



Rights and Bondage

It would be a gross understatement to call it a scandal, though such incidents are almost endemic in the impoverished tribal belt of Odisha. The latest aberration reaffirms a bizarre cocktail of the search of learning and crimes against women, the second almost tacitly condoned by the district administrations. The fact that a 14-year-old girl of Class 8 gave birth inside a state-run tribal residential school in Kandhamal district on 12 January was a horrendous travesty of the right to education, now a fundamental entitlement. The tragedy assumed a heart-rending dimension on Monday with the death of the baby girl; whether it was yet another instance of female infanticide can only be speculated upon and we must await the findings of a thorough medical examination. The student is battling for life in a hospital in Berhampur, the headquarters of Ganjam district. Fairly confirmed is the case of rape inside the hostel, if the arrest of a college student on the charge of having impregnated the girl is any indication. How did the man enter the school girls' hostel? This is the fundamental question that needs to be asked and answered. Swiftly has the National Human Rights Commission taken suo motu cognisance of the incident, seeking a report from Odisha's Chief Secretary within four weeks. It is fervently to be hoped that the matter will not be swept under the carpet. Prima facie, the crime points to a huge lapse on the part of the school authorities and the administration in Bhubaneswar. Not the least because the state's tribal welfare department has set up a network of residential schools in the remote tribal-dominated areas with the express objective of promoting education in the subaltern belt. The Kandhamal outrage has underlined the imperative for a drastic tightening up of the hostel administrations. There are regulations in place to monitor the functioning of school girls' hostels, with the focus on health and diet. As it turns out, the tribal welfare department has failed on both counts. The student, who had to bear the sexual assault by an outsider, was never examined. Scant regard for rules alone explains why doctors never visit these hostels.

Far from a concerted essay towards investigation, the Opposition has found a convenient stick to beat the government with. This isn't the moment for the Congress and the Bharatiya Janata Party to ratchet up the political pressure on Naveen Patnaik's BJD government. Admittedly, an important department in a predominantly rural state has been found wanting. Yet it lends no scope for a political offensive in an election year or even a sniper attack on the Chief Minister. A holistic investigation must cover the lapse of the tribal welfare department, the school-cum-hostel authorities, and the alleged involvement of criminals.



thefactivist

SHEKHAR GUPTA, ThePrint



Bring back the staid and boring SC

Its handling of CBI has been so bad that the blame has now shifted from the government to judiciary

Nobody will feel sorry for the Central Bureau of Investigation (CBI) even if the Narendra Modi government seems bent on flushing it down the chute. Trouble is, the CBI is now threatening to take the judiciary down with it. The question is, must the judiciary allow this to happen? And, if it doesn't, what can it do to rescue itself?

The description of "caged parrot" for the CBI isn't just a tired and overused cliché, it is also a ridiculous understatement. The CBI has been a rogue organisation for years. It has played hitman for governments of the day. It has merrily misused its powers, vastly expanded by the courts, and exploited the special protections granted to it.

The higher judiciary, beginning with the Jain hawala case during PV Narasimha Rao's time as prime minister, has shown great faith in the CBI as a sword-arm in its well-meaning war on corruption. How masterfully it has exploited this judicially exalted status to become a deeper state within the larger Lutyens deep state should merit a book in the Bob Woodward genre. No surprise then that three of its last four directors face investigations for corruption — often in the same cases of corruption the agency was handling under them.

Since the late JS Verma as CJI (1997-1998) intervened in the Jain hawala case, at least 10 CJIs and many other honourable judges have given CBI more powers and autonomy and their direct supervision and protection. A new cosmic mantra has been invented too, called SIT, or Special Investigative Team. This has been a blunder, except for those CBI worthies heading these.

What is the CBI, except a club of Indian Police Service officers of varying seniority imported from different states on deputation?

The judges have to be gullible, hubris-driven, or both, to imagine that some of the same policemen who twist the law and mostly specialise in creative writing in FIRs and charge-sheets for their political masters would become Yudhishtiras and Satyavadi Raja Harishchandras once they come to the CBI. There are exceptions. But exceptions do not make an institution.

