



INDIA: A democracy in peril

Introduction:

On 1 June this year, a gang chopped a young man into pieces in broad daylight in full public view in Thiruvananthapuram, the capital city of India's Kerala state. The rival gang, who murdered Binish, the victim, stayed at the scene for about an hour after the incident. Binish is a suspect in more than a dozen criminal cases. The incident happened barely 50 meters from the state police headquarters.

A few days later, the governor of Kerala, R. S. Gavai, gave permission for the Central Bureau of Investigation to prosecute the state secretary of the Communist Party of India (Marxist), Mr. Pinarayi Vijayan, for corruption. The bureau accuses Vijayan of illegally profiting from a government deal with a private contracting company, SNC-Lavalin, in 1998 while Vijayan was a minister. Within hours the CPI(M) organised a protest march against the governor's decision and burned his effigy in front of the governor house. The governor even received death threats. The CPI(M) called for a protest throughout the state.

In some areas, especially Vijayan's home district of Kannur, vehicles stayed off the roads while government and public offices remained closed due to the inability of officers to travel. Even hospitals had to function with minimum support. Instances of violence were reported around the state where the CPI(M) cadres destroyed public and private property.

In India, political parties sponsor mafia gangs and violence. Violence is part of India's political culture as well as its social fabric. Many would dispute this argument. Yet when a Sikh preacher was killed in Austria in May this year, Sikhs in the Indian state of Punjab resorted to violence in their homeland. The entire incident is an irony. Sikhism is a religion that officially denounces caste-based discrimination, which is yet another form of violence that runs through every Indian's veins.

Followers of Sikhism have resorted to violence in the past. The attack on two visiting preachers in Vienna this year, of which one belonged to the Dera Sach Khand sect, was allegedly by members of a rival sect. When the news reached Punjab, followers of the



Dera Sach Khand sect in the state, despised by the so-called upper-class Sikhs, resorted to violence. Thousands of Dalits, or "untouchables," in Punjab burned and destroyed public and private property on 25 May. A curfew had to be imposed to contain the violence.

It is a cruel twist of Indian society that Dalits, a community of millions that have faced the worst forms of violence, ranging from being labeled untouchables to denial of the right to exist, resorted to violence to vent their feelings.

When Indians protested in Australia against racial attacks on Indian students this year, their friends in India organised rallies and shouted at the Indian government to invade Australia. The Mumbai terror attacks in November 2008 were just one more excuse for some Indian intellectuals, politicians and policy analysts to call for an Indo-Pakistan war. According to these people, it was an opportunity dropped from heaven to test nuclear weapons and also to annihilate "terrorist neighbours" on their soil and solve the "world's problem" forever.

So behave the descendents of a generation that was able to gain independence from the British through a civil disobedience movement. But within hours of realising that the "external" threat of higher severity was set to go, Indians brought out their inherent affinity for violence by killing each other, in the name of two religions, in the Hindu-Muslim clashes that followed.

Some interpret the philosophical basis of the country's largest religion, Hinduism, to revolve around violence. The Bhagavad Gita, literally translated as "Song of God," one of the cornerstones of this religion, tells of the justification offered to a warrior by his counsel for the use of violence. The warrior is told to fight the rival factions, who are brothers, as it is justified as "dharma" or duty.

The overarching effect of this religion and its philosophy upon the people of the country is a catalyst to the primordial Indian nature to resort to violence to settle disputes and disagreements. Many religious groups in the country, whether Muslims, Christians or Parsees, have at times resorted to violence to vent their feelings and views, particularly disagreements.



Mainstream politics in India are merely harvesting the natural crop that violence breeds. All major political parties in India resort to violence. Dissent and discord is silenced with violence and the use of force. Violence is used not only in the literal sense, but also in all its temporal manifestations. In this milieu politics, state practice and the very concept of democracy itself have become the celebration of violence.

The human rights report on India cannot thus say anything other than the violence omnipresent in the country. In its manifest forms, violence haunts Indians and the country's future as extrajudicial executions, torture, crude forms of discrimination and enforced starvation. The following chapter on India thus deals with these subjects and tries to explain how such forms of violence is possible in the largest democracy of the world.

1. Extrajudicial executions

Pattern:

The Manipur Police Commando Unit (MPC) shot dead two persons on 23 July in Imphal town, the capital of Manipur state. One of the victims, Mr. Chongthan Sanjeet, was a young man and the other, Ms. Mayanglambam Thokchom Rabina, a mother in her advanced stage of pregnancy¹. The MPC was checking passenger vehicles in the town when the incident happened. The MPC stopped the vehicle in which Sanjit and Rabina were travelling near a crowded traffic interception and ordered the passengers to step out. When Sanjit came out of the vehicle, the MPC led him to a nearby medical shop. The MPC shot Sanjit inside the shop killing him immediately.

Hearing the gunshot the people ran for cover. The MPC fired at the fleeing crowd, hitting Rabina and five other persons. Rabina died on the spot and the other five persons were seriously injured. A journalist documented the entire incident, including the MPC placing a 9mm pistol on Sanjith's dead body before dragging the body out from the shop veranda.

The Chief Minister of Manipur, Mr. Okram Ibobi Singh, announced the next day in the



¹ AHRC-UAC-098-2009, 14 August 2009



state legislative assembly that the two victims are terrorists. The minister also said that the government could deal with terrorists only by resorting to harsh steps. The Director General of Police, Mr. Y. Joykumar Singh, said that the murder was necessary as the victims were armed and posed a threat to his officers as well as other citizens.

In fact, Sanjit was a villager travelling to the town for some business, whereas Rabina was going to the hospital along with her nine-month-old son for medical check-up. There was no subsequent investigation about the incident, nor any action taken against the officers involved in the firing.

The incident provoked a weeklong state wide protest organised by the civil society. The schools remained closed. Normal life in the state paralysed and the state administration wanted to regain control of affairs. The government launched a crackdown of the protest movement. The police arrested innocent persons whom they suspected of leading the movement. They charged the arrested with provisions under the draconian law, the National Security Act, 1980. Those arrested are yet to be released on bail. The detainees include prominent human rights activists.² Even after five months, the schools in the state are yet to be reopened.

Open murder by security agencies, the administration covering up the incident and then detaining anyone who protest are the regular ingredients of what is popularly known encounter killings in India. Extrajudicial executions have become a daily event in many parts of the country. During the past 14 months, the number of extrajudicial executions has alarmingly increased in the country. Not single state in India is an exception.

Murder for profits:

Fighting terrorists, insurgent groups, Maoists, Naxalites and other armed resistance groups are common excuses the security agencies, including the police, pose after each incident of extrajudicial execution. Out of an estimated 840 incidents of extrajudicial execution reported this year from India by various credible sources, the AHRC is yet to know a case where an officer is punished or an incident investigated after the incident. Instead, it is a common practice for the government to promote officers involved in the incident.³ It is thus not surprising that police officers in the country wrongly

² AHRC-UAC-122-2009, 18 September 2009

³ INDIA: Encounter killing and custodial torture, a disgrace for the nation; AHRC-STM-171-2009, 14 August 2009



believe that illegal detention, torture and killings are legitimate tools to maintain law and order.⁴

This is a controversial issue, not merely due to the wrong belief of police officers resorting to unlawful means, but also since these illegal methods are often used to cover-up criminal activities committed by law enforcement agencies and the political regime that control power to silence opposition. This is what happened in the case of Mr. Jainto Singh Gaur and Mr. Rajesh Bando reported from Assam.⁵

The army officers attached to the Kumaon Regiment stationed at the Tihu camp in Assam encouraged Gaur and Bando to pose as surrendering United Liberation Front of Asom (ULFA) cadres.⁶ Gaur was a student leader and Bando a small businessman from the Baksa district of Assam. The young men were attracted in the deal since a lawyer who worked closely with the corrupt army officers promised them that after the surrender, the government would pay them money from the funds designated by the state government for the rehabilitation of surrendering ULFA cadres.

The men started visiting the army camp and soon the army detained them in an undisclosed location. By the time they realised that the officers will kill them in a fake encounter, it was too late. The army killed Gaur and Bando between 17 and 28 April. The army claimed that they killed the two young men in an encounter. The recovery of hidden notes from the dress of the two men exposed the truth behind the incident. The notes strongly suggest that the officers and the lawyer were scheming to kill the two and share the reward money. The family of the two men are now pursuing a case at the Guwahati High Court, seeking the intervention of the court to direct an investigation in the case.

An enquiring magistrate exposed a similar case in Gujarat this year. The magistrate enquiring into the extrajudicial execution of Ms. Ishrat, Mr. Pranesh Pillai alias Javed

⁴ India: Overhaul Abusive, Failing Police System; Human Rights Watch, 4 August 2009

⁵ AHRC-UAC-163-2009; 27 November 2009

⁶ ULFA is a proscribed terrorist organisation operating in Assam. Over the past ten years, the political parties ruling Assam have used financial lures as a method to encourage ULFA cadres to surrender. It is also widely known that the political parties sharing power in the state have used 'surrender' of ULFA as a political tool to maintain popular support. The system is widely criticised for being laden with corruption. Blaming opposing politicians as ULFA cadres or sympathisers is a common method used in the state silence opposition. Hundreds have lost their life in this game. For further details please read Justice K.N. Saikia Commission Report, 2007



Shaikh, Mr. Amjad Ali Rana and Mr. Zeeshan Johar accused the Crime Branch of Ahmadabad Police for murdering the four students in June 2004 for mere promotions. The police case after the murder was that the victims, though college students are associated to the *Lashkar-e-Taiba*, a terrorist outfit.

