

Basantakumar Wareppa Interview

On 9th March, 2013

Q: Sir tell us something about yourself, how you came to law

B: Ok...I am Basantakumar Wareppa. I started my activism...since last 7-8 years, initially I worked with Amnesty International. In fact ...Rakesh is one of the first member of the national interim executive council, so we are together and we work together too. Since Tomar Rakesh is also dealing with a lot of cases, he himself is a lawyer so he had to abort many of the activism work, so he turned his work into litigation rather than the activism, so I continue to be involved with activism; mostly I did some ground work. During the Amnesty's works I had the opportunity to attend some of this programme and the human rights education organized by Amnesty International. In fact there was a time where I was really insisted by Amnesty International to further work and at that time I was just a graduation. I did my graduation in English Honours and completely different kind of activism we are in at the moment. Now after that I did my masters in linguistics, consequently I also joined Human Rights Alert as a programme assistant and I also need to attend my regular course in the University and from 9 to 3:30-4:00, I had to attend my classes in the University and I got the University route and went to office and work till 8 in the evening and often till 9:30-10:00. Then after passing my masters in linguistics, I did not stop my study and I pursued LLB as well. One of the reasons for pursuing LLB is when I go to field and interact with many people, I was always expected to be a lawyer, since I am involved in human rights work. So the perception of the people is that if someone is doing some human rights work are always expected to be lawyers, so in the sense I also talked to them and I referred them to...take advice from legal counsel. So I refer them to lawyers so gradually, in a way it was so difficult for me to you know refer all the...my client to other lawyer...so I...there was my primary requirement for pursuing LLB then I did my LLB, then after that I had an opportunity to work with SAFHR for some time. South Asia Forum for Human Rights (link - <http://www.safhr.org/>), based in Kathmandu, they also have an office in Delhi. They had a project called 'Understanding Impunity: Possibility of Truth Justice and Reparation'. I was the research (**inaudible 3: 28**) for six months. My primary task was to record

the family statement, for alleged human rights violation and if they have any process for litigation, I have to collect it, analyze it then I send it to the office. I think the record is yet to come out, expecting to release soon. Then after that I also had an opportunity to work with People's Watch, based in Tamil Nadu. They have a project called, 'Strengthen Access to Justice in India'. It's a collaborative project of UNDP and Minister of Social Justice and I was the state coordinator. Then I visited a lot of government officers and I realized how the government of Manipur function, the problem with them and their problem with the people. After that I worked with Asian Centre for Human Rights (link - <http://www.achrweb.org/>), based in Delhi. There is a guy called Subhash Chakma (**name not sure 4:35**), I think you must have heard of this gentleman. I worked with this organization for almost two years, they had a project called 'Human Rights Enforcement in North-East India'. I was a consultant of two years, I was never based in Delhi, I was based here, I do fact finding, I do litigation and I do use many legal mechanisms like filing petitions before the National Human Rights Commission and refer my client to the lawyers to seek legal help and after that, I also work with Asian Human Rights Commission (link - <http://www.humanrights.asia/>), it's based in Hong Kong. They had a project on torture, it's funded by the UN. It's also a joint project of REDRESS (link - <http://www.redress.org/>) which is based in London and Asian Human Rights Commission, based in Hong Kong. So there the purpose is, the fund is to implement in India,... say someone got tortured and the possibility to use, address this issue, using various legal mechanisms, like right from filing FIR to police, then court, then High Court, then National Human Rights Commission and upto the Supreme Court and in the mean time, primary objective of this project is to understand the base hurdle one probably would face, while addressing the issues of the torture in India and unfortunately this project didn't last long, so I left the project and at the moment I am concentrating with the present issues of fake encounter. One of the organization called Extra-judicial Execution Victim's Family Association of Manipur filed this writ petition before the Hon'ble Supreme Court and they are petition number 1 and Human Rights Alert, Babloo is the petitioner number 2. So I am helping out in this case.

S: So are you like arguing before the Supreme Court?

B: No, no...in fact it's very funny thing. Since holding my law degree, I never...never appear in any court of law. That was my first time, I had an opportunity to assist Colin Gonzalves in

Supreme Court in the facts of this case. Since I am dealing with all these cases, so I know, how to make an argument, find out a good point to argue, so I spend 3-4 days in Colin's office and just draft the arguments. So I briefed Colin to go and argue it...

S: How was the experience and how was Supreme Court looking in the matter?

