



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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September 10, 2021

To,
Mr CS Mawri,
Focal Point - Human Rights Defenders & Assistant Registrar,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert – Urgent Appeal for Action – Madhya Pradesh: Police action against workers who were also detained for protesting peacefully.

Greetings from Human Rights Defenders Alert!

HRD Alert-India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are writing to express our shock at the brutal police action against nearly 800 workers protesting outside the Century Yarn and Century Denim Mills in Khargone district in Madhya Pradesh.

Source of Information:

Information from HRDA West regional consultant
Information from HRD

Date of Incident:

July 15, 2021

Place of Incident:

Khargone District, Madhya Pradesh

Perpetrators:

- Ms. Anugrah P, District Collector, Khargone District
- Mr. Sangh Priy, Sub Divisional Magistrate, Kasarwad, Khargone District

About the Human Rights Defenders:

Nearly 800 Workers of the Century Yarn and Century Denim Mills in Madhya Pradesh have been protesting for nearly four years against the closure of the plant. The protest

began after the company had brought out a Voluntary Retirement Scheme (VRS), which was not accepted by workers. They staged a walkout in October 2017 to protest the sale of the mill to another private company. They have been protesting peacefully ever since outside the premises of the company.

Details of the Incident:

On June 29, 2021, the company put up an order stating all the workers will have to take VRS and put a deadline of July 13, 2021. On July 12, 2021, the workers went on an indefinite hunger strike to protest this imposition, on the protest site which was outside the factory premises.

On August 3, 2021, at 10 am, around 200 policemen from four different districts - Khargone, Khandwa, Burhanpur and Dhar - assembled at the protest site outside the factory premises. The SDM in-charge stated that Section 144 of the CrPC was in force in the area and the protestors had to leave and vacate the protest site immediately. The workers refused to leave the area.

Then the police manhandled and roughed up workers, physically picking up each worker and pushing them into vehicles brought by them. When the police ran out of vehicles, private buses were organised to put protestors inside. Nearly 600 protestors were picked and transported out of which around 200 were just left on the road.

Many women HRDs were injured, and one was even admitted by the police to the hospital where she was kept in the intensive care unit as she had fainted. The injuries were not only sustained during the police action but also due to the reckless driving of the drivers of the vehicles in which women were transported.

In all 331 men were transported to ITI School in Kasrawad, where they were detained and let go at midnight. Around 70 women were transported to Sanki Mahavidyalaya, where they were detained till 10 p.m.

The protest site and tents where workers had been camping for years were demolished and their belongings confiscated. The protestors have still not got their belongings despite a detailed list having been sent by the protestors to the SDM. It is crucial to note that the police personnel present at the protest site did not have name tags or badges on while acting against peaceful protestors.

The protestors have not been provided a copy of the FIR, however they have learnt Section 151 of the Indian Penal Code has been invoked, carries a sentence for punishment of up to six months imprisonment, if five or more persons knowingly join or continue any assembly likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse.

We strongly believe that the use of force by police against peaceful protestors was an act of reprisal against a peaceful protest by factory workers that has been underway for nearly four years. The protest outside Century Mills has been peaceful and has been underway for four years.

The Human Rights Council resolution 15/21 adopted in October 2010 reaffirms that everyone has the right to freedom of peaceful assembly free of restrictions that is

subject only to the limitations permitted by international law, international human rights law. The right to assemble peacefully is also enshrined under Article 19(b) of the Indian Constitution.

The Code of Conduct for Police in India under Sec 4 says, 'In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.' The provisions should also be ensured in conformity with Articles 4 and 5 of the UN Basic Principles on the use of force and firearms.

The UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels; (article 1). That "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration" (Article 12.2).

Furthermore, the contention of the police that Section 144 was in force and thus the peaceful protest needed to be violently dispersed doesn't hold. In the landmark judgment by a seven-judge Bench of the Supreme Court in the case of *Madhu Limaye vs Sub-Divisional Magistrate* in 1970, also known as the *Limaye* judgement, Chief Justice M Hidayatullah stated the power provided under Section 144 was not an "*ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application.*" The judgement further stated, "*If it is abused, the remedy is to question the exercise of the power as being outside the grant of law.*"

The Supreme Court in its order on the government crackdown against protestors at Ramlila Maidan in 2012 stated, "*...an order under Section 144 CrPC being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case.*"

A Supreme Court bench consisting of Justices NV Ramana, R Subhash Reddy, and BR Gavai in a 2020 judgment stated, "*An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order. While exercising the power under Section 144, Cr.P.C. the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure.*"

The bench stated that the power under Section 144 *“cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights”* and that *“repetitive orders”* under Section 144 would be *“an abuse of power.”*

We believe that the actions of the district administration and the police in Khargone district of Madhya Pradesh were a direct assault on the constitutionally guaranteed freedom to assemble and protest. It further goes against Article 21 of the International Covenant on Civil and Political Rights, which has been ratified by India and states, *“No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”*

APPEAL:

We urge the Hon’ble Commission to urgently –

- Direct its investigation division to initiate an immediate, independent, thorough, transparent, effective, and impartial investigation into the brutal and violent crackdown against peaceful protestors violating their fundamental rights.
- Based on the independent inquiry, direct the Director General of Police of Madhya Pradesh to take stern action against those policemen and officials guilty of intimidation, use of excessive force against peaceful protestors.
- Direct the Chief Secretary of Madhya Pradesh to provide compensation to the injured peaceful protestors and all medical treatment at the State cost.

Yours Sincerely,



Henri Tiphagne

National Working Secretary