

Workshop on Custodial Torture at Allahabad

The Workshop for Uttar Pradesh on 'Programme against Custodial Torture & Impunity' was held in Allahabad at BAL BHARTI SCHOOL on 21st FEBRUARY, 2009. Several Legal professionals, law students, representatives from civil society organizations and few victims of police atrocities were present during the session. Nearly 54 participants registered their names.



Participants at the workshop

The session opens with a welcome address by Mr. Kamal Krishna Roy, Advocate; Allahabad High Court and functionary of HRLN; he welcomes everybody and mentions that this programme [PACTI] has taken its initiation with the joint effort of HRLN and MASUM at Mumbai. MASUM is holding the national office and Mr. Kirity Roy being the National Convener of the said programme. It was mentioned that MASUM having a vast experience in dealing with custodial violence and all forms of torture by the police and other state agencies could provide a strong helping hand to move forward with this country wide programme.

Mr. K.K.Roy apologizes for selection of the dates for the workshop as the time being wedding season and for that reason many expected participants could not be present in the programme but definitely many enthusiastic lawyers, law students and representatives from various NGOs were attending this session from which it was expected that the session would be successful in every way.

Mr. Chittaranjan Singh, President of People's Union for Civil liberty [U.P Unit] was requested to say a few words. He mentions the gross violation of D.K Basu judgment in the state of U.P which does not come as shock for the people as that has turned to be the common practice. The common masses are ruthlessly suppressed whenever their voice rise for their very own *Jal, jamin aur jangal*. Forced eviction for the sake of development



Mr.K.Roy at the workshop

is another common feature in U.P like many other states. We have to develop an understanding regarding the current situation and next, work accordingly against this brutality of police. United initiative and hard work would definitely help to achieve success.

Mr. Rudra Prasad Yadav, lawyer was the next speaker who mentions that Uttar Pradesh is not only the state having the highest number of custodial death but also hits the list with the highest number of encounter deaths. Add to this Mr. Yadav also mentions that U.P is a state having highest rate of torture on the SC, ST communities. He mentions that three cases started from the year 1979 has been given judgment only ten days back, which though in one way is good news but at same time shows the delay in the judiciary system. Referring to the situation of U.P he states that the judiciary system has turned out to be a mockery, as far as providing justice is concerned. Under such circumstance an initiative like the PACTI is very much in need.

To provide a better picture of the situation in regards to atrocities by the police in Uttar Pradesh, Ms. Renu an activist working on women issues shares her point of view. She mentions that a common picture in the local police stations of Uttar Pradesh is that the police uprightly rejecting any F.I.R and the victim or victim's family face a lot of toil before the F.I.R is granted. It is only when severe pressure comes up on the police, an F.I.R is granted. Women moving to a police station for lodging complains are looked down upon by the police as they are expected to remain submissive and have the capacity to bear the torture of men.

There are uncountable laws in this country but it seems all of it is only for the rich and nothing but exploitation is what a poor may have. The heinous part amongst all this is that the judiciary has also turned to be a part of this system. All that a court can provide is the 'next date' and on the next date it again provides the 'next date'. The laws and the constitution do not have any implication and are no way protecting the mass.

Mr. K.K.Roy while thanking Rudra Prasad Ji for his speech also appreciates the presence of Mr.Akhil Sharma, President, Bar Association. Next to this he welcomes Mr. Anshu Malvi to say a few words which would help the participants to develop a better understanding regarding the police actions depicting a better picture of the outlook that the police hold for the general mass.

Mr.Anshu Malvi, working for the rights of the urban poor states that people easily link crime with poverty, even current day popular movies like *Slum dog Millionaire* are winning applauds of millions where they clearly state that slum people are criminals. The slums are marked as criminal tribes and every liability of any mishap occurring in any place of a city goes to theses slum dwellers. The common practice of the police remains in sudden arrest of any two residents of these slum areas [of course without any arrest memo] and torturing them black and blue. The current day practice of police has turned the police stations into an extended jail. Needless to mention the slum people have turned to be the prey of the police.

Following the speech of Mr.Anshu Malvi, the participants were asked to introduce themselves after which Mr.Kirity Roy was asked to take over the session.