B: We never thought that such a good judgment could found...I think Alam Aftab did a tremendous job, in fact his primary concern to appoint this Commission, led by Justice Santosh Hegde, is a fact that the material we placed before the Supreme Court is nevertheless could convince the judge, but another important for the judge, they are wise enough to make judgment. Instead of just placing a lot of material, we also placed a lot of material, just to find out, what is exactly, what would be the truth, is not to be basis depending on the material placed before the Supreme Court submitted by both sides. That's why in order to certain the validity, the exactness, the truth of the documents, so they form a commission. The commission had the hearing here. Then the hearing will continue in Delhi, so they form this Commission and unlike other Commission, this Commission have lot of power and this is not a Commission, which if formed under the Commissions Inquiry, that is exactly what Justice Santosh Hegde, while hearing...He always observed and reiterate and reaffirm the kind of power and the kind of effectiveness, this Commission would have. He always tried to **(inaudible 9:36)** counsel, because their primary purpose is not to punish the person who is found to be guilty but their primary task is to find out the truth. That is exactly why the state government counsel made an objection while we placed photograph of the particular spot where police had the encounter, then Justice Hegde said that, Mr. counsel you are not supposed to object this material, we are here to find out the truth. If you are ready enough to find out the truth, then you should not object it. So this was kind of a **(inaudible 10:14)** from this enquiry commission.

S: Who were heading the bench?

B: This is not a bench, this is an enquiry commission led by Justice Santosh Hegde a retired Supreme Court judge and G. M. Lyngdoh, who is the former Chief Election Officer, then Ajay Kumar Singh, who is the retired IGP and DGP of the Government of Karnataka.

S: In the original case, who were the judges in the bench?

B: Alam Aftab, who was the bench leader and Ranjana Desai.

S: Division Bench?

B: Division Bench!

S: Were there any other intervention made?

B: There were lot of intervention made...I think the respondent did not have enough material to discredit our material placed before the Supreme Court. The only argument they had was to blame the petitioner as anti-national. Then the judge feel so much...you know...upset. Alam Aftab started 'How can you say that someone coming to Suprme Court Chief Justice, are they anti-national? You being a state cannot mark this people anti-national. Nationalism is not a monopoly of the state. This is the way you mark people anti-national. Don't raise your finger at them, as long as we are here, rule of law is here...' what a wonderful (smiles)

'We draw contention, I have a strong exception for your contention Mr. Ranjit', who was representing Government of Manipur. 'Oh wonderful, is there war going on there...so they are killing people so YOU ARE ALSO KILLING PEOPLE, THIS IS NOT THE WAY for the state to function...'

D: Quite remarkable

B: It is quite remarkable...

S: So they are looking at all the seven states?

B: No this is just...the bench look after our petition

D: Petition pertains to Manipur only...

B: Manipur only. In fact this writ petition is a huge compilation; it's more than...it's nearly 1000 pages. The content of the writ petition is nearly 1000 pages. In the main text we have highlighted, 7 detailed cases. We alleged that these are all fake encounters and in annexure 1, I think you got the memorandum that we have submitted to Special Rapporteur on Extra-judicial executions right?

D+S: Yeah (*A Memorandum on Extrajudicial, Arbitrary or Summary Executions*” submitted by Civil Society Coalition on Human Rights in Manipur and the UN to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. **Hard Copy available at ALF office**)

B: And this document is annexure 1, listing 1528 extra-judicial executions, we have been documenting from 1979 to 22nd of May and we also annexed 6 detailed cases. Cases in which the family use various legal steps like filing a report to police, using some mechanisms like National Human Rights Commission and Court. We have annexed this as annexure 2. Then annexure 3 also, we annexed a report, ‘Official Sanction for Killings in Manipur (link - <http://www.amnesty.org/en/library/info/ASA20/014/1997/en>) this is a report published by Amnesty International. Then we also annexed a report of Human Rights Watch, ‘These Fellows Must be Eliminated’ (link - http://www.hrw.org/sites/default/files/reports/india0908webwcover_0.pdf), and we also annexed...this was then, just after 23rd July incidents (link -<http://tehelka.com/murder-in-plain-sight/> and <http://tehelka.com/life-in-a-shadow-land/>), the Tehelka exposed this fake encounter and this whole document have been in the presence of the petitioners...voluminous and they might be one of the biggest voluminous writ petition we placed before the Supreme Court.

S: Does it also contain affidavits of surviving persons?

B: We did not annex it, but during hearing we will annex it. In order to substantiate, the argument we made, in the writ petition, we had to substantiate it. So I went to 10 families, whose detail is placed in the main petition. I interviewed them and I draft their affidavit. I think their affidavit, really helps to convince the government and took the decision to appoint this Supreme Court Commission.

D: So from this petition, pragmatically what are you expecting?

