</sup>*The Indian Express*, March 10, 2006, Delhi; <sup>10</sup>*The Hindu*, March 9, 2006, Delhi; <sup>11</sup>*The Hindu*, May 20, 2006, Delhi; <sup>12</sup>*The Hindu*, June 16, 2006, Delhi; <sup>13</sup>*Hindustan Times*, September 1, 2006, Delhi; <sup>14</sup>*Hindustan Times*, June 18, 2006, Delhi; <sup>15</sup>*The Hindu*, April 2, 2006, Delhi; <sup>16</sup>*The Hindu*, August 19, 2006, Delhi; <sup>17</sup>*The Hindu*, May 16, 2006, Delhi; <sup>18</sup>*The Hindu*, November 9, 2005, Delhi; <sup>19</sup>*Hindustan Times*, September 1, 2005, Delhi; <sup>20</sup>*The Indian Express*, February 5 2006, Delhi;

\* A student of ILS Law College who worked as an Intern in PUCL National Office, Delhi. □

## Joint Report:

# Civil Rights Investigation into Police Firings on Gurjar Agitation in May-June 2007

## Interim Report Released at the Press Conference at Jaipur on June 11

A 24 member team belonging to the People's Union for Civil Liberties (PUCL), Rajasthan, the People's Union for Democratic Rights (PUDR), Delhi, Association for Democratic Rights (AFDR), Punjab, and students of various National Law University colleges conducted a week-long study of the State and caste violence that gripped Rajasthan. The team undertook visits on 9 and 10 June 2007 to five places where people were killed due to police firing and caste attack. The high death toll of 25 persons including two constables was shocking.

The team spoke to a large number of residents of Patoli, Peepal Khera, Bundi, Ghata, Lalsot, Bamanwas, Bonli and surrounding villages and met the SP, Dausa, Collector, Bundi, police officers at Bamanwas, Nangal, Bonli, Lalsot police stations, *panchayat* members, journalists, and representatives of political parties and caste committees. Though sites of violence included police firings, road blocks, destruction of public and private property and State sponsored caste confrontation over the week, we decided to restrict our visits to the places where people were killed. In addition we visited Bamanwas in Sawai Madhopur in order to get a glimpse of the alienation between the communities of the Gurjars and the Meenas.

The main conclusion to which the fact-findings teams reached are stated below:

### 1. Resorting to Firing by the Police was Unwarranted, Excessive and Inhuman

In Patoli-Peepal Khera, the violence was initiated by the police on 28<sup>th</sup> May 2007 through a night-long brutal operation in which

children, women and men of the villages suffered injuries from *lathi* blows and tear gas shelling. The immediate spark came from a police party entering houses, pulling out women, beating and molesting them and subjecting them to vulgar abusive language. On 29<sup>th</sup> May 2007 at around 7.30 am Police opened fire on people even though the highway was not blocked. At least three of those killed were shot in the back. Protestors were camped in fields far away and residents of the two villages were busy with their morning duties and cooking food for the gathering. The killing of the constable occurred after crowds collected on the road.

At Bundi, the killings took place at the Dev Narayan Temple on 29th May about 10 am where people were having food. Violence flared when Ex MLA Nathu Lal came running from inside the temple after negotiations with the people there failed and he was manhandled. The police party outside mistook him for a miscreant and started beating. The DM rushed to protect him. The confusion however was mistaken for an attack and people pelted stones from inside the temple, one of which hit the DM on the forehead. This prompted an attack by the police, immediately followed by firing. People were asked to clear within 10 minutes, and the firing was started by the DSP present there. One person was killed at the spot on the top/fourth floor, not visible from the ground, suggesting that the shot was aimed from a distance. Two others were killed near a makeshift tent and two more who were running away onto the adjoining hill. This description shows use of force far in excess of "necessary". The

behaviour of the police was brutal too: A very old man barely able to walk was mercilessly beaten and fractured both his arms.

At Boli village, on 31 May 2007 around 1 pm police panicked without reason when people working at a NREGA worksite were proceeding towards a free community lunch at a *yagya* that had started a week before. According to the FIR registered on 2 June 2007, police fired 96 rounds in the air only, but the 4 persons killed not mentioned in FIR where the post mortem was conducted in the night of 31<sup>st</sup> May and bodies were forced to be cremated in the night itself. All the killed and injured had bullet wounds at three to four feet level and in two death cases bullet entry wounds were through the side of the abdomen. These killings enraged the crowd and the destruction of State property occurred after the firing and police personnel abandoning the police station.

