

What Is Justice for Survivors of Gujarat 2002?

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of opportunities and activities currently, where interest rates are shooting up surely pointing to shortage of investment funds, Tatas with such high standing in the global capital market could have helped ease the pressure by avoiding this acquisition and also simultaneously convince their banks to support them in projects in India rather than elsewhere. However, these are matters of pure academic interests and the business decisions are not necessarily linked to specific national interests.

At today's steel prices, valuation does not fall significantly off the mark. Whereas a drop in steel prices is not being seen in the immediate future, any drop in the same in the order of about \$ 100 per tonne (the steel prices have risen further since the acquisition) will significantly upset the balance sheets of Corus. Although global demand for steel is likely to remain strong for several years to come, production is also likely to maintain a good pace. The typical shortage phenomena are not expected which could bring windfalls to the industry. But, the current highs are expected to remain only till the end of 2008 as significant new capacities are to be commissioned by then both in China and India. The problem is while prices drop rapidly, costs are mostly sticky downward. If market stops growing in the west but does so in the east, there is an advantage for those who are putting their money in the east.

Corus is a large steel maker but its financial strength is nothing to write home about. Their steel facilities are old with costs of production fairly high. Their return to profits has been mainly due to higher steel prices. Corus has also gained significantly from the region's oligopolistic market, where the steel makers have together cut production whenever needed to save prices and are active today in initiating or threatening trade cases against several countries including China, even at a time when the steel prices are at one of the highest levels ever! If these comforts of relative protection are taken away, especially if the steel user industries come up strongly, the European prices may come under severe pressure with cheaper imports flooding the European market.

Tata Steel stocks did not deserve the kind of hammering it got on the market. These are exaggerated and myopic response. But, it was certainly not a deal that will write history for the company. [EW]

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What Is Justice for Survivors of Gujarat 2002?

The United Nations Committee on the Elimination of Discrimination against Women recently pulled up the government of India for an inadequate response on the 2002 Gujarat riots despite specific queries by the committee on the issue. The concluding comments of the CEDAW offer a significant advocacy tool for human rights organisations working to secure justice for the riot victims.

SHEBA GEORGE, KALPANA KANNABIRAN

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) examined the second and third periodic report submitted by the government of India at its 37th session in New York on January 18, 2007. The CEDAW committee sought the responses of the government of India on a range of issues that had not been addressed either in its periodic report submitted in mid 2006, or in the answers to the specific written queries sent by the committee as an initial response to the government report.

The 15 member delegation of the National Alliance of Women presented an Oral Statement based on the Alternative Report on CEDAW to the committee at an informal session for NGOs on January 15 and a luncheon seminar on January 17 at which most members of Chamber A of the committee were present.

The 2nd and 3rd NGO Alternative Report on CEDAW, dedicated to Irom Sharmila Chanu, was prepared in consultation with over 1,000 groups and networks across the country. It was a culmination of three years of consultative processes initiated by the National Alliance of Women and provided detailed information on the failure of governments at the central and state levels to ensure non-discrimination for women.

The effort to draw the attention of CEDAW to the situation of the survivors of the Gujarat carnage in 2002 was part of the ongoing effort by human rights groups and civil society organisations working for justice to affected families to draw international attention to the Gujarat carnage and generate a public debate that would force accountability on the government both at the centre and the state.

The Alternative Report detailed the situation in Gujarat and identified the gaps in the delivery of justice, relief and rehabilitation to the survivors [National Alliance of Women 2006]. Drawing on various sources as also primary information from relief camps, the report described in graphic detail the lives of Muslim people who continue to live in fear five years after the carnage. The report also underscored the problems with the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005, which was introduced in the Parliament in December 2005 [Mehra 2006].

The Official Response

Pre-session deliberations: Despite the fact of mass violence against women, the government of India in its Second and Third Periodic Report submitted in 2006 did not make any mention of it, nor did it detail the steps it had taken to bring justice to survivors. The CEDAW committee at its pre-session working group examined the government report and raised a series of queries in October 2006 that it called upon the government to respond to. The opening comment was on Gujarat [CEDAW 2006]:

The Special Rapporteur on violence against women reported that extensive violence against women took place in Gujarat in 2002, and that following the Gujarat riots, a culture of impunity was created where sexual violence was allowed to continue and that women victims of violence were denied access to justice...Please provide information on the events in Gujarat and their impact on women...Also explain what confidence-building measures have been taken for the reintegration of the society.