B: In the prayer...there are certain prayers we are seeking from the Supreme Court. First is to constitute special investigation team, to investigate all the 1528 extra-judicial executions. The second is to...proper compensation...if forces, law enforcement forces under rule of law...I think the gist prayer, what we like to ask the Supreme Court is that the family has every reasonable right to know the truth, justice and reparation, despite the fact that the person might be wrong, he might be militant, but the militant is not...in any manner justified for the militant to

be killed in an extra-judicial manner. So even if the person is with the militant, the family still has the right to know the truth, how this person was killed.

S: So the enquiry commission right now, does it have a mandate of summoning, as in I am guessing that it has wide powers, so it can summon your testimonies obviously...

Rakesh: This Commission has powers to summon those department fellows (laughs). Mr Santosh Hegde has categorically said that, this is a commission constituted under the order of Supreme Court, so it has the power which Supreme Court has.

B: Even Justice Hegde said that, this is not the Commission appointed under Commissions of Enquiry Act that is exactly why you know, this committee has also the power to adopt any procedure. The procedure is not confined in any manner, so this is very wide power, but one of the...important for this commission is they are not willing to summon any people, they are expecting any party to come and depose before them, it's fair enough and also one of the important things, we could hear during the sessions is that you know...Justice Hegde started that you know the consequence of this...if the state respondent failed to appear before the commission, you should know the consequence. He started that of course you are right that we cannot take any action against you, but at the same time, you should also know that this report will go to the Supreme Court, will tell everything what we find, the truth, they will place before the Supreme Court. Supreme Court will take decision, you should know the consequence.

In fact there is one police commando, who is the inspector. In fact I like this man to be part of my petition, unfortunately I did not find the strong cases in which this particular person is involved but fortunately, this man, one of the families of the encounter killing, while this witness is deposing before the enquiry commission. This particular policeman went to house of this person and he threatened the family and subsequently we came to know this. Then I was very happy when the family prepared a complaint and placed before the enquiry commission. Justice Hegde got SO much angry you know and asked state counsel to respond and this policeman admitted that he went there and he stated in the affidavit saying that he got a reliable information...based on reliable information, in fact one of the family member of this particular family, he is a militant but became part of the process, the police, I mean government. This particular group is having suspension of operation. This particular man, whom he was shot, he is

staying in the 7th Battalion Manipur Rifle, so when arguing by Mukul Sinha, he stated that ‘My lord even this militant is not part of the...he is not militant no longer, he is part of the government, suspension of operation is on process’...then this police commando appeared before the enquiry commission. Justice Hegde said, ‘Inspector your audacity shows how the Manipur government functions. The counsel stood next to him, tried to intervene. Then the next committee member Lyngdoh said, ‘Counsel, don’t talk too much...you talk too much, you will also be in trouble.’ (everyone laughs)

I never imagined that you know, many of the police person who are involved in the killing, they are just sitting behind us, they are IPS officers, they are senior officers, they are summoned and cab in the witness box and Mukul Sinha put sequence of question and the sweat released from their face, really impact this man...Ah! (smiles) (everyone laughs)

If you could have arrived couple of days back when this...you could get sense of what was happening here.

S: So what is the stage at which this is now?

B: This is, they have recorded witnesses statement we produced and they are also recording respondent witnesses and from 13th they will record Assam Rifle witnesses and those police respondent, who are yet to depose and their depositions will start from 15th and 16th. After that we might have an argument on the basis of the deposition and the report will be back in the Supreme Court and latest by April, Supreme Court will take a decision.

S: So there is a time limit?

B: There is a time limit! This report will be placed latest by March.

D: So that’s the deadline...

B: Yeah!

D: So for how long have you been preparing for this case?

B: This case? Two years.

D: So two years of intensive preparation! So the amount of preparation that you just outlined, it's immense, so have you ever felt that the petition may not yield the kind of results that you want? Have you ever asked whether...have you ever felt discouraged?

B: No no, I don't think we have any discourage. I think we are in power enough, because we thought that the material, we provide is more than enough to convince the judge to look into. It's a serious matter, this is the only way, in which we can stop this people, otherwise no state let this people kill more and more, everyday they are making 3-4 widows. This is not the way state will have to do, but there is no possible way, one can stop it except to seek intervention from Supreme Court. We had a series of discussion with the widows, initially the widows also got so much scared. We could convince them and it is also for them to be part of the petition as petitioner number 1, because they are the legitimate people who can seek justice from the Supreme Court. We are secondary, they are the direct victims. So I think, even I think, the petitioner number 1, whose husband was also killed, unlike other case, the wife could file...took a notice of the High Court in the form of writ petition, Rakesh is dealing with this case and High Court directs the District Judge. District Judge conducts an enquiry and found the encounter fake. Even the petitioner number 1, whose husband was killed, in her case too based on the judicial enquiry conducted by the District Judge with the direction of the High Court found encounter fake. I think, this is more than enough to convince Alam Aftab and his bench to material we presented before him are more than reasonable.