The police accused that the students were plotting to kill the Chief Minister Mr. Narendra Modi. After five long years, the magisterial inquiry has pointed fingers at the officers, accusing them that they killed the students expecting promotions and cash awards. In fact, after the incident, the government promoted the officers. The case is now pending at the state's High Court. Similar cases are reported from Maharashtra, Punjab and Uttar Pradesh states where police officers are openly engaged in killing innocent persons after accepting money or expecting promotions.⁷

Murder as state policy:

In addition to corruption, the policy of the government is to condone extrajudicial executions. In states like Chhattisgarh, Orissa and Madhya Pradesh, the state government encourages extrajudicial executions for mere social control that favours the political regime in the state. These three states form part of India's red-corridor. In this year alone, the combined actions of the state police and the state-sponsored private militias in the three states account for more than half of the encounter killings documented in India.

The latest of the cold-blooded murder is reported from Orissa. On November 20, the state police shot dead two persons in the compound of Narayanpatna Police Station.⁸ The deceased were part of a 200 strong crowd that had gathered in front of the station demanding the Officer-in-Charge of the police station to accept their mass complaint. The crowd, mostly comprised of members of the tribal community in the state, were complaining that the police officers regularly molest them, particularly the women at home during night, in the excuse of search operations.

The police fired 300 rounds at close range at the crowd, injuring an estimated 60 persons and killing two. Several international organisations have condemned the attack.⁹ Yet, the state government has not initiated any inquiry in the incident.

⁷ Watch for example: Passport to Murder; BBC 28 September 2009

⁸ AHRC-UAC-162-2009; 26 November 2009

⁹ Among other organisations, the Amnesty International issued a statement on 2 December condemning the incident and calling for investigation



The myopic and blind urge for development is the reason for the government-sponsored onslaught upon the tribal communities living in central India. The state governments in these states are competing to attract foreign domestic investments. The investments are for exploitation of natural resources including the underground mineral resources in the region. The private corporations investing in excavation operations require the tribal communities that have been residing in these lands for generations to vacate the land. When the state government take sides with private corporations, it leads to conflicts.

Government-sponsored development programs implemented in Chhattisgarh state during the past six years are an example. This has destroyed thousands of hectares of forestland in Chhattisgarh. The National Mining Policy released in April 2008 spells out the government policy on mining. It aims at boosting national development through mining and disregards completely the concerns and welfare of the original inhabitants of the land.

Multinational players like *De Beers* of South Africa and the Anglo-Australian mining company Rio Tinto, which have invested heavily in mining operations in India, have shady human rights records and shoddy environmental practices. Accepting tenders from corporations with deplorable records and supporting their activities using state resources stands proof to the government's lack of commitment to the people.

Left with no means to survive and their original habitats rapidly depleting, the rural populations in the country have increasingly become vulnerable to exploitation by landlords and corrupt politicians. Exploitation often takes the shape of bonded labour, a practice criminalised in laws that are hardly enforced. Police and other state agencies, like the forest department, are easily bought over by landlords owing to the widespread corruption in the system. In frustration, the oppressed populations fall prey to extremist ideologies like those promoted and professed by the Naxalites, finding in them a means of fighting back.

Such fights, of varying intensity, have spread to an alarmingly large area of the country. Unfortunately, the government response has been equally violent, resulting in extrajudicial executions. Lopsided and religiously coloured defence tactics – like the



formation of the "Salwa Judum" and other village defence forces – have resulted in loss of life on both sides.¹⁰

In these fights, both sides are engaged in committing atrocities, as would be the case in any unregulated war where might and connivance make right. In addition to the policemen and the Naxalites, a large number of innocent persons have lost life in this war. As it was in the case from Manipur, the state governments justify every killing by its agencies by accusing the victims as Naxalites or members of armed resistance movements.

Even the union government in New Delhi supports this. A statement made by the Prime Minister of India proves this point. A few months back, the Prime Minister said in a public meeting "*Naxalites are the worst enemy of India.*" A week later government advertisements appeared in national dailies stating that Naxalites are cold-blooded criminals.¹¹

Trusted sources from Orissa, Chhattisgarh and Madhya Pradesh informs the AHRC that after the advertisement, there has been an increase in number of police raids carried out in the villages each day, resulting in a consequential escalation in the extrajudicial executions. The access of the media and other independent agencies into these 'unreported war zones of India' are extremely restricted and often prevented.¹²

In the Narayanpatna incident, the police rounded up the five member fact-finding team that went into the villages ordered them out from the village at gunpoint. The Deputy Superintendent of Police threatened that he will register fabricated charges against them if they were to be found anywhere near the villages.

The absence of credible data about extrajudicial executions prevents effectively challenging the government and allows it to continue its 'business of killing' with impunity. Often the victims' families, being from the most underprivileged backgrounds, have no means or the courage to approach the courts. The complete

¹⁰ When state makes war on its own people: Peoples' Union for Civil Liberties Report

¹¹ INDIA: Advertisement campaign against Naxalites is a call for violence; AHRC-STM-205-2009, September 30, 2009

¹² "It can become too dangerous, because of ongoing fighting, for our partners to access and reach out to the villages," Maria Joao Ralha, European Commission Humanitarian Office, as reported in India's Forgotten War, 19 November, 2009



absence of a witness protection programme or even a law to that effect, coupled with court delays often makes complaining against the law enforcement agency a suicidal act in the country.

However, there are direct and indirect sources in the country that provides 'sneak previews' into the reality. Often statements by government officers provide limited but shocking insights about extrajudicial executions. The Director General of Police in Manipur state, Mr. Y. Joykumar Singh made one such statement in November. He said that between January and October this year, his officers have murdered more than 260 persons.¹³ Of course, the officer added that all those who are killed are terrorists, murdered in armed encounters. In addition, there are also human rights groups who are actively engaged in documenting cases in the country.¹⁴

Conclusion:

The Indian media often report with contempt the killing and maiming of the citizens by non-state actors. The limited debate in the country upon the issue is centred on the illegitimacy of violence used by the terrorists, insurgents and armed resistance movements, and is highly polarised. Except for the effort of a few publications like the Tehelka, the deliberations so far have missed a crucial aspect, the issue of disproportionate use of violence by the state upon its own citizens.

The significance of this subject is on the logic that the state is the custodian of the law and is principally responsible for governing by the rule of law. It implies that the state must ensure equality before the law and must not allow the arbitrary abuse of authority and power by its agencies. Further, it casts a legal obligation upon the state that it can resort to force only through legitimate and controlled procedures, that too in extraordinary circumstances where the lives of its citizens are under immediate threat.¹⁵

¹³ INDIA: Law-enforcement agencies made accountable to the rule of law is an urgent need; AHRC-STM-236-2009, 2 December 2009

¹⁴ The SAFHR, a human rights group based in India is currently documenting cases of extrajudicial execution in Assam and Manipur. However, owing to fear most victims do not want their cases to be taken up in courts.

¹⁵ Rehnen, Frank. "Matching Traditional and State Authority: Challenges in Cooperation between Different Types of Authority to Build Peace", Paper presented at the annual meeting of the ISA's 49th annual convention, Bridging Multiple Divides, Hilton San Francisco, San Francisco, CA, USA, 26 March 2008



The constitutional framework in India that guarantees rule of law to its citizens thus restricts the state from unleashing disproportionate violence upon its citizens. Unfortunately, the Indian state is engaged in systematically negating this legal premise for the past several years. A cursory glance at the statistics produced by the National Human Rights Commission of India (NHRC), brings this fact to the fore. From April 2001 to March 2009, the NHRC has recorded 1184 deaths in police custody; which is murder committed by the police, without any sanction or approval of a court of law. Further analysis of this data brings out even more startling facts.

Most of these murders have taken place in relatively calm and problem-free states in the country, with Maharashtra state having the dubious distinction of topping the list with 192 murders. The other states ranked high in the list are Uttar Pradesh (128), Gujarat (113), Andhra Pradesh (85) and West Bengal (83). All these states are within the peaceful and prosperous parts of the country, with no insurgent activities.

It is a fact that these statistics is a gross underestimation of the actual numbers since only very few cases reach the NHRC and/or judiciary. The reason behind this is that often the victims' families, being from the most underprivileged backgrounds, have no means or the courage to approach the courts. The complete absence of a witness protection programme or even a law to that effect, coupled with court delays often makes complaining against the law enforcement agency a suicidal act in the country.

Further, in states like Manipur, the security forces have unlimited and unaccounted power to carryout their operations under the statutory protection of the draconian law, The Armed Forces (Special Powers) Act of 1958. This law allows even a non-commissioned officer to shoot to kill based on mere suspicion in order to "maintain public order".

