



Before the Andhra Pradesh Minorities Commission

"In a piece of fiction a former Indian diplomat Vikas Swarop (Q&A) starts to describe the fictional scenario thus. *"I have been arrested for winning a quiz show. They come for me late last night, when even the stray dogs had gone off to sleep. They broke open my door, hand cuffed me and marched me off to the waiting jeep with a flashing red light.*

*There was no hue and cry. Not one resident stirred from his hut only the old owl on the tamarind tree hooted at my arrest.*

*Arrests in Dharavi are as common as pickpockets on the local train. Not a day goes by with out some hapless resident being taken away to the Police Station. There are some who have to be physically dragged off by the constables, screaming and kicking all the while. And there are those who go quietly. Who expect, perhaps even wait for, the police. For them, the arrival of the jeep with the flashing red tight is actually a relief. In respect, perhaps I should have kicked and screamed Protested my innocence, raised a stink, galvanized the neighbours. Not that it would have helped even if I had succeeded in waking some of the residents, they would not have raised a finger to defend me".*

Unfortunately some times life imitates fiction.

The Hon'ble Commission for Minorities vide letter No.75/MC-B(2)/07-2 dated 14-09-2007 appointed the undersigned to conduct an investigation in to the matter, adopting such means and methods as deemed proper. In furtherance of the above mentioned warrant interim report was submitted. The report contained all the details. It was however termed an interim report as some of the persons could not be examined as they were not physically present in the prison on the date of the first visit 18 September , 2008.

Of the list of 20 persons seven persons were in police custody There names were shown in serial no 4-10 in the list of the person mentioned in the report.

After a long period of time the Commission visited the Cheriapally again on 4-11-2007. However the Commission was not permitted to meet with or interact with the named person. The Jail Superintendent Mr. Jaya Vardhan in presence of the Commission made attempts to speak to the in Director General of Prison. He later informed the Commission that he would inform me as to when I could visit the prison to interact with the inmates.

Subsequently permission was granted. The undersigned was informed by telephone The undersigned visited the prison on 17-11-2007. The Commissions during the visit on 17-11-2007 not only examined the detinue on the issue as to whether there was any ill treatment in the jail premises but also on their version of the arrest, the treatment by the police.

It is to be categorically stated that none of the inmates - , examined or earlier (re-examined) complained of any ill treatment or perceivable illegalities with in the jail premises. They are however relate and recall a story of shocking experience.

(The 7 persons who could not be examined earlier but examined this time reiterate with telling consistency, the now familiar story of arrest with out warrant, arrest with out informing kith & kin, being taken away to unknown places torture, etc. Many of them show a minor remains of hitherto alleged brutal physical treatment. Typically a pigment on skin reflecting minor electric shots are visible while time heals the physical wounds has left an indelible impression on the psyche of the persons.) A statement of the detencus, the date of the alleged arrest and the allegation of each person has given in Annexure -L.



|   |                      |          |                      |          |  |
|---|----------------------|----------|----------------------|----------|--|
|   |                      |          |                      |          | <p>2. Given the electric shots near the ear and beaten. But no sings have founded. Beaten on injured leg.</p> <p>3. Alleged is the neighbour of Shahid Bilal.</p> <p>4. Produced in Bolaram Police station early hours of 5-10-2007 and taken finger prints and photo.</p> <p>5. Evening 4pm taken to Civil Court and not produced me for not more than few seconds before the judge since then in jail.</p> <p>6. Signature from me was taken on a sheet of paper in jail for Narco Test.</p> <p>7. Bail application rejected. Cell phone seized.</p> <p>8. I can identify one short , well built person in Cargos.</p> <p>9. And says has no connection with the said Bilal &amp; no reason for seating me up.</p> |
| 6 | Mohammad Naseeruddin | 31 years | Sells the auto parts | 3-9-2007 | <p>1. At about 3pm they took me and also taken the 4 cell phones.</p> <p>2. They took me in an auto to Lamba theatre from there they shifted to a police van and taken to Bolaram Police station and taken watch, purse taken papers from my pocket.</p> <p>3. Blind folded at about 9:30 and two police started using violence and kept in lock up..</p> <p>4. The next day morning another 8 -10 persons were brought in striped to an underwear, beaten, toes tied, beaten with rubber tube and pipe. They used third degrees method till about 3pm and questioned about Shaid Bilal.</p> <p>5. Produced before Magistrate on</p>   |