Mr. Roy starts with the prime problem in addressing human rights, where he mentions that any person addressing human rights are considered as the enemy of the government. Ensuring human rights require raising voice against any wrong doing irrespective of the fact whether it comes from the ruling party or the opponent. In the process it is commonly seen that the activist or the organization involved in such work have helped both the ruling and the opponent party to develop an apathy towards them. Whichever issue is addressed the govt. always feels that such work goes against the govt. The issues and related actions may bring pressure amongst the police, state agencies and BSF, which immediately are misread and thus instead of any kind of cooperation every kind of hindrance comes up.

There are innumerable law and the common people are not aware of it. Practical experience shows that whenever [if at all] the common people approach the civil administrators, they refer to the law while speaking, this becomes impossible for the common mass to handle and thus they prefer to stay away from the administrators.

We fight against torture but there is no clear definition of torture

Very often we see that once a person is arrested, he/she is not put before the court within 24 hours, which in itself is violation of a law. The lawyers always plea for their clients bail, but hardly does any lawyer fight for the illegal detention of the victim. Thus this gross violation of human rights is overlooked as it may effect in someway or the other the professional life of the lawyers too.

A presentation by Mr. Kurity Roy comes up on 'Degrading criminal justice system in India'. The very striking statement in the very beginning said that the police who are in charge of enforcing the law take full responsibility in breaking it for their own selfish needs. The police never maintain appropriate arrest memo, the very time of arrest is recorded wrongly neither does the police take care of an under trial prisoner. Though the law directs to provide 36 sq ft to every under trial prisoner, the question remains, how many get it in reality??

To speak out against these malpractices, firstly one has to be aware of this law. One has to keep in mind that the police are bound to maintain the law and if it is not done one has to speak aloud regarding these malpractices. It is important for different organizations to come up and protest along with individuals to strengthen these protests.

Needless to mention, the criminal justice system is an inseparable part of the judicial system. Practical experience reflects that the judiciary system is very much dependant on the police in every form and vice versa. Instances also prove that the police are not aware regarding certain laws. Another common malpractice of the police was discussed upon regarding the police calling a citizen for investigation. The police is bound to call a person through written notice and is also supposed to provide TA, but in reality it is not in practice instead it is seen the women and minor are also called verbally in police station, violating law.

As far as custodial violence is concerned, one can lodge complain against custodial violence only when he/ she has the relevant medical report against it. The common practice in the country is that every under trial prisoner will go through regular medical check up by a state appointed doctor. Normally a No Injury Found [NIF] certificate is issued to every prisoner, without any check up as they come randomly and the doctors do not wish to devote much time to this. Any protest would mean further police torture making a silence prevail amongst this regular wrong practice.

A few subjects of police torture were present who willingly shared their experience to bring up the current situation of Uttar Pradesh.

Laluji; father of a victim came up and related the incident of his 14 year old daughter who was kidnapped in the middle of the night and raped. The victim's father was physically abused by the police [S.O, A.S.O] and accused for false complaining, while he went to lodge an F.I.R. No response came from the D.M too. Though he lodged complain at court with the help of Adv. Rudra Prasad Yadav but his life is under constant threat and he is being subject to police torture very often for seeking Justice. It would be unfair if it is said that life has become impossible for laluji and his family, rather it is something beyond impossible for them, who are proud to belong to Uttar Pradesh and be a citizen of India.

Subadhra ji, a lady around 30 years tries to depict the incident of her life but fails as she bursts out into tears while trying to depict the nightmare of her life where she was thrown out of her house while she was clad only with petticoat. Mr.Chittaranjan Singh helps her, by mentioning the non cooperation of the police towards this lady in such a vulnerable situation. Subadhra ji, who have never been to he police station before was harassed through non cooperation. Later on with the intervention of her father and sister she did go back to her home, but the police did not take any action regarding this rather supported the in- laws after getting bribed by them with a ransom

of Rupees twelve thousand and arrested her father and sister under certain false allegations [Sec 307] due to which these innocent are still under custody. The only fault being a fight for survival helped the whole family to reach under police custody....