The euphemism, "to maintain public order" is widely misused by the security forces for unleashing unbridled terror where they operate, thus supporting a trigger-happy culture of governance. The July 23 killing of Mr. Chongkham Sanjit and Ms. Rabina Devi in Manipur, exposes the degree of lawlessness resorted to by the security forces in these areas.

Placed in this context, the recent developments in the country have been highly disturbing. Despite all the evidences pointing to the worthlessness of the idea in delivering peace to the disturbed areas by use of force, the state is increasing its pitch



for declaring war on its own people. Even more unsettling is the fact that the union home minister himself leads the campaign.

An example of this is the home ministry's argument for a cohesive, clinical and all out operation against the Maoists named as Operation Green Hunt. What is missing in the aggressive rhetoric for a war on Maoists is the question about the people living in the area -- poor, hapless tribal -- marginalised to the peripheries of the Indian state for long. Caught between two warring parties armed to the teeth, the tribal pay the heaviest price in this battle.

Yet, they are nowhere cited in the public discourse. The only occasion they appeared to be included in the discussion was when the government decided to withdraw more than 100000 cases against the tribal 'to win their hearts and minds'. Cases that were slapped on them for 'stealing' firewood, honey and other minor forest produce and a constant source of their exploitation by the police and the forest department were withdrawn.

The government did not care to answer why these cases were charged against them in the first place! After all, they have been living in these forests for centuries and the forest belonged to them. Why did it take an armed rebellion to force the state to think about their plight, and why the government could not act on its own for this long are two important questions that are yet to be answered.

Similar is the case with the people of Nagaland, Manipur, Assam, the Jammu and Kashmir and other states hit by insurgent activities in the country. The people residing in these states are compelled to resort to war like efforts just to ensure survival. Day after day, they are forced to walk through an alarmingly reducing narrow corridor of neutral space, maintaining equal distance from the state and the non-state actors. In addition, the state does not help its case for garnering their support by the amount of terror it unleashes. After all, the state is the legal guardian of all its citizens, for it is the state who had solemnly promised and which had been bestowed the authority under the constitution to protect and preserve the inalienable human rights of its citizens.

For this reason alone, extrajudicial executions committed by the police and other state agencies deserve not only the strongest condemnation but also concentrated action against them. The deaths in police custody, committed with impunity provided by the uniform and authority, instigates not only public anger and protest but also hatred



towards the state. The insurgents, whichever colour they belong to, tap this hatred for mobilising people into an armed rebellion against the state.

Declaring a war on its own people is a humongous error of judgment on the part of the state. What the state needs to do is reengaging those who are up against it, addressing all their concerns. The state also needs to go for a systematic and systemic overhaul of the system and correcting the flaws within the administration at the earliest. For this, it is elementary to conduct a revision of state policies ensuring public participation.

Further, guaranteeing equality before the law and ensuring punishment to the perpetrators of violence including those enjoying political power is required. The country needs to put an immediate end to murder in police custody and fake encounters. Those who are responsible for committing these acts must be prosecuted, with no exception to incidents that have happened in the past. The government needs to put people in command of their life, their habitat and resources and stop the state-sponsored corporate plunder of natural resources. The future, otherwise, does not seem that bright.

The Supreme Court of India has repeatedly warned the government that 'custodial torture, violence and killing' as 'a naked violence of human dignity' and a 'calculated assault' upon the people and their fundamental rights. The judgments delivered in the D.K. Basu and the Bhajan Kaur cases categorically declare that it is the state's duty to ensure that persons live, behave, and are treated like human beings. The state must neither condone nor tolerate deprivation, oppression and violation of the right to life and liberty.

Yet, custodial killings in India have assumed alarming proportions, that it has adversely affected the belief of the citizens in the rule of law and the administration of justice in the country. Arbitrary misuse of authority with statutory impunity has also demoralised the security agencies in the country. If the functionaries of the state become lawbreakers, it results in a situation where might means right, leading to lawlessness and anarchy.

The Supreme Court has also directed the government that it must undertake innovative measures to deal with terrorism and has said that 'state terrorism would only provide legitimacy to terrorism which is against the rule of law'. The state must



thus ensure that its agents deployed for combating terrorism acts within the bounds of law and do not become law unto themselves.

India cannot afford to kill anymore of its citizens without plummeting into a state of anarchy. The prophetic vision of the court has proved to be true. It is now the duty of the state to undo its wrongs and prevent the ensuing anarchy.

It is time for the government to put an immediate end to the use of arbitrary means in dealing with dissent to safeguard the life and liberty of the citizens. The government cannot reject its constitutional and sacred duty to the citizens by becoming the unlawful arbiter and the executioner of humanity.



2. Torture

Tool for investigation:

Sceptics may argue that it is an irresponsible generalisation to say that Indian police depend on torture to conduct investigations. They may think such incidents are rare. The story of a 15-year-old Dalit, or low-caste, boy named Nitish proves that the sceptics are wrong.

The officers from Kodungaloor Police Station arrested Nitish into custody on 13 January.¹⁶ The police arrested Nitish at the Kodungaloor temple grounds. An officer took Nitish to the police station, where a probationary police sub-inspector and police constables brutally tortured him. The officer wanted Nitish to confess that he was a thief responsible for several unresolved cases that had been registered with the police.

The boy's family soon came to the police station, bringing along a politician for support. The probationary officer summoned Nitish from his cell. The officers had stripped him naked by then and he was bleeding from his wounds. The officer then caned Nitish in front of his parents and the politician. The boy's mother lost consciousness and collapsed inside the station. Later, the officer released Nitish after "advising" his parents that Nitish required "proper grooming," which he had demonstrated. Before letting Nitish go, the officer filed false charges against the boy. When the family approached a superior officer to complain about the incident, the officer said they could not expect the police to buy good food for suspects to get them to confess their crimes.



This attitude is not an isolated view. The speaker of the Kerala Legislative Assembly, K. Radhakrishnan, while inaugurating the 2008 Annual State Conference of police officers, said that police would have to use their "tools" while investigating a crime, for which "third degree" methods were essential. The speaker further clarified his position that human rights were an impediment to criminal investigations, a sentiment shared by police officers and many policy makers in the country.

¹⁶ AHRC-UAC-016-2009, 23 February 2009



A few months after Radhakrishnan's public statement supporting torture as an investigation tool, on 2 February, India's electronic media aired a short video displaying the shocking brutality practiced by the country's law enforcement agencies. The video showed eight-year-old Komal, a Dalit girl, being publicly tortured in Kailokhar village, Uttar Pradesh. A police officer held Komal up by her hair, twisted her ears and rained blows on her, demanding that she confess to an act of theft.

Five police officers in New Delhi are now facing accusations of raping a woman slum dweller inside the Inderpuri Police Station. The officers brought the woman to the station, as they wanted to question her about her husband, a proposition unheard of in Indian law.

What do the police have to say about all this? The most repeated rhetoric is that officers suffer from low salaries and a lack of proper investigation facilities. Political interference and public pressure to prove crimes are also quoted as reasons for pushing the police to torture suspects.

The Supreme Court of India in 2007 tried to address this problem. In a 2006 case, Prakash Singh and Others vs. Union of India and Others, the court directed the government to take measures to delink politicians from the police. Interestingly, Prakash Singh is a former police officer who believed that the court could end unwarranted political interference in the day-to-day functioning of the police. When the court decided in Singh's favour, the government filed a revision petition seeking a review of the court order on the grounds that the court was interfering with the function of the government. The revision was not allowed, but the court's directives are yet to be implemented, which demonstrates the simple fact that courts cannot resolve all the issues in the country.

Torture undermines democracy:

Torture is an important issue because it neither promotes democracy nor supports the rule of law. On the contrary, the open or clandestine use of torture undermines the fundamentals of democratic governance. India allows law enforcement agencies, particularly the police, to practice torture. As one of the most visible representatives of the state, the police can implement its directives in society through fear. Criminal investigations in India often begin and end with a confession. Fair trials have no place in such an environment.



The tendency to brutally abuse the weak is deep-rooted in the minds of the Indian people. In fact, the subcontinent has been the cradle of this practice. The temporal basis of the superiority of Brahmins, or high-caste elites, forms the foundation of the caste system, which justifies the use of brutal force to suppress weaker sections of society. Ill-conceived notions of divinity, to succeed, require unchallengeable restrictions imposed on those who are expected to remain outside the "divine caucus," which in the caste hierarchy are those lower than Brahmins.

Brutal suppression was the fate of anyone who attempted to break away from this servitude to the elite. Even in Hindu mythology, there is the story of Lord Rama, revered by millions, who kills a low-caste sage named Sambuka to liberate him from worldly sins. Another story tells the tragic fate of *Eklavya*, a low-caste prince who has to sacrifice his thumb to his teacher *Dronacharya* to perfect the art of archery – an act forbidden him due to his birth in a lower caste. Although one of India's national honours for teachers, the *Dronacharya Award*, is ironically named after this very teacher, whether he or Lord Rama ever existed is still a highly debatable issue.

Even after gaining independence from the British on 15 August 1947, and forming a democratic socialist republic on 26 January 1950, torture continues to be practiced in India by the powerful on the weak. This undermines the very foundation of the country and is the result of its decayed political system. It reflects the dead Indian mind. Torture is nothing but state-sponsored brutality.

The UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment came into existence on 26 June 1987. In the debates during the formalization of the convention, the government of India supported it and was of the opinion that it was "a step forward in realising human rights." That is the only statement made by the government of India in support of the convention in any international forum.

Unfortunately, 22 years later, torture is still widely practiced in India by the police, paramilitary units and other law enforcement agencies. They perceive the practice as standard operating procedure for criminal investigations, which usually begin and end with a confession obtained through torture or intimidation.



Torture is not viewed as a criminal act, but as a symbol of authority, a means to enforce discipline and for social control. That is why torture is not carried out in the secrecy of a detention centre, but in full public view in India.

A tool for extortion:

Law enforcement officers use torture as a tool for extortion. This behavior has distanced law enforcement officers from the ordinary people. In fact, "law enforcement agency" has become a misnomer in India; public perception sees these agencies as state-sponsored criminals in uniform. It is common practice in India that ordinary individuals, if required to interact with law enforcement agencies, will first seek assistance from politicians to avoid intimidation, abuse or arbitrary detention.

Corrupt politicians use this as an opportunity to demand bribes. In this way, torture facilitates corruption not only among law enforcement agencies, but also among other public servants. Similarly, torture corrupts the country's justice delivery mechanisms. Even though torture and a fair trial cannot coexist, criminal charges based upon evidence gathered by the use of torture continue to be brought to court, and result in acquittals. On the other hand, when there are possibilities for persons to be convicted through such evidence, a fair trial is negated.

Currently, there is no law in India that criminalizes torture. For the past several months, a law to this effect has been under the consideration of the government. However, it would require considerable revision to meet international standards that conceive torture as a crime against humanity.

No legal framework:

The internationally recognised definition of torture as envisaged in the convention is *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."*



The proposed Indian law, however, limits the definition of torture to "*any act which causes: (i) grievous hurt to any person; or (ii) danger to life or health (whether mental or physical) of any person.*" Limitations like the requirement of "grievous hurt" not only circumscribe the concept of torture from its normative definition, but also put additional burden upon the victim to prove that the injury was grievous in nature. The law is also silent about the burden of proof, which according to existing provisions of the Indian Evidence Act, 1872, is upon the victim.

The introduction of the concepts of "hurt" and "danger" in the law as qualifiers to the convention's broad definition of torture can only be viewed as an intentional attempt to dilute the state's responsibility in preventing torture. It is also an attempt to dilute the gravity of torture, the right to be free from which has attained the status of "*ius cogens*," a peremptory norm in customary international law.

The condemnation of the crime of torture and its expanding horizon was envisaged as early as 1992 by the United Nations in General Comment 20. The legislative process in the proposed law is seeking to keep this away from Indians. The law bypassing key aspects such as the investigation and prosecution of torture further lessens its use for torture victims. Without exception, no one in India would expect the police to impartially and promptly investigate an act of torture allegedly committed by their peers.

The proposed law also prescribes perimeters to its operation by limiting the time within which a complaint has to be filed to six months from the date of incident. The law makes no mention of any complaint filing mechanism however, or provisions for witness protection. Considering the gravity of the crime and possible suspects, a law criminalizing torture must include measures for witness protection.

So far, the government has not initiated any discussion or debate concerning the proposed law. Civil society groups however, made use of the International Day in Support of Victims of Torture, 26 June, as an occasion to discuss the brutal practice of torture in the country. For these discussions to be meaningful, civil society must also analyse the proposed law and devise means to make the necessary revisions for it to meet the standards prescribed in the Convention against Torture, which India signed as early as 1997.



Self-censored media:

The quintessence of democracy is governance through consultation. Torture prevents dialogue and discourages consultation. Complaining against torture is complaining against the state. Discouraging a complaint is demoralizing to the complainant. Complaint is also a form of expression. Freedom of expression and speech cannot coexist with torture.

Yet, the Indian media opted to maintain blissful silence on 26 June this year too, by not devoting enough space to speak against torture on the International Day against Torture.¹⁷ The silence of the media exposes the lack of appreciation and understanding of the Indian media of the importance of torture and the destructive role it plays in undermining free speech and expression. It also illuminates the professional neglect the media entrains against people's concerns.

Such lack of interest has allowed the government of India to succeed in denying to admit that torture as an issue affecting the country's rule of law. This denial challenges the constitutional mandate of any government that assumes office promising to protect democracy, promote the rule of law and fulfil constitutional guarantees.

Torture is the mother of all human rights violations, undermining the concept of justice and democracy. Trying to negate state responsibility for preventing torture is not only a self-defeating exercise for the government, but also an act of deceit played upon the citizens.

Judicial interventions:

India's Supreme Court has attempted to address questions concerning the use of torture. As early as 1978, the Nandini Satpathy case raised the issue of an accused person's right to remain silent under investigation.¹⁸ A series of judgments in the Charles Sobraj¹⁹ and Sunil Batra ²⁰ cases discussed and confirmed the rights of prisoners. The Raghbir Singh ²¹ case dealt with the issue of torture, where the court

¹⁷ The mainstream media in India did not write against the practice of torture on June 26, instead accolades were showered upon the government for its effort on combating drug abuse, as the same day is observed as international day against drug abuse and illicit trafficking

¹⁸ Nandini Satpathy v. PL Dani, (1978) 2 SCC 424

¹⁹ Charles Sobraj v The Superintendent, Central Jail, Tihar, New Delhi, 1978 AIR 1514 1979 SCR (1) 512

²⁰ Sunil Batra v Delhi Administration, (1978) 4 SCC 409 AND Sunil Batra v Delhi Administration 1980 AIR 1579

²¹ Raghbir Singh v State of Haryana, AIR 1980 SC 1087



condemned not only its practice, but held the government responsible for the acts of state agents. The Francis Coralie Mullin ²² case dealt with the issue of preventive detention and laid down the rights of a detainee in preventive custody. In the Sheela Barse ²³ case, the court said that a citizen has a right to know the living conditions of prisoners inside a prison.

The jurisprudence laid down by these cases not only affirmed the fundamental rights of the accused and convicts, but further reiterated that custodial torture is unacceptable in law. It is a settled law that a police officer could be punished for the crime of torture. Later, in the D. K. Basu ²⁴ case, the court went one step further by detailing the procedures to be followed during the arrest, detention and questioning of a person. The court did not stop here. It went further, directing the government to publish its directives in every police station and detention centre in the country as a permanent public notice. Yet, day after day, people are tortured, raped or murdered in police custody.

Meanwhile, in the Prakash Singh ²⁵ case the court addressed yet another issue, that of unwarranted political control of the police. This time too the judges literally stepped out of the Supreme Court building asking the government to come up with measures to meet the court's directives to replace malicious political control by laws and procedures. The court fixed a time limit for the government to fulfill the directives, which included setting up a Police Complaints' Authority to receive complaints about erring police officers.

Now in many states there are Police Complaints' Authorities. But three years after they came into existence, not many in India, including police officers and judges, are aware of these institutions. This explains why there aren't any cases registered in the country on the basis of a complaint received by these institutions. The government has provided the least possible advertisement to the public about them. Besides, the government has done nothing to comply with the court's directives.

The negation of the court's directives by the government and the police is proof that India's courts cannot solve deep-rooted problems. The impunity and the utter lack of accountability associated with policing also prove that politicians in the country are

²² Francis Coralie Mullin v Administrator, Union Territory of Delhi, 1981 AIR 746

²³ Sheela Barse v State of Maharashtra, JT, 1988 (3) 15

²⁴ Shri D.K. Basu v State of West Bengal, 1996 (9) SCALE

²⁵ Prakash Singh v Union of India, (2006) 8 SCC 1



not interested in improving the state of policing. A country where one-third of its elected representatives, irrespective of their political allegiances, face charges from murder to rape, cannot expect to have a legislative assembly that would enact and implement laws to curtail the "freedom" of corrupt politicians. A police force that benefits from corruption cannot be expected to press for any change in the status quo.

Yet, torture is not criminalised in law as a separate or special offense. Provisions in the Indian Penal Code, 1860 (sections 330 & 348) penalises acts that can also be considered as torture, with seven and three years of imprisonment respectively if proven guilty. But the offense attracts no particular relevance if the crime is committed by a police officer. The temporal treatment of the law is to deal with a regular offense. The two provisions also falls short of covering all aspects of torture, as defined in the Convention against Torture.

In addition, the reduced possibility of a proper forensic medical examination of a victim and the complete absence of a witness protection mechanism facilitates easy acquittal of the criminal. The Indian Evidence Act, 1872 also does not have any provisions in dealing with the aspect of torture. An act of torture, if proved, does not require the perpetrator to pay compensation to the victim. The right against torture is not a fundamental right. The courts in India, thus far have taken a minimalistic view on compensatory claims concerning acts of torture. A claim for compensation is dealt within the realm of personal injury claims. Awards of compensation vary widely from court to court throughout the country.