If the higher judiciary introspects, if it ever holds even a closed-door equivalent of a brainstorm, it might even realise that its dabbling with anti-corruption inquiries in general, and with the CBI in particular, has been disastrous for itself. It has brought an emboldened executive, led by the CBI, to its own door. We have seen the self-destructive spectacle of the Supreme Court (SC) intervening to protect its own from the CBI investigations. This isn't to say the CBI was right, but only to underline the loss of institutional, moral and political capital this has brought in its wake.

The CBI's incompetence and political complicity have only made the judiciary look helpless and silly. In the spectrum and coal block allocation cases, the result has been pure failure and embarrassment.

From Bofors to 2G, the CBI's record on high-level corruption is as poor as cricketer Jasprit Bumrah's batting. But, while the CBI can rarely get evidence to pass judicial scrutiny, its institutional genius lies in destroying lives and reputations through leaks and insinuation. Track its history from Jain hawala to Christian Michel.

This is why the Modi government was so frightened of risking the CBI with an unfriendly boss like Alok Verma even for a day. Because even if he had only registered a preliminary inquiry in Rafale, never mind the facts or evidence, it would have finished the coming election for them, and blighted many



■ The CBI's incompetence and political complicity have only made the judiciary look helpless and silly HT ARCHIVE

individual BJP ministers' lives for years. It's been done to others before.

Like any other power city, New Delhi is cynical, brutal and unforgiving. The CBI/Alok Verma issue is no longer top of the mind for it. It is now the Supreme Court. The blame for the current crisis has shifted, from the Modi government to the judiciary. Was it wise for the court to inveigle itself in the process of selecting the CBI director? If it did, should it have let the government get away with removing in a midnight raid a man selected with its endorsement just 23 months ago?

Should it have then given such a wishy-washy order reinstating Alok Verma? And if so, why did it take 77 days doing it? This order could have been given in an hour.

Pitchforking Justice AK Sikri — by all accounts and reputation a fine, clean judge — into what was always going to be a vicious fight between the government and the opposition was a misstep. That it was done despite the foreknowledge that he had already been given a post-retirement sinecure com-

pounded it. To be sure, Justice Sikri has declined the offer. Under the Modi government, 21 Supreme Court judges have retired. Nine of them got sarkari sinecures. The UPA was much worse at it. Of the 42 SC judges who retired under it, a majority were "accommodated". The executive knows that most of the top judges become job seekers at 65.

Draw a bottomline on this score sheet and you will find the following: The government is the hands-down winner and the judiciary the loser. The latest controversy over changes in the list of collegium appointees to the Supreme Court worsens it.

One year ago, four senior most judges held that joint press conference in a stirring show of institutional assertion. Three of the four have meanwhile retired. But one remains. It is for him to reflect on whether the open wound in his institution has begun to heal under his watch. He has the experience and wisdom to know what is best.

Here are my three simple suggestions on what the judiciary could do to protect itself:

* Start a voluntary pledge not to accept post-retirement government jobs except where constitutionally mandated, as in the National Human Rights Commission of India or National Green Tribunal. Even for these, a transparent mechanism must be put in place to take away discretion.

* Collegium proceedings should be opened up to some kind of institutional and public scrutiny. It can no longer function as a secret society, a judicial Freemasons guild.

* Third, and the most important, the judges should resolve to minimise headline hunting PILs and obiter dicta. They must return to their original calling of interpreting the text of law and the Constitution in the context of life, as Chief Justice Ranjan Gogoi said on Monday, speaking at the release of a book dedicated to late CJI YK Sabharwal. Finally, what our country needs, most desperately, is the return of the era of the staid, "boring" old Supreme Court.

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UP's encounter culture dangerous

The spreading encounter culture in Uttar Pradesh, with extra-judicial killings increasing in every part of the state, has caused concern and alarm not only within the state and the country but even outside the country. Officials of the UN Human Rights Commission have said that they are extremely concerned about the pattern of events in the state, with individuals being abducted or arrested before being killed and their bodies bearing marks of torture. They have said that they have not received a reply for letters written to the Indian government about specific cases of encounters. The National Human Rights Commission has issued a notice to the state over the killings. The Supreme Court has observed that the fake encounters in the state are a “very serious issue”. A petition has been filed in the court seeking a CBI investigation into at least 1,100 encounters which have taken place under the Yogi Adityanath government, in which 49 people have been killed.

