

# Brutalising Prisoners

Subhash Gatade

*“What a state of society is that which knows of no better instrument for its own defense than the hangman, and which proclaims ... its own brutality as eternal law? ... Is there not a necessity for deeply reflecting upon an alteration of the system that breeds these crimes, instead of glorifying the hangman who executes a lot of criminals to make room only for the supply of new ones?” —Karl Marx, 1853*

The letter sent by an undertrial Mukesh Kumar, at present lodged in Karnal Jail (Haryana) through his counsel to the Chief Justice of India makes depressing reading. The letter talks about the manner in which he was brutalised by the Jail staff for disobeying their orders. It is learnt that the Jail wardens compelled him to clean the toilets calling him names and ‘reminding’ him of his ‘caste profession’. His refusal to continue the dehumanising work led to his public thrashing and tonsuring/shaving of his head and moustache.

According to the administration, Mukesh Kumar is one of those persons who were arrested from different parts of Haryana from April to June 2009 as part of the state campaign ‘to curb Maoist activity’.

Of course, any close watcher of the human rights situation in the state would tell you that it is not for the first time that jail officials in Haryana were engaged in targeting a particular section of undertrials / detainees.

Three years back Gohana, a place around 50 km from Delhi had witnessed burning of dalit houses with the police turning a mute spectator supposedly to avenge the death of a Jat youth. Few dalit youths who were arrested for the death of the Jat youth were similarly brutalised by the jail staff.

It is beyond any sane person’s comprehension that when the matter is pending before the court itself, which is deliberating on it, then what is the rationale behind the extra enthusiasm shown by the jail staff. It would be height of innocence to say that jail officials are ignorant about the human rights of prisoners/detainees/undertrials. In fact, the impunity with which they operate makes it clear that they know the wide chasm which exists between precepts and practice.

It has been more than three decades that the Supreme Court has given its verdict on it.

Responding to two separate writ petitions filed namely by Sunil Batra and Charles Sobhraj, two prisoners in Delhi’s Tihar jail, the highest court made an intervention to humanise jail conditions. As noted in a writeup ‘Prisoners Rights : Some Landmark Judgements’ the question before the Court was: “Does a prison setting, ipso facto, outlaw the rule of law, lock out the judicial process from the jail gates and declare a long holiday for human rights of convicts in confinement ? And if there is no total eclipse what luscious segment is open for judicial justice? Sunil Batra, sentenced to death had challenged his incarceration in solitary confinement and Charles Sobhraj had challenged his confinement with bar-fetters.

The Supreme Court held that there is no total deprivation of a prisoner’s rights of life and liberty. The “safe keeping” in jail custody is the limited jurisdiction of the jailer. “To desort safe-keeping into a hidden opportunity to care the ward and to traumatize him is to betray the custodian of law, safe custody does not mean

deprivations, violation, banishment from the lantern barguet of prison life and inflictions of travails as if guardianship were best fulfilled by making the ward suffer near insanity.”

Despite clearcut instructions from the Supreme Court, one discovers that brutalisation and dehumanisation of inmates at the hands of Jail officials, is not an exception but the rule.

It was only in March 2009 that Gujarat high court ordered the Session Judge to visit Sabarmati jail and asked him to contact the detainees/prisoners lodged there. Responding to a petition filed by *Jan Sangharsh Manch* about the alleged atrocities committed by the jail staff on the inmates-most of whom were Muslims - it also issued notices to Inspector General of Police (Jails) and V Chandrasekhar, Jail Supdt of Sabarmati Central Jail (*Indian Express*, 28th March 2009). In fact, tension between the inmates and the jail staff flared up when one of the prisoners Yunus Sareswala was not allowed to meet his ailing mother. In the melee that ensued, twenty two prisoners were badly beaten up by the jail staff (25th March 2009).As noted in a fact finding report of human rights activists which met with prison officials as well as detainees and their relatives, “...[Inmates, most of them Muslim, who were on a hunger strike, were denied medical attention after a brutal attack on them by jail staff, which left at least three of them unconscious for so long as to start rumours in the city that they had died. They were subsequently denied access to counsel, their relatives were refused permission to meet them for three days, and then the Sabarmati Police station failed to register an FIR as sought by relatives and counsel of the victims.”

A question naturally arises why one notices quantum jump in cases of custodial human rights violations despite all talk of humanising jail conditions. One should see it as a product of faulty government policies and lack of transparency observed by the powers that be. Much on the lines of United States of America, Indian government also shies away from accountability in all such matters. Figures collated at National Human Rights Commission confirm this trend. As of now complaints which have reached its offices have already surpassed a figure of 70,000. While forty percent of the complaints focuses themselves on the police, violations of human rights inside jail comes second.

Of course, there are moments when jail officials are held accountable for their acts of omission and commission. In an important writeup ‘Walls Not A Prison Make’ Editor at large ‘Tehelka’ Mr Ajit Sahi provides details of a case where ‘Terror accused dare to take on their brutal jailers -and win’ (Vol 6, Issue 35, Dated September 05, 2009).

The said story discusses the brutal assault on Sohail and 26 other inmates in the prison on June 28, 2008 when the jail staff rained “...[b]lows, belts, bamboo sticks and stones on them, smashing their heads, breaking their bones and spilling blood.” Accused of participating in terror attack in Bombay and brought to Mumbai’s Central Prison in 2006, Sohail and his fellow accused were quickly branded traitors not just by the jail staff but also by the “regular” prisoners and faced all-round hatred and contempt. To cover up their attack, jail authorities claimed that the prisoners had rioted unprovoked shouting Pakistan Zindabad, Hindustan Murdabad [Long live Pakistan, Down with India] and attacked the jail staff.

Undeterred by the ongoing brutalisation Sohail with the help of his son Saeed filed a case against the jail authorities despite the odds and actually won a favourable ruling. As noted in the writeup : “The order of Bombay High Court judges Bilal Nazki and AR Joshi, delivered on July 21, 2009, does not just bring justice to Sohail and the others the prison staff brutally attacked. The ruling is historic because it restores the Constitutional rights of tens of thousands of inmates who face indignities and brutalities inside Indian prisons without let or hindrance. It also prescribes criminal prosecution of the jail staff for brutalising the inmates.”

According to the judges: “... We have found [that] force was used against the under trial prisoners for no fault of theirs. Force was used excessively for extraneous reasons and [the] law was also flouted. Even as a formality, the Jail Manual was not followed. We, therefore, direct the Chief Secretary, State of Maharashtra to initiate [a] disciplinary inquiry against all the Officers involved in the incident... If need be, in addition to the departmental inquiry, criminal action be also initiated against the concerned Officers.”

The said judgement unequivocally lays down that the jail authorities have no authority over an inmate’s life: “Once a charge sheet has been filed, nobody has authority over the custody of an under-trial except the court... It has to be remembered that the convicts or the under-trials are human beings and they have to be treated like human beings. The jail authorities who have custody over them have [a] special responsibility to protect their rights and in fact they are their custodian, reformer and counsellor.”

“They cannot assume the role by which they turn into [a] villain. They in fact should command respect from the prisoners and that respect should come as a result of their conduct with prisoners. This is no longer in debate in this country whether or not the prisoners have fundamental rights available to them as this has been decided in [a] number of cases by the Supreme Court.”

It need be noted that the judges also slammed the Jail Superintendent at the Central Prison, Swati Sathe, a female officer who is infamous for her brutalities among inmates. As of now a departmental inquiry has reportedly been started against other Sathe. □□□