|    |                       |    |             |          |  |
|----|-----------------------|----|-------------|----------|--|
|    |                       |    |             |          | <p>5-9-2007 in the late evening and no questions asked in court while remanded.</p> <p>6. Bail application rejected and I have come to know that I was booked in <u>120B 125,126 of IPC</u> and again taken along with 6 persons for 7 days and kept in Police custody in Bolaram Police Station.</p>  |
| 7  | Mohammad Abdul Raheem | 26 | Auto Driver | 3-9-2007 | <p>1. Arrested with out being informed of any charge.</p> <p>2. On Sep 3, about 4 police came home around 8pm and took me in auto till amberpet than after taken in a two wheeler with eyes tied, blindfolded.</p> <p>3. Taken to Bolaram Police station at about 8:30 enquired till about midnight and the next morning taken, beaten, toes tied, beaten on feet of sole arid abused.</p> <p>4. Became unconscious and after as soon as I gained conscious there about 7 -8 others who were also beaten up.</p> <p>5. Produced before Magistrate Secunderabad on 5-10-2007 evening 7pm.</p>   |
| 8. | Syed Abdul Quadeer    | 27 | Auto Driver | 3-9-2007 | <p>1. Arrested with out being informed of any charge.</p> <p>2.. On Sep 3 at about 8:30 pm abt ut 4-5 civil dress Police came called out and taken in a jeep.</p> <p>3. At cross road they have blind folded and driven for about 1-1 1/2hour. And one more guy is there in a jeep.</p> <p>4. Both were handcuffed taken to Bolaram Police station and they abused of Religion.</p> <p>5. Then after wards third degree method of beating on sofe.</p> <p>6. on 5/102007 signatures taken on printed papers, handprint, finger prints, photographs taken and said we were charged for petty offence.</p> <p>7. Produced before Magistrate late evening of 5-10-2007 and pushed</p> |

|     |                    |    |                  |          |   |
|-----|--------------------|----|------------------|----------|---|
|     |                    |    |                  |          | out of presence of Magistrate and no questions asked.   |
| 9.  | Shiek Mohd.Fareed. | 23 | Mauzan in Masjid | 4-9-2007 | <p>1. 1. Arrested with out being informed of any charge.</p> <p>2. On 4<sup>th</sup> Sep at about 4:30am plain clothes police man came and taken me.</p> <p>3. 4 Traveled in Hero Honda face closed and taken me to the Police station.</p> <p>4. Enquired around 2 pm stripped and made to sit with underwear and asked about passport beaten, physical abuse.</p> <p>5. I was taken with all others to the Gandhi Hospital, Injection given tablets recommended but not brought signatures taken on printed papers, handprint, finger prints, photographs taken.</p> <p>6. Bail application Rejected ..</p> |
| 10. | Aslam              | 29 | Tailor           |          | <p>1. 1. Arrested with out being informed of any charge.</p> <p>2. Came one night at 3 am 6 people came took me even with out shirt and taken me in two wheeler and later shifted in to a van waited on the road with the blind folded after half an hour they have taken me to Bolaram Police station.</p> <p>3. Beaten on sole of feet.</p> <p>4. Later produced me before the Magistrate for the first time informed to me that I was charged for blast.</p> <p>5. After remand taken to Bolarm Police Station interrogated.</p> <p>6. Bail Application rejected. Since from 5-9 -07 I am in jail.</p>     |

From the above it is clear that the above said persons have also gone through the same process.

An attempt has been made to obtain a copy of the charge sheet filed against the persons detained. The FIR is filed in connection with the twin blasts cases namely the blast at Gokul Chat Bhandar – Koti and Lumbini Park. It is seen from the FIR file received by me on 8-05-2008 that the FIR does not even mention a single one fact against the person detained. At this stage of the investigation of the twin blast case it is not necessary for any of the parties to consider as to whether or not the accused persons have any complicity with the offence. 13

We live in trouble times. The state is not only responsible to maintain Law & Order but it also carries the onerous responsibility of maintaining peace and ensuring a certain degree of confidence in the mind of the citizens. Custodial Violence strikes at the very roots of the Rule of Law. It is relevant to point out that the Apex Court as early as on 1996 said :- 14

“ Custodial Violence is a matter of concern. It is aggravated by the fact that is committed by the persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally enforcing officers is a matter of deep concern in a free society.

