

JAIN-BANERJI PANEL

MURDER OF A CORPSE

*JAHAN MAUT KE BAAD BHI
KAFAN NAHIN HUA NASEEB
KAUN PAGAL AB KARE
AITBAAR TERE SHAHR KA*

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PEOPLE'S UNION FOR DEMOCRATIC RIGHTS

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The judgement of Delhi high court quashing the Jain-Banerji panel reflects the pathological state to which the administration of justice has reached in this country. At every single step in its tortuous course a technical flaw or a knot was created, which doomed the next step. In the consequent fetish generated about the legal labyrinth the human beings, the victims of the 1984 carnage, disappeared. Let us restore back people to their place in this tragic drama.

The present story begins with a courageous lady Mrs. Anwar Kaur whose husband was killed in the carnage. He was one of the 2733 people whose killings were officially acknowledged. She approached the police at Sultanpuri who repeatedly refused to register the FIR. According to the official figures only 1433 out of the total 2733 murders were registered. Her complaint was among others, against Sajjan Kumar, former MP and the then General Secretary of DPCC(I) and Mr. Brahmananda Gupta, a Pradhan from Sultanpuri. Both of them were among 13 police officials, 15 Congress(I) leaders and 198 local Congress(I) activists and others named in the PUDR-PUCL report Who Are The Guilty?. The government turned down, initially, the demand for judicial enquiry. The two civil rights organisations approached the Delhi high court for an enquiry. The petition was arbitrarily transferred from one bench to another. Eventually it was dismissed by the court. The judge was Justice Yogeshwar Dayal. Five months later, in April 1985, the government appointed Justice Ranga Nath Mishra Commission of enquiry. The Commission disallowed the participation of the two civil rights organisations in its proceedings. Mrs. Anwar Kaur filed an affidavit before the commission. Eventually, almost two years later, in February, 1987, its report was placed before the parliament. The Commission found at least nineteen Congress(I) men guilty of involvement in

the carnage. Six of them, including Mr. Brahmanand Gupta were also named in the PUDR-PUCL report. In any case the report gave birth to three more committees. The first one to ascertain the death toll arrived at the precise and final figure of 2733 (40 months after the carnage). The second committee, to enquire into the police conduct during the carnage, is yet to submit its report. The third committee, to 'recommend the registration of cases where necessary and to monitor the investigation thereof', was headed by Jain and Banerji. Mr. A. K. Banerji, IPS, was a former director of CBI and Justice M. L. Jain was a judge in Delhi high court.

Meanwhile, 225 cases (accused 2329) relating to riots were launched. 93 of them (accused 379) were dismissed. Some of them were murder cases. In Narela (State Vs Chandan and others, 1984), two widows Tarseem Kaur and Davinder Kaur identified the main accused Chandan, a local milk vendor, as part of the mob that killed their husbands. But the honourable judge was convinced by the defence argument that the two widows named Chandan 'to escape paying their dues for the three months of milk supply'. Another case (State vs Kundan and others) was dismissed due to the 'unreliability of the eye witness account'. The eye witness Miss Amarjit Kaur was the sole surviving member of a joint family that was killed by the mob. As they began killing, she took shelter with neighbouring women. The judge found 'the attitude and conduct of the witness strange. Her kith and kin were being butchered and she had the audacity to say that she took shelter with a crowd of women'. In Zakhira (State Vs Mahesh and others) the accused poured kerosene on a group of Sikhs and burnt them to death. But police, maintaining that they had 'no intention to kill' registered a case not of murder but 'culpable homicide not amounting

to murder'. The case was dismissed. In all only in 11 cases, the accused (90) were convicted. Of them only one relates to murder. All the rest were minor offences like curfew violations. Two of the pending murder cases are against Mr. Brahmananda Gupta. Presently, 132 cases (accused 1950) are pending.

But the murder of Anwar Kaur's husband was not one of them. So she filed, dodgedly, a fresh affidavit before the Jain-Banerji panel. It was among the 400 affidavits received by the panel. After taking eight months, the panel recommended just three cases. In the first case no accused were named and hence the notion of prosecution has no meaning. In the second case, the panel recommended the reopening of Zakhira case but the Lt. Governor rejected it. Third and the last was that of Anwar Kaur in which Sajjan Kumar and Brahmananda Gupta, among others were named. The Lt. Governor did not respond to the recommendation for forty days.

Then suddenly in November 1987, Brahmananda Gupta filed a petition challenging the appointment of the Panel in Delhi high court. The honourable judges, without issuing notice to any other party, issued a stay order. The stay was issued by the same Justice Yogeshwar Dayal along with Justice G. C. Jain, Dayal was later replaced by Justice D. P. Wadhwa. Meanwhile, faced with a public criticism, Justice G. C. Jain voluntarily withdrew from the bench. A party hosted by him was attended by H. K. L. Bhagat and led to the controversy. Chief Justice R. N. Pyne replaced him. Meanwhile Justice Wadhwa became busy with the enquiry related to Tis Hazari lawyers strike. Just when he became relatively free, the case was transferred, to Justice B. N. Kripal and Justice C. L. Chaudhary, in July 1989. All the time M. L. Jain and A. K. Banerji, pathetically

attempted to have their panel represented before the high court. The government did not allow them to have a counsel of their choice. Nor did it make any serious effort to get the stay order vacated. Meanwhile, the term of the panel, already extended thrice, expired in August 1988. A year later, in response to repeated queries by the high court, the counsel for Delhi Administration submitted before the court in September 1989, that 'the panel is legally alive ... although the administration has not extended its term'. This statement has no meaning unless the expression 'legally alive' indicates a corpse. And it is this worthless corpse that is now quashed by the Delhi high court yesterday.

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