

Title: Reminiscence of state terror in Nepal

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Humans bear within themselves the mark of the inhuman ... their spirit contains at its very centre the wound of the non-spirit.

--Giorgio Agamben (1)

Much has been written about Guantanamo Bay, Abu Ghraib and even on Bagram prison camps where 'terrorist suspects' as 'enemy combatants' are kept without trial. In addition to this, the accompanying 'extraordinary rendition' programme has been disclosed as a mark of securitization of state in the US like the 'radical Islam' represented by the Al-Qaeda after 9/11 (2001) has saturated the imagination of the neocons in their quest for world domination under the guise of the 'gift of democracy'. The rendition programme is the classic case of the large scale use of torture and violence "committed with a terrifying world of endless interrogation, frequent transfer of prisoners round the world and detention without charge" (Gray 2007). The assertion of the concept of absolute state by President Bush in the American 'war against terrorism' has perpetuated unbridled state terrorism. The Bush Administration that has trampled the human rights of too many people other than its own is universally condemned for being horrendous. The Guantanamo was however under fire with the US Supreme Court ruling against the 'law free zone' and the judicial blockage imposed by the executive on the 45 sq. mile leased island from Cuba where the US has developed its naval base. The Supreme Court has ruled for granting habeas corpus rights to the detainees since 2004, which the government has been evading.

Lacerated by the unabated violence caused by the Maoist insurgency, Nepal had also taken lessons duplicitously following the US Patriot Act 2001 by adopting several stringent measures including declaration of national emergency suspending fundamental rights to the people and the anti-terrorist act with the provision of impunity. This led to a situation developing in Nepal in which the state was transformed to a repository of violence and terror. Towards this end, the Bhairavnath Battalion Military Barrack located at Maharajgunj had become the indefensible symbol of state terrorism in response to the threats of non-state terrorism. The men under arms become the active participants in the acts of arrest, detention, disappearances and denials of the citizens of state held incommunicado under the suspicion of being the Maoist terrorists. In the words of one of the victims, Himal Sharma, who had spent 26 nightmarish months inside the Bhairavnath Battalion Military Barrack, it was turned literally into a site for the 'human slaughter house'.

Like in the case of the US Supreme Court's inability to implement its rulings, its Nepali counterpart also faced stiff opposition from the military as well as the government authority whenever it raised the ante. Judiciary that had moved to examine the cases of illegal detentions

was denied access and thus had' failed to uncover the cases of disappearances. Blatant disrespect of the court order and disregard of the law were observed in several cases as the persons released by the court were arrested within its premises without any warrant order. The country was reduced to the situation of lawlessness and anarchy by the state agencies actually responsible for preventing it. The tragedy however was that the judiciary had failed to successfully probe the cases of the "legality of arrests [even] of legal practitioners" by the security forces. As the INSEC 2004 reports,

[T]he security forces [have] disobeyed, cheated, lied [to] the Supreme Court on the information sought by it regarding the whereabouts of many people. This sort of contempt of court must immediately stop. The security agencies have downplayed the spirit of rule of law, human rights and democratic system.... The denial of the army to accepting letters issued by Supreme Court and telling lies when asked about the whereabouts of people and later releasing them from the army custody makes it look as if the army is trying to bring the judiciary under its control (INSEC 2004).

Even judges were skeptical towards the apex court's assertion to regulate the law of the land, particularly the rights to habeas corpus that was not scrubbed even by TADO/TADA--the anti-terrorist act in principle. Many judges interviewed by the HRTMCC have shown scant regard for the human rights instruments and standards because of their belief that these are the alien concepts. While discussing the cases of torture, they feel that there is a similarity in discharging the state function by themselves and the police. Law practitioners also consider "the use of force by the police as legitimate actions taken by the state to maintain law and order"(HRTMCC 2004). Thus when violence is condoned by the public authority, torture simply becomes a normal practice for extracting information in defence of national interests. And when government prosecutors feel torture works the vocabulary of law makes it transient to define as 'interrogation' for privileged security of majority over individual liberty. Terrorism becomes a despicable vocabulary for the state to legitimize violence against it. Thus violence served as a means of radically demarcating boundaries between categories of differences--like the Maoists versus others.

If one were to read the book under review against such an abysmally dissolute background, Jitman Basnet has broken the pall of silence that has stifled the victims of torture who however survives to tell the story to enrich indigenous knowledge about barbarism of the modern state that are both unspeakable and unimaginable. Basnet's book is the reminiscence of the acts of inhumanity committed by the soldiers and officers of the Royal Nepal Army on their hapless victims. It is a vivid portrayal of events reflecting on the atrocious experiences of the inmates who were literally reduced to the stature of the 'bare life', as described by Agamben, who can be killed but not sacrificed (Agamben 1998). It is a book about torture and trauma inflicted against the defenceless persons who had either given up resistance to arrest or surrendered and taken into custody. There had been disabilities and deaths in captivity after unbearable torture, mental disorder and lunacy, sufferings and physical breakdowns due to the denials of medical care. Hunger and diseases, unhealthy food and poor sanitation, living on the damp floor under the leaking tent and sleepless nights with mosquito bites coupled with regular beatings and forced labour (even while blindfolded) had physically and mentally destroyed the trust necessary for

living among fellow human companions. For example, the horrific deaths of Khadga Bahadur Magar and Padma Narayan Nakarmi after infliction of severe pain and sufferings caused by torture, starvation and prolonged sickness had traumatized the situation in the camp. The inmates of the camp particularly accommodated in the squash hall and around commando chok (square) were the hapless victims of the trauma as they were trapped in their enforced encounter with violence, brutality and death.