Encounters have become routine events in UP, with the government actively encouraging and supporting them and protecting the policemen who have arbitrarily killed and injured people. Soon after Adityanath came to power, he got a draconian legislation against organised crime



SC, UN and the NHRC are all shocked, but the Centre isn't

passed, which allowed lawless killings, violation of human rights and deviations from the due process. He has given the police the clearance to kill, and issued directions to that effect. The state officials have justified such killings as necessary. Accounts of most of these killings and the FIRs, if they are registered, read much the same. Usually, there are no witnesses and the victims are predominantly from the minority community. Policemen involved in killings are awarded promotions.

Adityanath has said that the gun will be answered with a gun. This is against the rule of law and norms in

a democracy, which he apparently does not recognise and accept. The idea of a gun for a gun, when unchallenged, eventually changes to the use of the gun against a person who has no gun also. The basic premise of the rule of law -- that every citizen, even a criminal, is entitled to human rights and due process -- is being daily blatantly violated in UP. The state government's attitude to right to life may be seen from the fact that the chief minister ordered filing of cases under the draconian National Security Act (NSA) against people charged with killing cows but he has not bothered much about the killing of a police inspector by a mob. Neither the central government nor Adityanath's party will stop him on his lawless tracks because they, too, do not differ much from him on his view of life and law.

AUTHORITARIAN REGIMES

Human rights at risk

There is a need to mobilise people on the issue of the risk and threat of denial of human rights by governments

N Veerasha

December 2018 marked the 70th anniversary of the adoption of the Universal Declaration of Human Rights (UDHR) by the UN General Assembly. It's an important document in the history of mankind, with the preamble: "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

This year's theme is "#StandUp4HumanRights". India is celebrating 25 years of the National Human Rights Commission (NHRC). UN Secretary General Antonio Guterres in his message said, "Human rights are under siege around the world. Universal values are being eroded. The rule of law is being undermined". Set in this backdrop, it is pertinent to explore the status of human rights around the globe, and for us, especially in India.

The World Report 2018 is Human Rights Watch's 28th annual review of human rights practices around the globe which summarises key issues in more than 90 countries and territories worldwide. In his keynote essay, "The Pushback Against the Populist Challenge," Human Rights Watch Executive Director Kenneth Roth says that the "surge of authoritarian populists...with a series of politicians around the globe who claimed to speak for 'the people' but built followings by demonising unpopular minorities, attacking human rights principles, and fuelling distrust of democratic institutions".

But even as these authoritarian regimes rise, the US and UK are missing in action as human rights defenders. Battling with racism, refugee crisis and domestic political unrest, France, Germany and European Union nations are unwilling to take up the cause of defending human rights in the present situation. This vacuum has been ably exploited by China and Russia, forming alliances with repressive governments. Witness the mass atrocities in Burma, Syria, South Sudan and Yemen, challenging the international standards for the prevention of human rights abuses, the International Criminal Court and the International

Court of Justice.

With the result that there has been a frontal attack on the democratic values of social inclusion, respect for socio-cultural and religious diversity and a sense of solidarity that is at the heart of the universality of human rights.

Globally, most nations, in particular the populist governments, including India headed by Prime Minister Narendra Modi have broken the rule of law in order to promote the desires of majoritarian groups, resulting in massive violations of the rights of minorities, backward sections and indigenous peoples. This has given rise to authoritarianism and the breakdown of democratic rule and governance.



The core human rights issues are the denial of economic freedom, right to decent work and equal pay, societal divisions between dominant elites and minorities (both cultural and religious) "who feel that their lives have become more precarious". The rise of social violence, terrorist attacks and religious extremism have worsened the human rights condition in many parts of the globe.

The intrusion of governments into the domain of freedom of speech and expression, suppression of the media and even the right to food has become a common pattern, disturbing the peace among the people and leading to socio-political instability. The situation in India is not much different from the above, rather it is depressing and disheartening when it comes to human rights.

Indian citizens gave a majority electoral mandate to the BJP in 2014. One would have expected a peaceful and stable governance. Instead, the country has witnessed frequent mob violence, political murders, extra-judicial killings,

and social violence aimed at religious minorities, marginalised sections of the people, especially adivasis and Dalits, children and women. Democratic dissent is labelled and perceived as anti-national, and civil rights activists, journalists, researchers and academicians are arrested and implicated in false cases by adopting inhuman and undemocratic means.