The government of India, in its response to this query by the CEDAW committee spoke first about the fire in the Sabarmati

Express and the relief provided by the district administration to the passengers on the train. It then went on to say,

As a fallout of this incident in Godhra, incidents of communal violence, arson and stabbing were reported later on from Baroda, Anand, Ahmedabad and some other parts of the state of Gujarat, which continued for some time.

In its brief response, the government of India (GoI) then went on to cite information provided by the state government of Gujarat:

1,054 persons died and more than 2,500 persons sustained injuries in the disturbances and 223 persons were reported missing. The loss of property was estimated to be around Rs 687.62 crore.

In order to cope up with the situation and to maintain law and order, the state government deployed state/central forces, including army columns in full. Curfew was imposed in many police station areas in the state. The chief minister of Gujarat and the then prime minister visited the affected area.

...As per available information, the state government has informed that an amount of Rs 205 crore have been spent so far towards relief measures which includes funds released by the state government also.

The recommendations of the Parliamentary Committee on Empowerment of Women, the GoI said in its response, had been forwarded to the state government for necessary action, and the action taken report (ATR) of the state government had been sent to the Lok Sabha secretariat. With respect to the prosecution of offenders, the GoI quoted figures supplied by the state government, which said that there had been 6 convictions, 182 acquittals and other cases in various stages of trial. It then went on to sketch the initiatives of the Supreme Court of India on the re-opening of cases and the initiatives of the National Human Rights Commission. Finally, the terms of reference of the Nanavati Commission were stated: "to enquire into the incident of setting on fire some coaches of the Sabarmati Express train near Godhra railway station and subsequent incidents of violence in the state in the aftermath of the Godhra incident."

The 37th session of the CEDAW and Gujarat: The oral presentation by the head of the Indian delegation addressed the Gujarat issue as follows:

In relation to the Gujarat riot cases the Supreme Court acted at the instance of the National Human Rights Commission and

a series of orders have been passed between 2003 and 2004, acquittals have been set aside, cases have been ordered to be reinvestigated, cases have been transferred out of the state of Gujarat and over 200 closed cases have been ordered to be reviewed. A larger concern arising out of the Gujarat cases is the aspect of witness protection, particularly women, which is pending before the Court...

Incidents in Gujarat some years ago were an aberration that should never have happened. Subsequent events have shown that the nation, the people of India, have learnt some important lessons from those unfortunate events. I refer specifically to the beauty of the human spirit that was displayed after a few incidents took place in Varanasi some time ago. This and other ill disguised attempts at flaming passions in Mumbai and Malegaon were transformed by the people of different communities of the cities into an affirmation of peace and love between different religions and also reflected the alertness of the response of the administration. It was India's spirit at its highest and best and as a nation we could take pride in those events just as much as the happenings in Gujarat distressed us...

There have been important government and civil society efforts in Gujarat, which have effectively contributed to the rehabilitation process. The situation of women and children is being specifically addressed and a number of important confidence building measures have been put in place.¹

Clearly, this statement co-opted civil society and human rights responses into the government response; it also refused to make a distinction between necessary executive action and judicial activism. At the 37th session of CEDAW at New York on January 18, 2007, several of these issues

were raised for further clarification by the GoI. The absence of any mention of the Gujarat carnage in the government report was voiced as a cause of concern. Further in response to the query by the committee subsequent to the submission of the report, the GoI responded by quoting statistics from the state government, instead of providing the information contained in the reports of statutory commissions like the National Human Rights Commission. Despite repeated statements that what happened in Gujarat was a blot that "we can never be adequately ashamed of", and "an aberration", the committee insisted that justice cannot be done with repentance alone. In cases of mass violence, of which grave sexual assault is part, members stressed, prosecution is an essential part of delivering justice. The head of the delegation then commended NGOs, the media and the judiciary for their role in ensuring justice.

The reasons why prosecution, the responsibility of the government, has been woefully inadequate for the survivors of Gujarat 2002, were not given. The committee reiterated the fact that the response of the judiciary in fact reflects a failure on the part of the government to provide protection to victims and asked why the government did not contemplate the use of Article 355 of the Constitution to restore normalcy in Gujarat. The response of the government that these are matters that need to be treated with care appeared inadequate, given the scale of violence that provided the context for the suggestion.