In all the three cases, we found that there was no attempt to minimize casualties. There was no arrangement to take the injured to hospital. Those who were grievously injured as well as the others injured were left by the wayside, to seek their own means to reach medical assistance. To date a list of the injured along with the injuries sustained is not available with the State administration.

Police stories of the happening were found inconsistent with material facts. As a rule the mandatory warning before firing was ignored. In Patoli-Peepal Khera, police claimed that the firing was aimed at protestors on the highway. Our team saw a large blood stain two hundred yards

south and witnesses claim to have picked the other dead bodies 100 to 300 metres north of the road. Further, the bullet entry wounds on the bodies of three of the victims were on the back, contradicting that the firing was in self defence. The accounts of Bundi and Bonli villages confirm the same pattern.

## **2. Government is Responsible for this Political and Administrative Blunder**

(a) The seeds of the present impasse were sown at the time when the present State legislature was garnering support in order to come to power. The *Gurjar* community was promised inclusion in the list of Scheduled Tribes.

(b) The protest programme of blocking four National Highways was announced well before 28 May providing the government sufficient time to engage in talks and to look for a solution. In fact the size and the form of the protest was an indicator of the lack of will on the part of the government to initiate discussion on the issue.

(c) The order declaring Sec 144 at the places where the protests were to be held and the order to prevent the road blocking at all cost was ill-conceived. It was also discriminatory, given that various protests had been permitted in the recent past even in the State capital, which had led to blocking of road communication for long stretches of time (recall rally in support of Natwar Singh in August 2006).

(d) Despite the prior knowledge, police did precious little to prevent the gathering. *Lathi* charge and tear gassing done at Patoli-Peepal Khera, from 28<sup>th</sup> evening onward was instigatory and illegal rather than preventive. No attempt was made to arrest people for violation of S.144. In fact the S.P., Dausa found the idea of arresting so many people ridiculous. The intent of the police therefore was to allow protestors to collect and then to use brute force to disperse the crowd. The use of

force necessarily included opening of fire, given the relative numbers of police and protestors present.

(e) Far from dispersing the crowd, the police action led to a longer blocking of roads than any of the protestors had initially imagined. It also led to a huge loss of life and to the generation of enmity between different sections of the people.

(f) The attempt to treat a popular mass protest as a law and order problem is tantamount to the abdication of responsibility of the government towards the people. The operation planned in this manner amounts to a premeditated crime, and cries out for justice.

## **3. Generation of Tensions and Clashes between Communities**

(a) There is sufficient reason to believe that senior functionaries of the government in power were actively engaged in provoking the Meena community to fight the Gurjars. For example, the blockading of roads by the Meenas to prevent provisions from reaching the Gurjars at Patoli-Pipal Khera was well organised. Towards this purpose Meenas blockaded roads at four places. These blockades surprisingly did not attract the provisions of violating S. 144, nor did they face the ire of the police.

(b) In the case of blockading of roads near Bamanwas in Sawai Madhopur, false intelligence messages were shared with the Meena community, both by the police as well as the SDM, to provoke Meenas to retaliate. It was only due to timely persuasion by elders from the Meena community that a major clash was averted.

(c) The killings at the road blockade at Ghata, Lalsot clearly shows that police was in connivance with the Meena community and facilitated the attack. There were only 150 gujjars who had been peacefully organising the blockade since 30 May. Police acted as a mute

spectator and thus facilitated the attack which resulted in four deaths, destruction and loot of property in nearby villages. Even after the attack, police investigation has still not named any accused, and fear looms large in the gurjar settlements.

## **4. Discrimination and the feeling of Alienation among Gurjars and the deep divisions that have developed between the two communities**

Vasundhara Raje and Colonel Bhainsla may have signed the statement on the evening of the fourth of June, which may have resulted in the lifting of the various road blocks and prevented further smashing and destruction of Public property, however the week long situation of State violence and violent public protest by the Gurjars and its retaliation by the Meena community has changed the rural scenario in several villages of Rajasthan.

Tragically what the entire week has left behind are deep divisions between the two communities and the feeling of hate as well as the fear of the other. In village after village that we visited the two communities, who were till now political partners in helping their candidate win, even in non ST seats in these districts, are now keeping their distance from each other. Even a *Sarpanch* belonging to the Gurjar caste and from the BJP said that he was not comfortable about visiting the neighbouring village which was Meena dominated. Several Gurjar families out of fear are not even going to the market.

