

Human rights in INDIA: A parallel discussion at the UN Human Rights Council

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Coinciding with the 25th UN Human Rights Council Session held in Geneva, the Asian Legal Resource Centre organized a parallel event to discuss "Human Rights in India."

Dr Angana Chatterji, a cultural anthropologist and a human rights specialist; M. Mihir Desai, a prominent lawyer from India; and Mr Babloo Loitongbom, a lawyer and human rights defender working in Manipur, were speakers at the event. Representatives from permanent missions present in Geneva, members of civil society and the local press attended. The meeting was held from 1–3pm on 18 March 2014 at Hall Number 28 at the Palais des Nations, Geneva, Switzerland.

Dr Chatterji

Dr Chatterji spoke about human rights issues in India that emanate from gendered violence. She spoke about the widespread patterns of dowry deaths, rape, sexual harassment and the commission of sexual violence upon women particularly in places where armed conflicts exist. She emphasized that redress for human rights abuses in India is a limited option in practice, due to a failed justice delivery mechanism. Due to cultural taboos associated with human rights abuses committed against women, especially against women complaining of gender violence, redress is a remote possibility. This is particularly the case for rural women. Dr. Chatterji emphasized the difficulties faced by women approaching criminal justice institutions to seek redress. Police stations in India, in their very appearance, resemble dungeons and are unsafe places for women to walk into and lodge complaints. The image of the Indian policeman, who uses sexual violence to create fear and attain social control, particularly in the rural setting, further discourages women from engaging with the police even at the stage of filing complaints. Police insensitivity in dealing with the psychological condition of a woman who has been subjected to sexual abuse poses further hindrances to women approaching them.

Where armed conflict exists, as in the States of Jammu and Kashmir, Chhattisgarh, Orissa, Gujarat, Manipur, where police commit brutal violence against women, Dr. Chatterji argued that the possibility of a female victim lodging a complaint against sexual abuse or sexual violence is almost impossible. This is proven by the absence of any reasonable prosecutions of perpetrators in cases of gender violence, and their punishment.

This pattern of violence committed upon women by state agencies and non-state actors engaged in armed conflict with the state, emanates from India's male dominated culture, where the status of women is equivalent to that of mere chattels.

Dr. Chatterji stressed the importance of the Indian government's role in enforcing the law in all instances of gendered violence in India, irrespective of the perpetrators' political and social status. She also called upon the international community to work in close collaboration with the Government of India to improve the country's understanding and capacity in dealing with the psychosocial restitution of the victims, which at present is absent.

Mr Desai

The second speaker was Mr Mihir Desai, a prominent lawyer who assisted in the prosecution of the perpetrators of the 2002 Gujarat massacre. He spoke of the dismal state of the Indian criminal justice system, which has failed to adequately investigate, prosecute and punish the perpetrators despite more than 2000 persons being murdered. Many of these were women who were sexually abused prior to their deaths. Mr Desai emphasized that the riots were state sponsored, with the incumbent government actively participating in the conspiracy, planning, subsequent execution and the prevention of any form of restitution to the victims. Witnesses and complainants who were initially willing to file complaints were systematically discouraged by the state police from doing so, and those who still dared to complain were either directly threatened and forced by the police to withdraw their complaints, or had their details passed to Hindu fundamentalists who were working hand-in-glove with the state government in executing the carnage.

Mr Desai also noted that the prosecutions were largely below standard, while in many cases the investigation had failed to reveal the actual perpetrators behind the incident. Lawyers like him who were assisting the prosecution and the victims were threatened by state agencies and Hindu fundamentalist right wing activists.

Under the influence of the incumbent State government, certain judges have also passed unwarranted remarks against Mr Desai. He was therefore compelled to approach the High Court with the grievance that the lower judiciary was treating him as an enemy of the Court for his assistance to the victims and witnesses of the 2002 Gujarat carnage.

Mr Desai said that the entire state apparatus had schemed against the Muslim community in Gujarat as well as against all those who assisted or were willing to provide assistance to the victims. Twelve years after the massacre, deep wounds and social stigmatization against communities perpetuated by Hindu right wing fundamentalists and the state government that it supports are still fresh, while victims continue to struggle for closure.

Mr Babloo Loitongbom

Mr Babloo Loitongbom spoke of his work as a lawyer and human rights defender in conflict-hit Manipur. According to him, the enforcement of the Armed Forces (Special) Powers Act 1958 (AFSPA) has inflated the conflict and the resultant violence has fragmented society to the extent that even within families mutual trust no longer exists. As in the case of Gujarat, the worst affected in Manipur are women and children. Instances of custodial torture, extrajudicial executions, disappearances, rape, and armed robbery committed by law enforcement agencies are at an exceptional high in Manipur. Seeking redress for such human rights violations is suicidal, as they are largely committed by armed state officers who are empowered and protected by statutory impunity; the AFSPA allows and entitles an armed officer, irrespective of his or her rank, to shoot and kill a person on the mere suspicion that the person could be a threat to the officer. The alarmingly high rate of human rights abuses in the state is linked to the protection this law gives officers from all forms of prosecution and investigation. Similar circumstances exist in all regions where this draconian law is enforced in the guise of providing protection to the civilian administration.

Mr Loitongbom noted that thus far, the Union and state governments have categorically refused to withdraw the implementation of this Act from Manipur. He added that even Manipur's lower judiciary is afraid of the Indian armed forces; there have been many instances where judicial officers were threatened by members of the armed forces.

Both state sponsored as well as non-state actors equally engage in human rights abuses in Manipur. There are 42 prohibited armed militia underground groups in active operation in the state. Frequent fights between these groups result in the loss of life and property of ordinary citizens. Armed militia groups engage in extortion and other crimes just like their counterparts who are employed by the state either as policemen or soldiers.

Mr Loitongbom spotlighted how the maintenance of armed militancy, or the perception of widespread militant activity in Manipur, is promoted by the incumbent state government led by Chief Minister Mr Okrom Ibobi. Ibobi and his political party personally benefit from the unaccounted money the union government spends on Manipur in the name of combating armed militancy. A large proportion of this money is not put through public processes such as the state assembly audit, of which records are published; this money is in fact earmarked for the private profit of the incumbent Chief Minister and his comrades and cadres.

The ensuing circumstances have resulted in a large number of unspoken human rights abuses being committed in the name of secessionist ideas or the opposition of the same ideas by non-state and state actors. These circumstances pose enormous challenges to human rights defenders working in Manipur. Human Rights defenders are either targeted by the state as spokespersons for armed militia groups, or equally targeted by the militia as state agents who spy on them. According to Mr Loitongbom, the militia forcefully recruits child soldiers by abducting children from schools or from their homes. Due to the absence of protection to their children, parents often refuse to send them to school and schools remain closed for three to six months every year in Manipur, due to the threat posed by militants.

Adding to the arguments made by Dr Chatterji and Mr Desai regarding the failure of India's criminal justice apparatus to address any of these problems, Mr Loitongbom noted that it is a policy of the state to maintain this status quo, as people in power benefit from the resultant absence of accountability.

Mr Bijo Francis

Mr Bijo Francis, Executive Director of the Asian Legal Resource Centre, spoke about the importance of the unique struggle and protest of Ms Irom Chanu Sharmila. Sharmila has been fasting in Manipur for the past 13 years, demanding the state and non-state actors to end violence in Manipur, and the government to withdraw the imposition of the draconian ASFPA. There is hardly any critical analysis published about this law in Manipur; about how it negates constitutional and international human rights norms and how it violates constitutional guarantees and international human rights obligations. A critique of the law is available in ALRCs publication, "article 2".