Rules on the regulation of foreign funding are being used to target civil society organisations that are critical of the government's policies. The lack of accountability and institutional mechanisms for human rights violations and abuses, sexual violence against women in general, particularly adivasi women, by the security forces in the regions of the North-East, Chhattisgarh and Jammu and Kashmir. Mob and lynching attacks by extremist Hindu religious groups against minority communities, especially Muslims, have increased at an alarming rate since 2014.

Supreme Court rulings

In this fragile environment, the Supreme Court rulings in 2017-18 strengthened fundamental rights, rights for women, and accountability of the security forces for violations and killings. Four judicial pronouncements are critical from the perspective of human rights in India: the abolition of triple talaq; the striking down of IPC Section 377 to end discrimination against LGBTs; the entry of women into the Sabarimala temple; and the declaration of individual privacy as part and parcel of fundamental rights.

The question is, how to respond to the challenge of these populist and authoritarian regimes, which are a threat not only to human rights but also to human civilisation. Civil society organisations, the media and the people at large must exert pressure to reaffirm the criticality of human rights principles. The effective participation of the citizen in the affairs of governance is the instrument to hold government accountable for its actions and violations of human rights.

There is a need for large-scale mobilisation of people on the issue of the risk and threat of denial of human rights by governments. The interaction between citizens and institutions of governance is fundamental to the preservation and protection of human rights and is critical to realise the spirit of Article 1 of the UDHR which states that "All human beings are born free and equal."

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NHRC Issues Notice to Rajasthan in 'Botched' Delivery Case at Govt Hospital

A baby was decapitated during delivery and the NHRC said if reports of negligence by staff were true, it amounts to violation of rights.

16th January, 2019

New Delhi: The NHRC has issued a notice to the Rajasthan government over reports that a baby was decapitated during delivery at a state-run hospital in Jaisalmer, officials said on Tuesday.

In a statement, the National Human Rights Commission said it had issued the notice to the chief secretary, seeking a detailed report in four weeks, along with health status of the woman and action taken against the doctor responsible and hospital staff.

“The NHRC has taken suo motu cognisance of a media report that in a shocking case of medical negligence, the head of a baby allegedly got separated from the body as the physician pulled the baby’s legs with excessive force during delivery at a government hospital in Ramgarh, Jaisalmer in Rajasthan earlier this week,” it said.

The commission also observed that the contents of the new report, if true, amount to a violation of human rights of the newborn and the mother. They indicate gross negligence by the doctor and the nursing staff, it said.

The incident needs to be probed thoroughly so that necessary steps could be taken to ensure that such incidents do not recur in future, the NHRC statement said.

According to the report, published on January 11, the doctors at Ramgarh hospital allegedly attempted to hide the case and referred the woman to Jaisalmer for further treatment and surgery, citing complications, it said.

“At Jaisalmer hospital, it was revealed that the head of the baby was still inside the mother’s womb, which was taken out by the doctors.

“However, when the news regarding this tragic and bizarre incident went viral, the state medical and health department put the doctor concerned on ‘Awaiting Posting Order’ (APO) and placed two nurses under suspension for their negligence,” the statement said, quoting the report.

An FIR has been lodged by the family against the hospital staff for killing the newborn. The doctor concerned has reportedly claimed that when the woman was brought to the hospital, the baby had already died and its legs were outside the uterus.

NHRC issues notice to Rajasthan government after newborn was decapitated in botched delivery

The human rights panel has sought a report on the mother's health status and the action taken against the doctor and the hospital staff.

Thursday, January 17th 2019

The National Human Rights Commission on Tuesday said it has issued notice to the Rajasthan government over reports of a newborn being decapitated in a botched delivery in Jaisalmer's Ramgarh last week. The commission called it a "shocking case of medical negligence".

The commission, taking suo motu cognisance, issued the notice to the chief secretary calling for a report within four weeks with the health status of the mother and action taken against the doctor and the hospital staff.

The parents alleged that a nurse at a government hospital had pulled out the newborn with immense force during the delivery, decapitating the child. The hospital authorities then allegedly hid the part of the body they had pulled out, and sent the woman to another hospital in Jodhpur with the baby's head still inside the womb.