S: Who are the petitioners?

B: Petitioner number 1 is the Neena Ningombam (link - <http://www.countercurrents.org/ningombam300912.htm>), she is the widow and also secretary of the widow's group called 'Extra-judicial Execution Victim's Family Association of Manipur and we are petitioner number 2.

S: And the respondents are...

B: Respondents are Union of India, State of Manipur and National Human Rights Commission too. You might be wondering National Human Rights Commission to be part of respondent! We tried to use this mechanism, this National Human Rights Commission. I think they will just be intimate with the government and the government had love of tactics to get delay their response

to the Commission and despite the fact that NHRC has limited power, but I think they have a lot of other opportunity in which they can intervene, so you just imagine, 1528 extra-judicial execution. Even if NHRC is aware of the fact that systematic extra-judicial execution is taking place in state of Manipur, but they never sent even a senior officer to visit Manipur, inquire this matter even in a single case.

S: Since 79

B: since...no NHRC formed in 99. But NHRC admitted that they have received complain from Manipur and ...they have intimated to the government of Manipur saying that they have received 111 cases of encounter killings, but I think 111 is more than enough for them, any single case they could come, any single case...one case! I think their responses are very bad before the Supreme Court. They said that they are not in power, their power is very limited, but NHRC still object our writ petition without any basis, that's why the judge said that you are not delivering justice, someone came ask for JUSTICE, WHY ARE YOU OBJECTING IT?

S: They placed objections?

B: They placed objections!

S: What was their point?

B: They said that we have limited power, if protection of human rights is a mandate, then if we could have power then we can do it. And to the counsel of the NHRC, Alam Aftab said that, 'sit down, sit down don't be so sensitive'

(everyone laughs)

D: Sir lot of victim's families and widows are deposing before the court?

B: No no, they are not. It is just for the 7 case we placed in the main petition.

D: But none of the victim's families are involved in actually providing testimony in front of the court or the commission?

B: In front of the commission the victims' family have already deposed.

D: So how do you train them, because that is a new situation..

B: No, no we don't train them. We don't train them, these are truth, we don't need to train them. Of course Rakesh and other lawyer they draft their affidavit and place before the commission and they voluntary go and depose off. Since the matter is truth, this victim would not be sack off in any way.

D: That's what am saying, you know sometimes like your opposing counsel can intimidate to be extremely aggressive...

B: I think in this point of time, Justice Hegde is more than enough to...

(everyone laughs)

'Mr. Counsel and senior counsel, I don't think you can put this question...' But Justice Hegde never intervened our counsel. He never intervened, rather he encourages counsel to put more question.

S: So this 7 cases are the main cases right?

B: No this is in fact and we said that there are more than 1528 extrajudicial executions and we ask the Supreme Court to just hand and pick the cases we allege and examine. And out of the 7 cases, in 3 cases we don't have witnesses, even those cases became very strong now, after court examination. I think the police themselves in a statement became our winners.

(everyone laughs)

S: So in the 3 cases there are no witnesses?

B: No eyewitness, but this case also became very strong...

D: Just because of cross-examination

B: Because of cross-examination.

S: The other 4 cases they were witnesses?

B: Yeah, there were witnesses.

S: Were there any basis of selecting these 7 cases?

B: No, no we said that...I think we are fair enough, we said that these first 7 cases is a part of the annexure 2, compilation, we just randomly select and place in the main petition. Since we presumed that these are all fake encounters, we don't need to select a stronger case. If we wanted to place the stronger case, we could have selected those cases who had all been...which had judicial finding...enquiry finding. In annexure 2 more than 20 cases had judicial enquiry findings, we don't place this document, we are fair enough, we just hand and pick and place these test cases and even these test cases become very strong, even though we feel they are very weak.

Useful Links

- 1) Memorandum submitted to SC appointed Commission - http://humanrightsmanipur.files.wordpress.com/2013/02/cschr-memorandum-to-sc-appointed-commission_18feb20131.pdf
- 2) Petition of EEVFAM - http://e-paolive.net/download/PR/2012/EEVFAM_Supreme_Court_petition_201210.pdf
- 3) Interim Submissions made by petitioners - <http://humanrightsmanipur.files.wordpress.com/2013/04/eevfam-interim-submission-manipur-extra.pdf>
- 4) Judgment - <http://judis.nic.in/supremecourt/imgs1.aspx?filename=39896>
- 5) Latest Office Report - <http://courtnic.nic.in/supremecourt/temp/wr%20129rpt.txt>

Next Date of Hearing – 01/07/2013