

Violations of the Constitution, the Law, and International Treaties

The urgent task today is to secure justice for all the victims of the Gujarat carnage, and simultaneously to ensure that the principles of equal citizenship and justice for all enshrined in the Constitution are not merely safeguarded but also strengthened. This team holds that first and foremost India's own institutions of democracy and justice have to be pressed into action, and their representatives and office bearers made accountable for their responsibility to safeguard the rights sanctioned by the Constitution. Appeals to international courts of justice and the evoking of international conventions are also extremely important and necessary tasks, but can only supplement the process of delivering justice. The main action has to take place within our own institutions and be implemented by our own judges, bureaucrats and leaders, with the involvement of Indian citizens across the nation.

CONSTITUTIONAL VIOLATIONS

The Gujarat government is responsible for gross violations of the Constitution of India with respect to children's rights too.

Trauma and Denial of Education

Article 39 of the Directive Principles of State Policy which states "... that children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".

The large-scale and intense trauma that children have been subject to as well as the denial of education, are both in complete violation of this principle.

Article 14 of the Fundamental Rights "The state shall not deny to any person equality before the law or the equal protection of the laws....."

Article 15 of the Fundamental Rights "...prohibits discrimination on the basis of religion, race, caste, sex, or place of birth"

Depriving minority children of access to education and disempower the entire community thus is a clear violation of the above articles.

The sensitivity and effectiveness of a democracy are reflected nowhere better than in its ability to protect the children, who cannot directly participate in the democratic electoral process. A drive to ensure education for every child has become a critical imperative in Gujarat, and it is the responsibility of the Gujarat government to implement it. In the context of the large-scale trauma that children have been subject to, access to education

The Next Generation: In the Wake of the Genocide
A Report on the Impact of the Gujarat Pogrom on Children and the Young
by an independent team of citizens, July 2002, Supported by Citizens' Initiative, Ahmedabad,
Full Report available at: <http://www.onlinevolunteers.org/gujarat/reports/children/>

becomes even more necessary as natural therapy and to help restore some sense of normalcy in their lives.

Violations of Laws regarding juvenile citizens of this country:

- Producing minors in the Judicial Magistrates' courts
- keeping them under arrest in adult lock ups and jails
- failing to inform their parents within 24 hours
- subjecting them to severe and repeated beatings in custody

VIOLATIONS OF INTERNATIONAL TREATIES

While victims of injustice and violence have always had trouble being heard, historically none have had more trouble than children. It has long been internationally agreed that the child, by reason of his/her physical and mental vulnerability, needs special safeguards and care, including appropriate legal protection, before as well as after birth. **The Geneva Declaration of the Rights of the Child of 1924**, the **Universal Declaration of Human Rights** and the statutes of specialized agencies and international organizations concerned with the welfare of children straightforwardly document the need for such special safeguards. The State's failure to implement various International Treaties that relate to the rights of every human being, adult or child, such as the Universal Declaration of Human Rights, **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, and **The Convention on the Prevention and Punishment of the Crime of Genocide**, has been convincingly demonstrated in other reports¹, and do not need repetition here.

The International Convention on the Rights of the Child, 1989, to which the Government of India became a signatory in 1992, has also been infringed upon in no uncertain terms. Of special relevance in the context of the murders of children, born and unborn, the trauma of witnessing the rape, murder and burning of relatives and neighbours, and the arbitrary arrests and police torture, are the following provisions:

International Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49. India acceded to the convention on 11 December 1982.

Article 2

¹ Presented in details in The Survivors Speak. The articles of The International Convention of the Rights of the Child are also listed there, but since they bear specialized relevance here, we too include them in the interests of presenting a comprehensive account of the violations of children's rights.

Ø States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Ø States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 6

Ø States Parties recognize that every child has the inherent right to life.

Ø States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 14

Ø States Parties shall respect the right of the child to freedom of thought, conscience and religion.

Article 37

Ø States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

Article 39

Ø States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

We also seek to draw attention to the fact that almost each and every principle of the United Nations' ten-points Declaration of the Rights of the Child (1959) has been severely violated in the Gujarat genocide. We quote the ten principles below in full.

Declaration of the Rights of the Child (1959)

Principle I

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights,

without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself² or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

² Read herself/himself, she/he, his/her, him/her etc. throughout this document.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.³

Nothing seems more distant from the children in the Gujarat Relief Camps than a promise of “healthy and normal” development. The entitlement to a Muslim name has unfortunately threatened the right to the Indian nationality. Most of these children have

³ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

The Next Generation: In the Wake of the Genocide
A Report on the Impact of the Gujarat Pogrom on Children and the Young
by an independent team of citizens, July 2002, Supported by Citizens' Initiative, Ahmedabad,
Full Report available at: <http://www.onlinevolunteers.org/gujarat/reports/children/>

either lost the bread winning members of their families, or their parents have lost all their savings, as well as their means of livelihood in the genocide. It remains the duty of the State, which has unmistakably and miserably failed to protect the children and their parents from acts of organized violence, to now secure the “benefits of social security” for them. If the State fails to do so, this second failure – being less spectacular in form – might be more harmful in its lingering effect since serious psychological dislocation accompanies economic and social dispossession.

In the *Shah-e-Alam* Camp alone, almost fifty babies were born immediately after the genocide and another fifty were expected during the time of our visit. The Government has not taken any substantial measure to provide “adequate pre-natal and post-natal care” to these newborns and their mothers. We wonder how the proclamation of the right to “full and harmonious development of ... personality” and claims to “love and understanding” would sound to Javed Hussain (14) of Naroda Patia, or to Saddam Hussain (8) of Randikpur, or for that matter to any of the 50,000 who have lost their homes in this organized violence.

The right to education has been violated. The sources of family incomes have been irrecoverably destroyed. The course of normal life has been suddenly disrupted. It is clear that one of the aims of the genocide was ethnic cleansing – hence the systematic and widespread rapes and burning of women, fetuses and children. Another was to psychologically traumatize and emotionally destabilize the children from the minority communities. Many of them have been forced to witness the rapes of their mothers, sisters, relatives and friends, some of whom have been burnt to death, and some others were left semi-charred. The “spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood” that they were promised now sounds like a cruel joke. The Government has failed not only to live up to the requirements of the Geneva Principles, but also to guarantee the minimal constitutional rights of the citizens from a particular community.

The Next Generation: In the Wake of the Genocide
A Report on the Impact of the Gujarat Pogrom on Children and the Young
by an independent team of citizens, July 2002, Supported by Citizens' Initiative, Ahmedabad,
Full Report available at: <http://www.onlinevolunteers.org/gujarat/reports/children/>