Kabita ji from the village parbej has a family of three children, and the earnings of her husband are not enough to run the family. She starts with a small grocery shop in her own land beside her house but is being physically tortured by another owner of a local grocery shop who takes her as his competitor. This physical abuse is taking place with full support from the local police who are suspected to have take bribe. No complain has been accepted from kabita ji by the police against the neighboring grocery shop owner as she could not pay them any ransom as bribe. Her husband have been arrested once only to harass her and the police along with the perpetrator is involved in various forms of torture t stop this family from earning their livelihood through honest means.

The second half was primarily a forum for discussion taking into consideration the resolutions that have been taken at Mumbai while this programme was planned. The resolutions are as follows:

- 3 fact finding has to take place every month with detailed document and complaint from the victim or victim's family.
- The respective organizations would lodge complain in the district and state level.
- The National office would lodge complain in the national level, Regional level, before the UN and International bodies [complaints to be furnished within 14 days after receiving the complain]
- Rs.1000 allotted for each fact finding
- Every fact finding has to take place within 5 days of the occurrence of the incident.
- This program will provide legal support to the victims in criminal defense as well as complaint 156(3), 200 CRPC
- The state office has to maintain files within there office in proper manner
- This program has to explore for medical assistance to victims by networking with other resources
- State office has to keep contact details of dist. Key officials and personal email id is mandatory for every key person
- Posters published by HRLN have to be translated in local language and it has to be used as awareness generation material in districts.

It was mentioned by Mr. Roy that fact finding being an important and complex work, detail training would be required. It is preferred to have a few in number but willing and strong candidates to attain this training as they are the ones on whom the basic work would depend on. A request came up from Mr.Roy where he asks the member lawyers to help out the victims through taking atleast one such case free of cost in a year.

The session was appreciated by both Dharmeshji and Hiralalji, where it was mentioned that considering he present status of U.P such initiatives are very important and required in the state. Both of them suggested reconsidering the point of submitting the case within five days of the occurance.

Mr.Prem Prakash Singh closes the session by thanking every participant. He mentions that the member lawyers of HRLN already provide their helping hand to such victims, free of cost. Such assistance is provided to more than one victim in a year by each lawyer. He assures to move on with this kin of initiative and make this program a success.

DAY-II- Visit to Kasaumbhi at Dwaba Vikas evam Utthan Samiti

Report on meeting of citizens organized by Dwaba Vikas evam Utthan Samiti

Date: 22/02/09

Topic: Custodial Torture & Impunity

Venue: DVUES, Chamangunj, Karari, Dist- Kausambhi, U.P



Participants at DVEUS

A meeting took place at *Dwaba Vikas evam Utthan Samiti* at chamangunj, Karari in the Kausambhi district of Uttar Pradesh. The Secretary of the organization; Mr. Parwej Rizvi shares that DVUES is working for the last 20 years. The organization has thirty activists and is directly working in eighty villages while indirectly reaches out to two hundred villages of five police stations. Nearly 40 grass root activists were present during the interaction. Mr. Rizvi helped in developing an understanding regarding the situation at U.P where he mentioned:

- The tendency of the police is not to lodge an F.I.R
- The police always tends towards going for a mutual settlement instead of taking any action
- Adolescent girls are not safe and abduction of such is not much uncommon
- The Court proves itself to be equally insensitive by providing bail, even where it may cause severe damage to the victims
- Caste wise discrimination majorly prevails within the community

The session formally begins when Mr.Parwez welcomes all the members of the organization and the community. With the basic introductions he insists Mr.Chittoranjan Singh and Mr. Kirty Roy to speak and help the participants to find a better way in their struggle through their valuable suggestions.

Mr.Chittoranjan Singh addresses the participants where he speaks regarding the current scenario of the country and the societal structure in various levels. These levels come as per financial status, religion and caste. Tendency shows that the torture is mainly perpetrated towards the dalit, women and of course overall on the economically backward. Money is only in few hands causing disparity in the economy, showing that there is no change since independence. The country is hugely under foreign debt, which means nothing but the citizens have to repay it. Foreign investments in the country are leading into mortgaging the *jal, jamin and jangal* and all this is leading the rich to get richer while the poor people are getting poorer.