Witness protection:

There is no specific law concerning witness protection in India. The only possible measure is for the court to impose a condition at the time of considering a bail application. The usual practice is to impose conditions like the accused shall not interfere with the witness or the evidence in the case. But there is no safe and watertight framework within which compliance to these conditions could be guaranteed. It is a common practice in India for the accused to try to threaten the witnesses and or tamper with the evidence in a case.

Conclusion:

Torture is practiced as a routine and accepted as a means for investigation. Most police officers and other law enforcement officers consider torture as an essential investigative tool, rather than an unscientific and crude method of investigation. Policy makers and bureaucrats believe that there is nothing wrong in punishing a



criminal in custody, not realising the fact that a person under investigation is only an accused, not a convict and further, that even a convict cannot be tortured. This is due to the lack of awareness about the crime, its nature and about its seriousness. All sections of the law enforcement agencies, the paramilitary and military units practice torture. Torture, as a form of violence is used for social control.

Trauma from torture affects an individual's capacity to act prudently and further to respond normally to incidents. Torture -- mental or physical or a combination of both -- is practiced in every police station (12,441 police stations in the country). Given the fact that a victim of torture and a witness -- which includes the perpetrator, since the perpetrator is also a witness -- suffers from mental trauma from an act of torture, arguably, the police stations in the country are manned by individuals suffering from mental trauma associated with torture.

Domestic as well as international experts, particularly the thematic mandate holders under the UN framework have expressed concern regarding the widespread use of torture in India. The National Human Rights Commission of India has repeatedly recommended to the Government of India to ratify the Convention against Torture and to criminalise the act of torture in the country. The Commission said "*[d]aily the Commission receives petitions alleging the use of torture, and even of deaths in custody as a result of the acts of those who are sworn to uphold the laws and the Constitution and to ensure the security of its citizens. Such a situation must end, through the united efforts of the Government...*"

As early as 1981, the Supreme Court of India has said "*...[n]othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights*".²⁶ The UN Human Rights Committee as early as 1997 has expressed its concern about the widespread use of torture by the law enforcement agencies in India.²⁷ The Committee on Elimination of Racial Discrimination²⁸ in 2007 and the Committee on Economic Social and Cultural Rights²⁹ in 2008 have also expressed similar concerns.

²⁶ Kishore Singh V. State of Rajasthan, AIR 1981 SC 625

²⁷ CCPR/C/79/Add.81

²⁸ CERD/C/IND/CO/19

²⁹ E/C.12/IND/CO/5



Torture and the concept of democracy do not coexist. Torture works against the fundamentals of justice and the rule of law. Torture is not a stale human rights issue that has to be left for the consideration of the courts or that of human rights activists. Torture is the enforced monologue by the state to the people to constantly remind them that the state has the will and the means to enforce its writ whether the people like it or not. Enforced monologue by the state is the character associated with dictatorship.

India and Indians are not immune to the effects of torture. In fact, thousands of individuals fall prey to torture each year in the country. It is practiced inside police stations and other centres of law-enforcement. Torture is so common in India that it is no more a highly secretive act practiced in hidden locations. Torture is viewed as an acceptable mode for criminal investigation and is condoned by jurists and policymakers alike. Until this attitude is changed, there shall be no change in the status quo, instead India will continue to remain a pseudo democracy.



3. Caste based discrimination - the continuing curse of manual scavenging:³⁰

Manual scavenging in India is officially defined as 'lifting and removal of human excreta manually', at private homes and toilets maintained by municipal authorities. The practice consists of gathering human excreta from individual or community dry toilets with bare hands, brooms or metal scrapers into woven baskets or buckets. This the scavengers then carry on their heads, shoulders or against their hips, (and in wheelbarrows if they can afford it) into dumping sites or water bodies. Apart from this, many scavengers are similarly employed to collect, carry and dispose excreta from sewers, septic tanks, drains, and railway tracks.

Manual scavengers are condemned to live and work in most dehumanising conditions. Cleaning public/private latrines, sewer systems, and septic tanks, they work amidst excruciating filth and stench. Carrying the refuse to disposal grounds merely adds to their woes as they are generally compelled to carry it refuse as head load. It is insignificant to point out that these working conditions make them vulnerable to serious health hazards exposing them to viral and bacterial infections.

Apart from the dehumanising and degrading nature of the work, scavengers are employed at highly exploitative wages. Those working for the municipalities seldom earn more than 40-50 Rupees a day. The enactment of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has effectively worsened their situation. The Act prohibits municipalities to hire scavengers as permanent workers and therefore and they take recourse to contracting out all the scavenging work. These private contractors have been seldom



Manual scavenging; Picture curtsy-Karuna
Tmict

³⁰ This chapter is based on the findings of the research and contributions made by Mr. Avinash Pandey, Research Scholar at the JNU, working on the political economy of manual scavenging. His research interest includes the overall political economy of caste and caste based occupations, and he has done projects partially supported by the AHRC, exploring the sources of the entrapment of Balmiki community in manual scavenging and the perpetuation of the violation of their human rights and dignity. The text is the abridged summary of Pandey's article, reproduced with his kind permission.



found to pay stipulated minimum wages to their workers.³¹ The condition of those employed privately is even worse. All they get for this demeaning job is left over food as well as a meagre 20-30 Rupees per month per house.

In sum, the scavengers have been pushed out of the religious boundaries by virtue of their 'untouchability', are denied rights whether scriptural, religious or social and are placed on the margins of the society, necessary for its survival but unwelcome to be a part of it. The predicament of the *Balmikis* is a classic case of subversion of logic making the manual scavenger who cleans and disposes waste (including human and animal excreta) by others becomes ritual 'polluter' condemned to remain on the fringes of society.

Yet, far more intriguing is the fact that instead of taking corrective measures, India after independence has not made any gains in reinstating the *Balmikis* to the mainstream of the society. For all its lofty ideals of equality, democracy, secularism, and socialism promised in the Indian constitution, *Balmikis* continue to be discriminated because of sheer accident of birth in a marginalised community.

The rise of manual scavenging and fall of manual scavengers:

The scavengers known by different names (*bhangis*, *mehtars*, *thottis*) in different parts of the country stands at the bottom of the caste system. Their basic functions in the villages are to do away with the carcasses of the dead animals, to clean and sweep the village, to beat drums (as drums are made of leather and so were filthy, unfit to be handled by the upper caste Hindus), and to announce deaths, the most unwelcome news. Thus, they are considered to be the heralders of bad omens whose contact and presence can defile the caste-Hindus. To put it in the words of Dr B.R. Ambedkar, they are "the lowest in a system of graded inequality".³²

Even the other Dalit (lower caste) caste groups discriminate the manual scavengers, thus forcing them to face the worst forms of double burden of exploitation. The recent political assertion of the Dalit groups has left this particular community out of its ambit. The reasons behind this are manifold. First, the occupation they are in is considered to be most polluting and filthy. In a system where occupations are ranked not over their economic value, but on their religious and ritual ranking, heredity

³¹ See Ramaswamy, Gita (2005) *India Stinking: Manual Scavengers In Andhra Pradesh And Their Work*, Navayana, Chennai; and Thekaekara, Mari Marcel(1999) *Endless Filth: The Saga Of Bhangis*, Books For Change, Bangalore among other for prevalent wage rates

³² Dr. B.R. Ambedkar, the father of the Indian constitution was also a lower caste, born into the Chamar caste



profession of manual scavenging predestines the members of the community to be ranked at the dead bottom of the hierarchy and to be despised by everyone.

Contrary to the popular belief, even the British interventions during the pre-independence period did not bring any change to the condition of manual scavengers. The sight of head loading of the shit, and shoddy brooms reminded the dominant castes of the Balmikis's inevitable occupation and of their menial status. Om Prakash Valmiki, a poet who hails from the same caste, comments with anger and disgust simmering within. *"As long as there will be a metal trash can in Rameshwari's hands, the democracy of my nation will be an insult"*.³³

Dr. B.R. Ambedkar was first to spot and oppose the nefarious designs inherent in pre-independence legislations that nailed manual scavengers to the bottom of social hierarchy. Commenting on the criminalisation of refuse to do scavenging work and supporting the sweepers' strike in Bombay, he described the Acts as sanctions for forced labour and a perpetuation of slavery through the legitimacy drawn by state power. A long quote of him on the issue reads:

*"People may be shocked to read that there exists legal provision which sanctions forced labour. Beyond doubt, this is slavery. The difference between free labour and slavery lies in this. Under slavery a breach of contract of service is an offence which is punishable with fine or imprisonment. Under free labour a breach of contract of service is only a civil wrong for which the labourer is liable only for damages. Judged in this light of criterion, scavenging is a legal obligation imposed upon the untouchables which they cannot escape."*³⁴

The miserable conditions of Dalits were not lost upon Gandhi. He did notice their pain, agonies and sufferings. Yet, the contradictions of Gandhi's position on the issue become evident when we analyse his take on the question of scavengers' right to strike. Gandhi was categorically opposed to this and suggested other ways to the scavengers to give voice to their anger. Gandhi said:

"Just as man cannot live without air, so too he cannot exist for long if his home and surroundings are not clean. One or other epidemic is bound to break out, especially when

³³ Valmiki, O P (1991): 'Jharuwali' Sadiyon Ka Santap, Philhal, Dehradun, pp16-17

³⁴ Ambedkar, B. R.(1989) Essays On Untouchables And Untouchability, writings and speeches, Vol. 5 Government of Maharashtra, Mumbai p 257



*modern drainage is put out of action. ... A Bhangi may not give up his work even for a day. And there are many ways open to him for securing justice."*³⁵

Faced with this dual assault of native elites (read upper caste Hindus in the main) and the might of colonial empire, the scavengers were doomed to enter the profession for mere survival, and once in the profession had no way out. The legislations, the punitive powers of the state, religious bigotry and economic penury have sealed their fate. They were to remain entrapped in the profession and were also to be blamed themselves for their predicament.