Similarly members of the Meena community were lamenting that a historical relationship between the Gurjars was now over because of a leadership that had led the Gurjars to the path of destruction. At the same time they feel that their achievements in the field of politics and administration has come from hard work which now would be grabbed by the



## Binayak Sen

### Copy of Letter:

To, The Chief Minister,  
Government of Chattisgarh,  
Raipur.

Sir,

Subject: PUCL General  
Secretary Dr Binayak Sen's arrest.  
PUCL (AP State) committee wants  
to meet Mr Binayak Sen. Request  
for permission.

Jaya Vindhyala, Advocate and  
General Secretary, *People's Union*

*for Civil Liberties*, Andhra Pradesh  
State committee submits:

That we have come to know  
that Dr Binayak Sen has been  
arrested.

That PUCL AP State  
committee wants to meet him as a  
fact-finding committee.

Hence I request you sir kindly  
allow us to meet Dr Binayak Sen in  
the first week of July after getting

your permission, we will let you  
know our program in detail.

Please take action. Reply  
requested.

Thanking you sir, Yours  
Sincerely. – **Jaya Vindhyala**

### Copy to:

1. Director General of Police  
Govt. of Chattisgarh, Raipur
2. Principal Secretary (Home)  
Govt. of Chattisgarh Raipur
3. PUCL Central Committee

### Copy of Letter:

Honorable Governor of  
Chhattisgarh, Raipur

Respected Sir,

The General Secretary of  
Chhattisgarh PUCL was arrested  
on May 14 2007 because of the  
Chhattisgarh PUCL's opposition to  
the repressive policies of the State  
Government or suppressing the  
extremist movements. The  
atrocities on innocent villagers  
were nothing sort of State  
terrorism. After Dr Binayak Sen's  
arrest, the State President Shri  
Rajendra Sail, who was organising  
protests, we also arrested to  
undergo one week's imprisonment  
in a contempt case which had its  
origin in 1998 after the murder of  
Shanker Guha Niyogi.

The PUCL (Gujarat) strongly  
condemns the arrest of Dr Binayak  
Sen, on trumped up charges under

the Chhattisgarh Special Public  
Security Act 2005 and the Unlawful  
Activities (Prevention) Act, 1967 as  
amended in 2004. These laws do  
not have provisions like bail,  
appeal, etc.

The PUCL (Gujarat) is  
specially concerned on the  
development of events in the wake  
of the wave of custodial violence  
cases unfolding in various parts of  
the country after the revelation of  
the fake encounter case of  
Sohrabuddin Sheikh in Gujarat.

The PUCL (Gujarat) is also  
concerned about the illegal  
detention of Shri Piyush Guha,  
who has been in detention of more  
than a week in contravention of  
Supreme Court guidelines.

You may be knowing that the  
National General Secretary of the  
PUCL has sent the case to the

National Human Rights  
Commission.

A PUCL Delegation had called  
on the union Home Minister Shivraj  
Patil to ensure the safety of Dr  
Binayak Sen and others.

The Home Minister Shri Shivraj  
Patil advised the delegation to  
make representations to the  
National Human Rights  
Commission, the State Human  
Rights Commission, and also to  
move the relevant Court.

We urge upon you to take the  
matter seriously and help us for  
early release of Dr Sen.

Thanking you, Anticipating  
your favourable Communication. –  
**Gautam Thaker**, General  
Secretary, PUCL Gujarat, June 13,  
2007

## Update on Binayak Sen Case

Dear Friend,

Dr. Binayak Sen's Bail  
Matter was heard in the  
Chhattisgarh High Court at  
Bilaspur on 20th July, 2007.  
The Senior Counsel Adv Kanak  
Tiwari, assisted by Adv  
Prashant Mishra, Adv Sudha  
Bhardwaj and Adv Vimlesh  
Bajpai, brilliantly argued it.

After hearing both the  
parties, the Hon'ble Justice  
Sunil Kumar Sinha has  
reserved it for orders. It was

expected that the same might  
be delivered next week.