No debate is required to establish the fact that development does not occur without education, but unfortunately we see that no quality education is provided by the government. Quality education lies only in the hands of the privileged section as it becomes impossible for the under privileged to afford it. Health facilities too are equally unavailable as all these are reserved for the affluent section of the society.

Be it D.K.Basu Judgment or the Constitution, no law of the land is of any use in giving the citizens a normal life which the Constitution guarantees for all.

Torture by the state agencies i.e; whenever anybody raises their voice against these wrong, the person has to be a subject of police torture.

Mr. Kirity Roy was requested give his valuable guidance to the participants in regarding with violence perpetrated by the state

In reference to Mr. Chittaranjan Singh Mr. Kirity Roy highlights the two major aspects that have come up, the first being nothing new to all i.e.; what all are experiencing and the second one is the dream, which will see the end of all repression and all human will be treated equally. This is the dream of every citizen but since independence we see that day by day the situation is becoming more complicated. The working sphere is huge but being representatives of MASUM, we can speak or rather suggest on issues related to police torture and violation of human rights by the state. For instance we see that the administrative heads do not cooperate with us when we approach them with any issue which they are supposed to take care off, though these authorities gets their salary from the tax that we pay. It has also been observed that while we approach the administration for any grievances the police force intervene in between and, making the state applying its power only to stop the common mass from speaking out their genuine problems. This proves that the country is not democratic rather it can be called to be autocratic.

There are three forms of governance:

- Judiciary
- Executive
- Legislative

It is like three legs of a chair the fourth leg being good governance, the absence of which prevents the chair from standing.

The people in the grassroot level cannot reach higher authorities mainly because they are unaware of its existence and sometimes also have a feeling that it is beyond their reach. If we consider the levels one by one we may see that the hierarchy goes in the following way:

Citizens of India -- BDO --SDO -- DM -- Chief Minister -- National Level - UN Level (international)

Maximum instances show that we do not move after a certain level i.e; SDO/ DM, but if we are able to reach higher levels, not only national but also international if required then positive changes may be found. This is so because the Indian law is formed by three bodies;

- The Parliament
- The Supreme Court
- The United Nations

Being a member of the United Nations, India has agreed to maintain certain commitments. Due to this India has also introduced new laws for the protection of its citizen, violation of which would mean violating its own rule and also the commitment made in the UN. Information of the incidents violating human rights reaching at UN would confirm international pressure helping to develop positive changes in practice.

One can only approach such authorities when one is aware regarding the existing laws. Thus certain basic laws were discussed where it was mentioned that

- No women could be arrested by male police

- No women can be arrested after sunset and before sunrise
- No women or child [boy or girl] can be called in a police station for Enquiry
- No man should be called in police station for enquiry without a written notice
- Travel allowance has to be given to the person who is called in the police station for enquiry
- Any child [within the age of 18 years] cannot be arrested by the police and put in lock up. Such a child has to be placed before the Juvenile Justice Board
 - The police cannot arrest somebody guilty of a non cognizable Offence

All these were discussed in reference to various law [160CrPC, 50A CrPC, IPC 330,331]

With a few important laws being discussed, fact finding was explained in brief which would be required in case of violation of laws. Four 'W's and one 'H' were mentioned before the audience.

W- who [victim, perpetrator, witness, detail of their each family member]

W- when [time of occurrence and all other timings related to the incident]

W- where [place of occurrence or any other place related to the incident]

W- which

H- how [details regarding how the incident have occurred]

It was assured that any case which required intervention would be taken care off. The organization has to intervene in the district and state level while MASUM would carry on with its intervention in the national and international level. HRLN would provide the legal aid.

Mr. Parwez concluded the session by mentioning the requirement of such sessions which would provide more information helping them to work in a better way. It was mentioned that the people of Kausambi and DVUES has various limitations, be it of knowledge or infrastructure, which makes it difficult for them to move in the national or international level. Such initiative from MASUM would definitely be of a great help. The initiative of HRLN providing legal aid would also be of a great help. He thanked Mr. Chittaranjan and Mr. Kirty Roy for the informative session and expressed his wish to continue this work with joint effort.