Government inaction and intentional neglect:

Despite official abolishment of all forms of untouchability with the framing of Constitution itself, it took 24 years more for India to introduce Section 7A into the Protection of Civil Rights Act, 1955 which made the compelling any person on grounds of untouchability to scavenge a cognizable offence. The practice was illegalised finally in 1993 with the passage of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 in Indian parliament making even the supposed "voluntary" employment as scavengers an offence. The political will of the Indian state behind this legislation gets exposed from the fact that the Act got notified in the Gazette of India only in 1997 and no state promulgated it till 2000.

Adoption of the Act by state governments was crucial to achieve the goal of eradicating manual scavenging as sanitation is a state subject as per entry no. 6 of the Seventh Schedule of the Constitution; and the central act remained an ineffective and worthless tool for eliminating the practice in absence of its adoption by state governments. As per rules, the responsibility of enforcing the various provisions of the act was with the state governments and their inaction ensured the failure of it.

Despite repeated attempts and mounting pressure from activists and civil society organisations, both the central and state governments did not budge on the issue. In 1996, Justice Rangnath Mishra, the then Chairperson of the NHRC, sent a letter to various authorities expressed his concern about the continuation of the 'inhuman and degrading practice of manual handling of night soil' which was 'prevalent even today in certain parts of the country'.³⁶ He asserted the need for translating the 'landmark' legislation into concrete measures in view of various constitutional provisions and the

³⁵ Harijan, 21 April, 1946

³⁶ NHRC (1996) D.O.No. 15 (19) / 96- Coord.



protection of human rights in view and urged upon the authorities to '*set an example on this score by replacing dry latrines, wherever they exist in the buildings owned by your [m]inistry, with pour-plush ones, and fix a date for achieving this target*'.

However, it required another letter, far sterner in tone and tenor, from the NHRC to make the states get their act together. Justice M.N. Venkatachalliah, the then Chairperson of the NHRC communicated his displeasure to chief ministers of all the states and requested them to implement the provisions of this Act.³⁷ However, it took another decade for some states to adopt the Act. As of now, only 17 states of the Union of India viz; Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, West Bengal, Orissa, Punjab, Assam, Haryana, Bihar, Jharkhand, Chhattisgarh, Madhya Pradesh, Tamil Nadu, Uttar Pradesh, Gujrat and some union territories have adopted the Act. Most of these states have adopted the Act only after 2005, including Uttar Pradesh, the most populous state of the country.

In a clear violation of all the constitutional provisions and the their self-proclaimed commitment to uphold the constitution, eleven states including six major states of Himachal Pradesh, Rajsthan, Uttarakhand, Kerala, Jammu and Kashmir are yet to adopt the act together with the states/union territories which have claimed to be 'manual scavenging free' despite data to the contrary. These states include Arunachal Pradesh, Delhi, Goa, Himachal Pradesh, Meghalaya, Mizoram, Nagaland and Sikkim.

Estimating the numbers: engaging with the perplexing statics:

For all the false claims of success in eradicating the inhuman practice of manual scavenging from India, the ground realities are grim. Even after sixteen years of passage of the Act, the government of India itself unabashedly accepts the continuation of the practice. The Ministry of Social Justice and Empowerment holds that nearly 676000 people are still engaged in manual scavenging, though official figures are definitely an underestimation of the extent of problem.

Based on surveys and fieldworks conducted by them, the activists engaged in campaigns against manual scavenging and other atrocities on Dalits estimate a number three to four times higher than the government data. The reasons behind this underestimation of the number of people engaged in manual scavenging are manifold.

³⁷ NHRC(1997) D.O. No. 11/1/99-PRP 7 P, January 24th



First and foremost, acknowledging unabated persistence of a practice illegalised full sixteen years ago is not only a source of huge embarrassment for the government of India, but is a direct affront on the constitution of India by denying the very basic fundamental rights and freedoms guaranteed by it to Indian citizens. The continuation of this dehumanising practice violates fundamental rights guaranteed under Article 17 (right against untouchability) together with Articles 14, 19 and 21 guaranteeing equality, freedom, and right to life with dignity.

Presented with this situation, the only way of estimating the numbers of people condemned to be engaged in manual scavenging is making an attempt to infer their numbers by triangulating government's own statistical data with the surveys and field studies conducted by activists, campaigns and independent researchers. For example, National Commission for Safai Karamcharis, a statutory body established by the parliament of India, puts the number of dry latrines in country around 9,600,000.

As against this figure, the 2001 census of India found service latrines (another name for dry latrines) in 13 million households, 6 million in rural and 7 million in the urban areas.³⁸ The staggering difference of around 3,400,000 between these two figures is a telling comment on the reliability of government data on number of manual scavengers employed in cleaning these dry latrines. Compounding the problem are another 122 million households in the country without any kind of toilet facility of which 108 million are in the rural and 14 million are in the urban areas. Even if we assume that there is absolutely no need of cleaning the human excreta generated by these households in the rural areas for the fact that most of the people defecate in open agricultural fields, the question that who cleans the urban streets is never addressed by the government authorities.

Plenty of schemes: poverty of vision:

The question of scavenging has remained in the public discourse since the times of Indian struggle for independence. The issue kept springing up post independence as well. Right from 1949, when the government of Bombay (now Maharashtra) appointed the Scavengers Living Conditions Inquiry Committee, under the Chairmanship of Mr. V.N. Barve, many a committees, commissions and task forces have been appointed by the government of India as well as state governments to tackle the problem. A few prominent ones of these include, the *Scavengers Living Conditions Enquiry Committee* (Barve Committee, 1949) *The Scavenging conditions enquiry Committee* (Malkani Committee) 1957, *The Committee on Customary Rights to Scavenging* (Prof. N R

³⁸ Census of India 2001



Malkani Committee) 1965, *The Committee to study the working and service conditions of sweepers and scavengers* (National Commission on Labour) 1968.

Interestingly, most of these reports accused the scavengers themselves arguing (seemingly) that they had taken up the job voluntarily without even thinking of the material and conditions that forced them into the profession. The following recommendation of the Barve Committee is a classic example of this misplaced identification of the problem:

*The caste of Bhangi as such was confined only to certain provinces like Gujrat, Maharashtra, Karnataka, etc. it was of a very late origin. Ancestors of these Bhangis were just field labourers of a low caste but never did the work of scavenging. **Some of these people took to the dirty work of cleansing the latrines for the sake of profit. Slowly this developed into a monopoly. The stage was reached when the Bhangis wanted to exploit this monopoly and a sort of customary right was thus developed. By force of habit the Bhangi lost his self-respect to such an extent that he did not consider the dirty work of cleansing latrines as a curse from which he should Endeavour to extricate himself.***³⁹ [Emphasis added]

In blaming the Bhangis for taking the dirty job 'for the sake of profit' and by losing their self-respect 'by the force of habit' the committee made a mockery of its own stated goal as well as that of the very basic belief in the rationality of individuals, the cornerstone of modernity. Fascinatingly, nowhere the committee talks of the material conditions which might had forced the Bhangis into the profession or, cite any data in support of its laughable claim that Bhangis took to the job willingly!

Just to give an idea of the enormity of the issue, the Indian Railways has more than 8000 stations of which, only six per cent or some 500 stations are currently marked for concrete platform tracks which allow a washable apron system (in other words use of mechanical water jets to remove human excreta). Again, only 60 of these 500 stations figure in the short term up-gradation plans of the railways and the Railways is tight lipped about when it would upgrade remaining 94 per cent stations. Furthermore, the annual allocation in the Railway budget under passenger amenities, a section of which is used for such up-gradation is a meagre two billion rupees as against the estimated budget of 11 billion rupees for upgrading just 500 top stations.

³⁹ Barve, V. N. (1958) *Report of the Scavengers Living Conditions Enquiry Committee, State of Bombay*; Government Printing Statistical, Bombay.



Many of the defence establishments flatly deny any dry latrines even while employing manual scavengers. Municipalities, on the other hand, have been found to threaten the scavengers and others who brought the existence of dry latrines to public knowledge and achieved silencing of these voices in most cases.