The delay and non-inclusion of the remedial measures undertaken by the

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government on the violence in Gujarat found parallels in references by the CEDAW committee with what happened in Bosnia and Rwanda. That information and facts and figures on cases reopened and convictions, the situation of rehabilitation and witness protection were made available and provided only when asked provoked stringent remarks from the committee members, Hanna Beate Schopp Shilling and Heishoo Shin, who expressed that the government must be aware that no rehabilitation can be complete unless there are prosecutions for crimes committed and justice has been delivered to the victims and survivors.

Shanthi Dairiam raised a query about the proposed Communal Violence Bill and sought responses from the government delegation on what measures were taken to ensure that the Bill actually addressed the specific concerns of women in situations of mass communal violence in the context of Gujarat.

There was concern that temporary special measures had not been undertaken for justice and rehabilitation well within the provisions of the Constitution of India and CEDAW Convention. It was suggested that not only should the efforts of NGO's statutory bodies and judiciary be referred to but governmental obligations be fulfilled.

CEDAW's Concluding Comments

The drafting of the concluding comments by the CEDAW are an extremely important step in the reporting process under the Convention on the Elimination of All Forms of Discrimination against Women. In identifying gaps, strengths and possible courses of action to remedy discrimination in various spheres, it also urges accountability and transparency by state parties by identifying specific lapses and making the deliberations public. Where there has been an active NGO lobby that has foregrounded critical concerns, the concluding comments represent the culmination of the first stage of work, and can then be used nationally as an advocacy tool that has international legitimacy to press for further and swift action.

The opening paragraph of the concluding comments on the India report [CEDAW 2007] said,

The committee expresses its appreciation to the state party for its combined second and third periodic reports, while regretting that it was overdue, did not fully comply with the committee's guidelines for

preparation of reports or refer to the committee's general recommendations and did not provide the information requested by the committee on the communal violence in Gujarat.

Requesting a follow-up report in view of the inadequate state response on Gujarat, the CEDAW outlined its reasons for this request:

The committee expresses its disappointment with the inadequacy of information provided by the state party in its report and in its answers to issues and questions posed by the committee, on the impact of the Gujarat massacre on women, which negatively affected implementation of the convention... [I]t requests the state party, in conformity with article 18, paragraph 1(b), of the convention, to submit a follow-up report in January 2008 for consideration by the committee later in 2008.

Recapitulating the discussions at the session and the specific queries raised by committee members to the official delegation, the concluding comments outlined the framework of the follow-up report it was requesting:

The follow-up report should include information on the impact of the Gujarat massacres on women. In particular, the report should provide information (a) disaggregated by sex, on the 2,000 or so cases relating to the massacres that have been reopened and the resolution of these cases; (b) on the number of cases of sexual assault and violence against women that have been reported and the resolution of such cases; (c) on victim protection measures and other measures to support victims that have been put in place and the impact of such measures; (d) on arrests made and punishments imposed, including on state officials who were found to be complicit in such crimes; (e) on the gender-specific measures taken by the state party to rehabilitate and compensate women victims of such crimes and the number of women who have benefited from such measures; (f) on compensation awarded to women victims, especially of violence against women; (g) disaggregated by sex, on the 5,000 or so Muslim families displaced by the violence and measures taken by the government for their resettlement and rehabilitation; and (h) on measures taken to enable economic rehabilitation of the affected communities and rebuilding of basic infrastructures destroyed during the riots.

Further in terms of the prospective steps being contemplated by the government, the CEDAW in its concluding comments cautioned the government about the

shortcomings in the proposed legislation on communal violence and recommended specific inclusions:

The committee is concerned that the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, does not include sexual and gender-based crimes against women perpetrated during communal violence or create a system of reparations for victims of such crimes... In addition, the committee remains concerned that this Bill does not adequately address abuse of power by state officials in failing to take action or being complicit in communal violence.

The committee... recommends the incorporation into the Bill of: sexual and gender-based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules. The committee further recommends that inaction or complicity of state officials in communal violence be urgently addressed under this legislation.

We hope that five years after the holocaust in Gujarat this February 28, national and international censure and concern for justice to the survivors of the targeted violence against minorities in 2002 will move the centre to take urgent and appropriate action. The 37th session of the UN CEDAW has been one important step in this direction. [EW]

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Note

- 1 Introductory Statement by Deepa Jain Singh, secretary and leader of the Indian delegation, government of India, at the 37th session of the Committee on the Elimination of Discrimination against Women, New York, January 18, 2007.

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