It is contextually relevant to recall the steps required to be taken at the time of effecting arrest as laid down by the Apex Court in D.K.Basu Vs State Of West Bengal detailed a number of steps to be taken while effecting an arrest they are as follows.

We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interests in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the dairy at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/ her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and District as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not through out the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the police of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

In the said judgment it is said as follows. "The time to take such corrective action is now the Hon'ble Commission may take these factors and also record the statement of detainees who has now released on bail and place before the government with recommendations and corrective steps to be taken".

Anglo Saxon Jurisprudence places great reliance on the procedure required to be followed by law. Investigating agencies are bound by the law. To counter terrorism and counter terrorism are not one and the same. From the facts narrated in the interim report it is clear that certain conclusions can be drawn of procedural violations. It is clear that all the victims belong to a single community and mostly to a single economic class. This may be insufficient to place the burden surely at a single door step namely the police. They however surely tell a pattern. A seriously dangerous pattern.

Now that it is all over, or so we believe, the haunting issue would be whether the allegations stand established, and as to whether there are any punitive measures and rehabilitative measures to be taken. Punitive against the high handed action and rehabilitative for the victims.

The report is self explanatory. This final report reiterates every thing said earlier and adds that the persons interviewed later reiterate the same tale of woe.

The European Court was also repeatedly stressed the risk that a system of secret surveillance for the protection of national security poses of undermining or even destroying democracy on the ground of defending it

:: Rotaru Vs Romaniciu No. 2843 / 95. ECHR 2000. ::

In the instant case, each person states that he was whisked away by plainclothes man who at the time of arrest failed to identify themselves. The Hon'ble Minorities Commission is free to summon the case dairy to note whether it is reflected in the case dairy.

The Apex Court reference to a witness at the time of arrest is to ensure a safeguard, not place an alibi. A purposeful examination of the Case Dairy and the specific document in each instance of the witness will reveal the truth.

Certainly most of the conditions mentioned by the Apex Court have not been followed. The question that arises is as to whether the Executive can plead 'impracticality' or any other defence against the pronouncement of the Apex Court.

Institution concerns and a long run public debate may be of little relevance to the victim.

It is their injuries that require immediate medication. With all humility I recommend strongly that all the persons arrested should be rehabilitated in

a proper manner, lest we loose them from the main stream of the society. We will do good to remember that they all constitute an important facet of our civic society. Caught at the Cross Roads of terrorist carrots and the social challenges it is the collective responsibility to wean them away from such temptations. These also appears to be a growing cynicism that persons from single community are being targeted. Such belief may or may not be justified. The issue is not as is to whether the feeling is justified or not as it is as to whether there is such feeling or not. It is needless to point out that such a feeling will have to be erased and can only be erased if the government undertakes a proactive stance and takes definite visible steps. To have been in vail for as long a duration as the victims have, leaves indelible marks of the psyche and the emotions of the victims. The great challenge will be to financially rehabilitate them and also rebuild the emotional stability. The Hon'ble Commission created as a Statutory Authority to protect the welfare of the minorities can play a vital role in this regard and in this direction.

Also the Hon'ble Commission may choose to insist, in the context of growing whispers, that a local committee be constituted to operate within the process Code of Criminal Procedure and guidelines laid down in the D.K. Basu Vs State of West Bengal as referred supra and ensure against allegations of illegal arrests in future.

The world today is faced with great challenge to fight with terrorism. No step to erase it must lead to preventing terrorism not strengthening it. The solutions are very difficult to spell out. The government's task is far from easy. The challenge nevertheless must be met and while so doing, the government is bound to act with in the precincts of its legality. Its legality its only credibility.

Policing the police is an alarming social concern. Very recently the British Parliament debated at length the law to detain a person for 60 days with out reason. In our system, we do it with shocking ease.

Recommendations:-

- 1) Take a detailed statement from those detained.
- 2) Examine the records with the Investigating Agency on police failure to follow procedure.
- 3) Call for corrective action against erring police officers.
- 4) Have some rehabilitations scheme for the members effected and their families.
- 5) Educate the youth of the local area against problems of terrorism.
- 6) Constitute a Committee with the local police to supervise arrests in the area in the future.

No civil society can permit arrest / detention with out a law. That may be the crux. This also may be the challenge.

May be pleased to consider.

*Signature*  
13/11/2008