Government of India, on its part has failed singularly to bring the offenders to book. Multiplicity of departments, institutions and agencies for tackling the problem has done anything but helping the scavengers. Armed with the confusing jurisdictions of different government agencies of competing departments, officials have treated the issue with absolute abandon and have seldom tried to fix responsibilities. Further, these agencies keep passing the buck to other departments when confronted with concrete data regarding absolute failure of the schemes for liberation and rehabilitation of the scavengers. For example, in 2005 an official of the Ministry of Social Justice and Empowerment (hereafter MoSJW) lamented the inaction of Railways in containing the practice by inadequate allocation of funds in railway budget for doing away with manual scavenging.⁴⁰

Situation now:

Unfortunately, despite scathing critiques, the ministries and implementing agencies did not change their ways. Even after 2002, the implementation of the Scheme was as appalling as earlier. The audit report of 2006 gives a fair idea of the underperformance by demonstrating the allocated budget and actual expenditure. The data shows the taxpayers' money meant for manual scavengers remained underutilised in government coffers year after year.

Similarly, the auditors' report of 2007 indicted the Railways for violating the directives of government of India and the Supreme Court by failing to eradicate manual scavenging from railway tracks. It found that washable aprons were either not provided at all or were not provided on tracks between all platforms in 69 per cent of the A category stations reviewed. The report further observed that:

- Existing washable aprons were not maintained properly and were found in broken condition in 15 stations including important stations such as Mumbai Central, Bandra Terminus, Sealdah, Kharagpur, Ranchi, Bilaspur, Lokmanya Tilak Terminus, Pune, Surat, Ballarshah etc.

⁴⁰ Mazoomdar, Jay (2005) Railways say Manual Scavenging to Stay, Indian Express (New Delhi Ed), Sept 10



-Non-availability of washable aprons and poor maintenance of existing washable aprons compounded by the inadequate water supply restricted the use of machines for cleaning. Consequently, the night soil and waste collected near the tracks had to be disposed off manually, even though manual scavenging was banned by Government of India through the 'Employment of Manual Scavengers and Construction of dry latrines (Prohibition) Act 1993' and Supreme Court had also issued directions regarding the same. ⁴¹

Very recently, The Safai Karamchari Andolan, an organisation working towards the implementation of the 1993 law banning manual scavenging, submitted a report before the Supreme Court on 9 May this year pointing out it had identified 15 dry latrines and five manual scavengers in North East Delhi, the capital city of the country. ⁴² Only after drawing the opposition of the Supreme Court, the Delhi Cabinet decided to implement the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 in all areas covered under the National Capital Territory of Delhi.

Conclusion:

Though there have been many studies which dealt with the perennial subordination and subjugation of the Dalits in general, far less attention has been paid to the scavengers. Their plight was believed to be explicable by the structure of Hinduism through the perpetuation of caste hierarchy over millenniums.

Undoubtedly, Hinduism and the caste structure did produce and shape the fate of the scavengers, yet their plight cannot be explained by it alone. The exploitation they suffered with the onset of colonialism was significantly different from what they underwent in their rural settings. As it has been argued earlier, though exploited, subordinated and dehumanised, yet manual scavengers did not carry human excreta as head load.

Manual scavenging was never a hereditary specialised caste based occupation till the onset of the colonial rulers. The nineteenth century entrapment of the scavengers did not emanate from the structured inequalities of Hinduism, it derived rather from the

⁴¹ CAG (2007) Union Report, Performance, Ministry of Railways, Cleanliness and Sanitation on Indian Railways, para 2.10.3

⁴² Dhananjay Mahapatra (2009) A Capital Shame: SC Gets Details Of Manual Scavenging In Delhi, Times Of India (Delhi Ed.) May 10th



massive urbanisation and the consequent needs of urban government, though the existing social divisions along the lines of caste hierarchy did help the process.

As of today manual scavenging continues to haunt the prospects of the 'developed country within 2020' projection of India. Caste based discrimination, corruption and government neglect have contributed a large share to continue the 'status' of manual scavengers unchanged in India. India has a long way to go to clear its image as one of the societies practicing the worst forms of discrimination conceived by the human race. Yet, the urge required to bring about that change is not yet visible in the Indian polity.



4. Right to food and child malnutrition

Indicators of democracy:

*The formulation and implementation of national strategies for the right to food requires full compliance with the principles of **accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary**. Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.*

- ICESCR General Comment 12-



(Photo courtesy of the Spandan, Madhya Pradesh)

Child malnutrition is one of the indicators explaining food insecurity as well as social and economic inequality in a society. The world reports on food insecurity and child malnutrition published by international agencies including International Food Policy Research Institute (IFPRI), United Nation Child Fund, Food and Agriculture Organisation (FAO) and World Bank all show that Bangladesh, India, Nepal and Pakistan are on top five among the countries in Asia⁴³. To compare these four countries merely by child mortality rate, the number of underweight children or the number of malnourished children is neither possible nor appropriate.

⁴³ In the report published by FAO explains that Bangladesh, Nepal, and Pakistan are classified as counties who need international assistance for natural disasters, drought, and conflict threatening food security whereas it is observed that food production in India has increased.



Compared with other three countries, India has been producing sufficient food to all citizens, even exports food and has a high economic growth rate⁴⁴. Politically, it is a democratic country. Despite this, the fact that India is at the same level as the other three countries in terms of child malnutrition explains that discrimination and inequality against the vulnerable groups exposed to food insecurity and deprived of food accessibility are more serious than the in other three countries⁴⁵. In other words, the economic growth has not been reaching those groups who are excluded from participatory democracy.

The AHRC, since the launch of its Hunger Alert programme in 2004, has been reporting cases of child malnutrition, in particular to disclose the fundamental causes promoting food insecurity. In 2009, the cases from four states including Madhya Pradesh, Uttar Pradesh, Bihar and Orissa documented that all victims belong to either the lower castes including Scheduled Castes (SC, mostly known as 'Dalits') and Other Backward Class (OBCs) or Scheduled Tribes (ST) who are the most marginalised. They are usually either landless agriculture labourers or small-scale farmers with no proper facilities living in rural area. Under this lack of adequate livelihood, they are often forced to migrate to the city, seeking jobs or depend on government schemes aiming to guarantee right to food for the poor. However, the vulnerable groups in rural area living under the condition framed by long lasting caste system are again deprived of their right to food by corrupt public servants who are engaged in government schemes for the poor at different level.

Apart from these two root-causes discrimination and corruption depriving of right to food that the AHRC has been highlighting, there are two more significant issues emerged this year. One is a climate change and drought seriously affecting on food security in some area and another is a



⁴⁴ See the AHRC statement for World Food Day titled "Do not give food, give the right to food".

⁴⁵ Gini Index shows that economic inequality in India is higher than the countries such as Pakistan and Bangladesh (UNDP 2009 report).



public discourse on the National Food Security Act drafted by the government and currently under the discussion. (*Photo courtesy of the Spandan, Madhya Pradesh*)

Killing the tribal children:

Two-month-old Reena died on 17 June.⁴⁶ She was malnourished with the symptoms of high fever, diarrhoea and respiratory difficulty. Her parents took her to the private hospital nearby where her condition did not improve. Reena's family lives in Saledhana village, Khalwa Block, Khandwa district, Madhya Pradesh. They are from the Kol tribal community.

Villagers like Reena's family, living in a remote and rural India finds it difficult to access the public health institution such as the Primary Health Centre (PHC) or the Nutrition Rehabilitation Centre (NRC). These institutions are often located away from rural villages, closer to towns. In addition, the doctors who are trained to treat a malnourished child are not attached to the NRC. As it was in Reena's case, a malnourished child often suffers from a variety of ailments due to the child's poor physical state and requires specialised medical care, which a PHC or NRC cannot provide.

Reena's father Kishore is a landless agricultural labourer. He is one of the millions of small-scale, marginalised or landless farmers amounting to 60 percent of the total population of farmers in the country. Despite the majority of the population - approximately 70 percent - are engaged in agricultural sector, the agricultural industry merely contributes 17 percent of the GDP. One of the causes for low proportion is low wage of the agricultural labourer, which is actually, less than the statutory minimum wage.⁴⁷ In share crops, the farmer has to pay more than 50 percent of the total output to the landlord.

Thanks to the soaring food price since 2008, Kishore will have to pay 12 Rupees per kilogram of wheat and 20 Rupees per kilogram of rice. Even though he is entitled to get wheat at five rupees per kilogram and rice at 6.5 Rupees per kilogram from the ration shop (officially called as 'fair price shop'), the grains are neither available in the shops and most shops do not open. This pattern is not unique to one state or district in

⁴⁶ AHRC-HAC-004-2009, 23 July 2009

⁴⁷ Minimum wage in agricultural sector is lower than other sector. Please refer to the AHRC-HAU-006-2009



the country, but is a common complaint across rural India.⁴⁸ In addition, the ration sold at the ration shop is much less than 35 kilograms earmarked by the Supreme Court Order on the right to food.⁴⁹ 20 kilograms of rations last merely a week for Kishore's family members. Since his family depends on the rations provided from the Public Food Distribution System (PDS) and landless labour cannot manage food for a year, his family is forced to migrate to other districts or states twice a year.