The Rajasthan Police on Friday arrested the nurse, Amrit Lal, while his coworker, Jhujhaar Singh is absconding,

The human rights panel said if the reports are true, then the incident amounts to violation of human rights of the newborn and the mother and indicate "gross negligence by the doctor and the nursing staff". "The entire incident requires to be probed thoroughly to determine the real cause so that necessary steps could be taken to ensure that such gruesome incidents do not recur in future," it added.

The commission said the State Medical and Health department put the doctor concerned on "Awaiting Posting Order" and placed the two nurses under suspension for their negligence after news of the incident was widely shared.

Victim compensation scheme notified, NHRC told

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Kendrapara: The National Human Rights Commission (NHRC) has been informed that the 'The Odisha Victim Compensation Scheme, 2017' was notified in the official gazette dated March 31, 2017.

The NHRC was also told that anti-human trafficking units have been constituted, and that a police officer has been designated as Child Welfare Officer in all police stations. Juvenile Police Units have also been set up in all districts of the state.

A Special Secretary filed a detailed report regarding this running into four pages with the NHRC.

The SP, CID-CB, Cuttack, has taken many steps to deal with the trafficking of children. The state authorities informed the NHRC that the steps were taken after the issue of summons in a 2016 case of poor children being exploited sexually, physically and mentally by a woman who was a former model.

Drawing the attention of the NHRC, Radhakanta Tripathy, SC advocate and rights activist, informed the Commission that Narayan Dash, Bariguda, Ganjam, had kidnapped an eight-year-old girl from her village while she was attending a festival on the occasion of Kartika Purnima.

Narayan took the girl to Burupada and sexually exploited her. The next day he sent her for begging. He removed the ear tops of the girl and sold them for Rs 2,000 to a jewellery shop and purchased a mobile phone.

The NHRC was also told that a former model was using minors from a Bhubaneswar slum for a begging racket and was extorting money from them.

Eight women were charged with kidnapping children and forcing them into begging at Bhubaneswar. These women were also using some children for begging claiming to be deaf, dumb and physically-challenged to gain the sympathy of railway passengers.

Tripathy alleged that it was a failure of the state government as children were being used for begging, sexually abused and for selling narcotics.

Tripathy requested that the issue be investigated and the secretary, women and child development department be asked to take measures for the arrest of the criminals, and that all children should be compensated and rehabilitated.

After directions from the NHRC, the DCP said an eight-year-old child was rescued by an NGO while he was begging at the Bhubaneswar Railway Station pretending to be deaf and dumb.

He was produced before the CWC where he said that his father A Krishana, mother K Basanti and K Manju were kidnapping children and using them for begging. After investigations a charge sheet was filed against the eight accused.

The report of the Ganjam SP stated that Tuna Pradhan of Kaudia village in Ganjam district had filed a missing complaint regarding his minor daughter Trisharani Pradhan, 8, from the village Siva Temple November 25, 2015 at around 7 pm while she was witnessing the Yatra and a case was registered.

During the probe, the minor girl was rescued by GRP Berhampur from the railway station. The accused confessed that he had sold the gold ring and ear tops of the girl at a jewellery shop.

The IO submitted a charge sheet in court under Sections 363, 363A, 369, 370(4), 376(2)(i)(n), 392 of IPC and the Pocso Act.

The NHRC observed that the trafficking of children is endemic in Odisha. The DGP was asked to submit a report about the steps taken by the police to deal with the problem.

The NHRC had specifically asked in how many districts anti-human trafficking units were functional. It also asked whether in police stations an officer not below the rank of ASI has been designated as Child Welfare Police Officer to deal with children in coordination with NGOs.

The commission also asked whether the Odisha Government had constituted juvenile police units in each district as per Section 107 of the Juvenile Justice Act, 2015.

As per Section 107 Sub Section (2) the Special Juvenile Police unit must be headed by a police officer not below the rank of Dy SP and must have all officers designated under sub section (1), i.e. all Child Welfare Police Officers and two social workers.

The NHRC also asked about the strength of anti-human trafficking units in districts.

The DGP was asked to submit a detailed report on this within 12 weeks. Since the report was not filed by the authority, a reminder was issued September 12, 2017 and a summons was directed to be issued to the concerned authority September 14, 2018 to file the report on the matter.

The matter regarding the sexual exploitation of kids and criminals forcing children to beg was placed before the camp sitting at Bhubaneswar in the second week of January, 2017.