In the mean time, the  
Chhattisgarh Government is  
going ahead with its repressive  
measures and harassment of  
the human rights activists,  
social organisations, etc. Mr.  
Subash Mohapatara of *Forum for  
Fact-Finding, Documentation and  
Advocacy*, was arrested on a  
complaint made by the clerical  
staff of the State Human Rights  
Commission on 17th July. Mr.

Himanshu of *Vanvasi Chetna  
Ashram* working in Dantewara  
district for the past 20 years was  
asked to wind up its activities, as  
the State Government has  
suddenly discovered that they  
were operating from unauthorized  
land.

More details would follow. –  
**Rajendra K Sail**, President,  
Chhattisgarh PUCL, (Mobile:  
098268-04519) □

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*Nominal charges*

**Contact:**

81 Sahayoga Apartments, Mayur Vihar I, Delhi 110 091

Phone: 2275 0014

**Copy:**

**Save Autonomy of the University Education**

To, The Editor  
Today, 08.07.2007, a  
State level convention was  
held under the banner of  
University Shiksha Bachao  
Samit (Save University  
Education Committee)  
against various problems  
prevailing in all universities  
of the State like attacks on  
the autonomy of the  
University, misuse of power,  
favouritism, corruption,  
nepotism, anarchy in  
admissions, and results, fee-  
hike, problem of appointment  
of teaching--non-teaching

staff, commercialization of  
education, etc. The  
Convention expressed full  
solidarity with the struggle of  
Fine Arts of M.S. University.  
Students, teachers, activists,  
educationists and citizens  
from all walks of life from  
Gujarat University, M.S.  
University, Baroda, Veer  
Narmad South Gujarat  
University, Surat Bhavnagar  
University, Sardar Patel  
University Vidhyanagar,  
Saurashtra University Rajkot,  
North Gujarat University,  
concerned citizens of the

State, students from different  
parts of the State joined the  
convention and participated  
in large number.

The Convention was held  
in Gajjar Hall. The  
convention was presided  
over by Dr. B.A. Parikh,  
former Vice-Chancellor, Veer  
Narmad South Gujarat  
University.

Shri Prakash N. Shah,  
Editor, *Nireekshak*, felt the  
spirit of the period from  
1968-74. He stressed on the  
student-teacher-citizens  
solidarity as was witnessed

during Nav Nirman Movement. Prof Yashvant Waghela of SC/ST Teachers' Association elaborated the problems of Gujarat University and the fight against that. Mukesh Semval, President, All India D.S.O., Baroda pointed out that all the policies now pursued by the University Authorities are attempts to bring the policies of Common University Act from backdoor after it had to be frozen owing to State wide protest against it. Among the other speakers were Dr. Bharat Mehta, Reader, M.S. University and Member, All India Save Education Committee, Shri Hasmmukh Patel of INSAF, Prof Ilaben Pathak of AWAG, Prof. Dhawal Mehta, former President, BUTA and GUTA, Shri Manishi Jani, veteran of Navnirman, Shri Umakant Mankad, well-known Advocate Shri Girishbhai Patel, Shri Indukumar Jani, Editor, *Naya Marg*, Shri Suryakant Shah, former President, Gujarat Universities Teachers' Association, etc. Students of Fine Arts Faculty of M.S. University presented a song to bolster spirits. Parvez Kabir of MS University Fine arts delivered a spirited speech.

Dr. Shivaji Panikkar, who faced an attack from hooligans just a day before here in Ahmedabad joined the convention and spoke at

length on the University autonomy, freedom of expression, and the present struggle against the University authority. He called upon all to join the fight against all out saffronisation of education. A resolution was presented by Shri Gautam Thaker, Convenor, University Shikshan Bachao Samit and it was passed unanimously. In the end three future programmes were announced:

- Meetings will be organised at all central places where universities exist and memoranda will be submitted to the respective Collectors.

- On 17 July, the memorial day of Shri Indulal Yagnik, a human chain will be formed near his statue in Ahmedabad.

- On 19 July, when Assembly Session is to start, a delegation will meet Governor of Gujarat and submit a memorandum.

- A Fact-Finding Committee headed by Dr. B.A. Parikh and comprising Shri Ilaben Pathak, Shri Digant Oza, Shri Digant Joshi, and Dr. Bharat Mehta as its members. – Girish Patel, Prakash N.Shah, Prof. Shivji Panikkar, Prof. Suryakant Shah, Prof. Dhaval Meheta and others call for a united struggle of teachers, students and concerned citizens – **Gautam Thaker**, Convenor



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