Given the above facts, it is no surprise that the Infant Mortality Rate is the worst among the Scheduled Tribes in the country. 96 percent of child deaths in India happen within tribal communities.⁵⁰ The infant mortality rate in India is one of the highest in Asia.⁵¹

Seasonal migration is an invisible element violating the right to food. The most vulnerable group in rural area are landless labourers who usually belong to tribal or Dalits communities and have no other choice but to migrate seeking employment. The government neither have an official record of migration nor exclude them in the process of Below the Poverty Line (BPL) identification. BPL survey 2002 includes the reason of migration as one of the dimensions; however, it is not viewed as a serious deprivation of right to food reflecting life insecurity. All the cases from Madhya Pradesh documented by the AHRC shows that the migrant labour is the main income of the tribal in rural India.

The BPL identification excludes not only migrant families but also other villagers forced to leave their villages due to corrupt administration and the oppression of village head and upper castes⁵². The case documented by Spread in Orissa explains that how the village head manipulated the data and the official in charge of a

⁴⁸ According to the report circulated by Ministry of Consumer Affairs and Food & Public Distribution on June 4, 2009, the price of the ration shop in Madhya Pradesh is relatively higher than the one in other states.

⁴⁹ It is one of the loopholes of the Targeted Public Food Distribution System (PDS). The state government who is in fact responsible for the food distribution to the ration card holders has to decide how to distribute the rations since there is a gap between the BPL identification from the government and the actual BPL families. The civil society calling for right to food to all in India demands universalisation of the PDS identifying that the BPL family is more than 70% while the BPL survey 2002 identified around 35%

⁵⁰ UNICEF report, published November 2009

⁵¹ UNICEF the State of the World's Children Report 2009 states that India has a high rate of infant mortality in Asia; 72 deaths for every 1000 children below the age of five. Cambodia and Pakistan perform even worse.

⁵² AHRC-HAC-004-2009. After the AHRC reported the case, the Orissa state government sent a letter dated on November 21, 2009 to the District administration asking for the investigation of the case.



government survey cooperated with the village head. In other cases documented so far, the victims are deprived of benefits from the government schemes or programmes for the poor as not identified as a BPL family. This is the first step of corruption by the officials and depriving rights of the poor.

The media pressure on the government increased after the AHRC started reporting cases. In response the government increased the AWCs in the villages and paediatricians are dispatched to the NRCs. However, NRC refuses treating moderately malnourished children identified as suffering from grade II and I malnourishment. In many villages, the NRC officials refuse to admit even severely malnourished children due to lack of facilities⁵³. Further, there is no food security and health care for the malnourished children at home owing to the lack of follow up by the health officials.

Government's denial and absence of monitoring body

The government continues to deny that an alarmingly high number of children die out of malnutrition in the villages. If the children had any other symptoms or sicknesses such as fever, diarrhoea, malaria or respiratory difficulty before they died, the government tends to highlight the diseases as main causes ignoring the element of malnourishment.

The state and its agencies do not have a clear picture of hunger and malnutrition. On the other hand, to avoid the criticism and responsibility the state officers accuse human rights groups for manipulation of data.⁵⁴ Government views human rights groups as their foe instead of encouraging them in participating in policy framing and implementations.

The government's record on child malnutrition and mortality fails to reflect the reality. A fact-finding team composing of several civil society groups in Madhya Pradesh has exposed the incompatibility between the state's record and the reality.⁵⁵

⁵³ Only ten out of 36 malnourished children visiting the NRC in Java Block, Rewa district were admitted in September 2009 due to lack of basic facilities such as beds. See the details in AHRC-HAC-008-2009

⁵⁴ The open letter by the Spandan, a human right group working on right to food based in Madhya Pradesh explains that the relevant authority in fact made an irresponsible and groundless statement. See the AHRC-FOL-005-2009

⁵⁵ See AHRC-HAC-009-2009



It is a pattern observed in many cases documented by the AHRC, that the tribal and Dalit children are not registered at the Angawadi Centres (AC - child care centre). It is in these centres records of the children with clinical data including that of vaccination and immunisation are maintained. Caste based discrimination plays a vital role in this.

The workers from the upper caste are neither concerned of the tribal and Dalit children, nor visit their families, since they consider a tribal or Dalit child as source for pollution. Due to the denial of education to the lower caste communities, often employment at ACs is priority opportunity for the members of the upper caste.⁵⁶ Given the fact that most of the malnourished children belong to the SC and the STs, this is a significant impediment in the villagers' participation in running primary health centres and Anganwadis.

When the *Spandan* started running AWCs with the help of volunteers from the community, the local administration did not allow the volunteers to work for the children at the AWCs. Participation is one of the national policies in ensuring the right to food. Yet, it is negated due to caste discrimination.

The negligence and discrimination practiced by the public servants in charge of the right to food or health care of the children in the village create a gap in policy and practice. Further, the government tries to intentionally play down the gravity of the issue.

According to the report, World Hunger Index 2009 and India Hunger Index 2008, despite the big gap, Madhya Pradesh has officially highest number of undernourished children and child mortality rate in the country. It does not really mean that other states have better status regarding the right to food and health care as there is always question as to accountability and accuracy of the official data. Government ignorance is illuminated from the fact that there has been little improvement in government programme and the budget⁵⁷. The lack of budgetary allocation is an additional obstacle in eradicating malnutrition and poverty.

⁵⁶ Recently the qualification was downgraded to eight grade from 12 grade however it is still difficult for low caste or tribal women to get educated at that level.

⁵⁷ According to the right to food group in Madhya Pradesh, the budget for health service accounts for merely 2.4% out of total state budget. Although the child malnutrition has been increasing for last five years, not even a single PHC has been built up. 1,659 out of 4,708 posts of medical officers are vacant and 1,098 posts of Auxiliary Nursing Midwife (ANM) are yet to be filled.



Concealment of the facts and the failure to implement policies reflect the absence of substantial monitoring system and a deterrence mechanism for those violating the right to food. Suspension of low profile public servants such as workers of AWCs sometimes happens to the hunger deaths. Officers up in the bureaucratic ladder who are equally responsible for the deaths are neither made accountable for the deaths nor punished.

When cases are reported to the NHRC, it does not conduct an independent and objective investigation into the complaints on right to food and child malnutrition. Investigation, a primary role of this monitoring body is intentionally negated. The letters sent by the NHRC to the AHRC proves this point. The NHRC merely depends on the report from the governments to decide the case. Absence of independent investigation and long delay of investigation make a question about its role and existence.⁵⁸

Collusion:

The proposed law on national food security brought out a national level campaign in November this year. It demanded the universalisation of the public food distribution system and food sovereignty protecting domestic food product as well as natural resources including land and forest against the draft by the government that merely discuss the PDS.⁵⁹ The law will be one of the main issues of debate and discussion in the coming year. It is important how the civil society participates in the process and succeeds to achieve their demands.

The denial of the right to food, a fundamental guarantee under the constitution and an inalienable right is a wilful, systematic and systemic practice of violence upon the people of the country. It is a state policy to ignore the plight of a few million Indians, fated to be born in India and left to starve to death. The fact that the highest number of victims of malnutrition and hunger are from the tribal and Dalit communities in the country and that nothing much has been done to improve their condition proves the point.

⁵⁸ AHRC-STM-182-2009. The independence of the NHRC is debated in the 2009 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia.

⁵⁹ AHRC-STM-224-2009



From Jawaharlal Nehru to Manmohan Singh, Indians have been served by 17 prime ministers. All of them voiced concern for the nation's children; every year the country observes 14 November as Children's Day. Yet, India is worse than sub-Saharan Africa when it comes to child welfare, dealing with infant mortality in particular.

There has been only a marginal drop in the number of underweight children from seven years ago, when it was 47 percent. At the same time levels of anaemia in women and children have worsened compared to seven years ago. About 56 percent of women and 79 percent of children below three years are anaemic. The survey confirms that India has done little for its children.

India is rich in food stocks; in fact there has been a food surplus for the past several years. There have been no serious natural calamities that have affected the country as a whole in recent years. There has been no civil war in the country. India has had a democratically elected government since independence. There is a reasonable logistical infrastructure, and the country is not really poor.

Then why are the children in such a pitiable state? The answer is not simple, and several causes are apparent. Of the millions of children who suffer from malnourishment in India, more than 80 percent are from the lower-caste communities. Their parents are discriminated against and forced to work as bonded labourers. Corruption being rampant in the public food distribution system in India, the food grain that the government distributes through welfare shops does not reach the targeted population. It is sold on the black market.

Bonded labor, caste-based discrimination and illegal dealing in grains are prohibited in India. Yet corruption in the food distribution system is one of the worst systemic failures affecting the poor in India. Caste-based discrimination in its most inhuman forms continues in India. It is obvious that the children who are born into this environment would suffer the most.

Responsibility for this pitiable state of affairs does not rest solely on the government. Caste based discrimination is not practiced by the government, in fact, but by the people who make up the government. However, both the government and many well-placed Indians deny this practice with all their might. Even the NHRC jumps on the bandwagon by augmenting the government's stand on caste issues, which is shameless denial.



India as of today is leading the region with its trump-card diplomacy of democracy and projected growth-rate statistics. But what is in store for millions of children in the country is death or permanent disability from acute starvation.

This is a curse that could have been warded off, had the democratic institutions remained truly democratic and the benefits of growth been shared proportionately among the people. But for this, Indians would need two vital virtues -- openness and generosity. What the people lack cannot be expected from their government.