Notwithstanding the continuity of such degrading inhuman practices by the government authorities, including public prosecutors, Nepal is yet to declare torture a crime. Torture is the "most unacceptable criminal act that takes place in isolated confinement ... [the] consequence of which is far reaching because the victims, their families and the society as a whole suffer," says the National Human Rights Commission (NHRC 2003). Torture is an ugliest feature of human behaviour. But it is knowingly committed by the powerful against the powerless in secrecy and denied simultaneously. No civilized state either authorizes or condones torture. President Bush was explicit in announcing "We don't do torture" (The Economist 22 September 2007). But the reality is otherwise.

In the case of Nepal, political authorities had always shrugged off their responsibility from such a criminal act. They rhetorically point out to the UN Convention on Torture that Nepal had ratified in 1990 along with the national constitution that prohibits both 'physical and mental torture'. Despite this, the ICRC and the OHCHR-Nepal had frequently intervened highlighting the cases of disappearances making Nepal the most notorious country in the world to make its own citizens disappear, but to no avail. The political leadership remained evasive and the army was contemptuous to the intruders. The army had deceived the ICRC whenever its members visited the Bhairavnath Military Barrack by playing hide and seek game. In some other instances the interns were strictly instructed to tell lies to the ICRC visitors who interviewed them in the presence of the military officials. The army also forced the victims to sign fake documents under duress with following description to produce as the evidence of its innocence in front of international missions.

I am a Maoist cadre. I was arrested a few days ago ... I have been involved in ... number of killings and disruptive terrorist activities.... I have not been tortured inside the Barrack.... I would like to stay in the Barrack as my life is not safe from the Maoists outside (pp. 37-38).

In this way the army had turned the lives of the innocent people into a theatre of absurd. Though the signing of the confession document would provide temporary respite to the victims in saving their skin, it would humiliate and haunt them psychologically as was the case of Sarita Sharma whose resistant was overpowered (p.36).

The narratives in the book disturbingly point out some of the common techniques in torture spelt in the code like making 'Krishna Sen' (a Maoist journalist killed in custody), 'daal khuwaune' (dipping into dirty water tank/water boarding), 'upachar' (treatment meaning severe beating and torture) usually with hooding, holding the person in a painful position for long hours, exposing victims to severe cold or heat with ear-splitting noises, giving electric shocks, insertions of pin underneath the nails, beating till the victim faints, denial of visit to toilet for long hours for natural discharge and sleep deprivation. Mistreatment and harassment of women detainees were routine occurrences. There were reports of rape and killing after rape inside the Barrack. But

there was no remedy to the monstrous crimes and degrading behaviour of the guardian angels of the sovereign state. There were three types of detainees at the Bhairavnath Battalion Military Barrack: physically disabled as a consequence of relentless cruelty and torture; mentally disoriented and lunatics; and the sick and diseased caused by the hunger, starvation or by consumption of very low quality inedible food. Besides this there were number of deaths caused by torture whose exact figure had never been unearthed (pp. 104-05).

Jitman Basnet thus writes, "Nobody would believe what happens inside the camp. But the reality, however, is despicable" (p.83). The army had become the perpetrator of violence in a situation when their 'search and destroy operations' aided by the culture of impunity rely heavily on the personal integrity of the army officer involved in the mission. The army depends heavily on torture and believes it works as the investigative tool to coax out the truth (p.44). This relates to the case of the daylight killing of Colonel Kiran Bahadur Basnet in Kathmandu leading the army to impound and arrest a person and coaxed out the truth after administering severe torture and interrogation that helped them to arrest two other persons subsequently. But a dramatic turn of the event leading to the arrest of the real culprit Bhim Giri actually involved in the killing of Colonel Basnet proved all the three accused innocent who were tortured to extract truth with their forced confession (pp.42-44). Fortunately, their lives were spared and they returned to the Barrack from the Shivpuri jungle (2) where they were taken to be killed and buried, as Jitman Basnet writes (p.44).

Giorgio Agamben, while explicating the situation of the 'bare life', thus, says the fate of the 'suspect' depends moreover and ultimately on the personal judgment and on the spot decision of the officer involved. The 'ethical sense' and 'civility' of the person involved largely determines the action unfolding thereafter to make it either 'barbarous' or 'civilized' (Agamben 1998). While recounting his personal experience inside the detention camp, Jitman Basnet says one cannot resist but surrender to the whims of the military officers or the soldiers guarding the inmates. They are both hapless and helpless shattered to the bare existence. The army officer like Colonel Raju Basnet, the younger brother of the murdered Colonel Kiran Basnet, who was the Commandant of the Bhairavnath Battalion Military Barrack, reign supreme and his whims were the law inside the camp. He had also tried to pin down Jitman Basher accusing him to be responsible for the murder of his brother, "We have been informed that you were actively involved in the assassination of Kiran Bahadur.... Forget your human rights and courts. We give a damn to all these.... Even God does not know where you are. Now your life is in our grip. We have already buried alive many like you" (pp.19-20, 25-26). It was not simply a threat; it was also the display of the sovereign power of the state bestowed on the person of authority under the provision of impunity. The feeble resistances of the inmates were suspended between the sovereign power and state violence. The detainees inside the camp were simply the 'bare life' who can be killed but not sacrificed because they were never under legal custody.

The Bhairavnath Battalion Military Barrack was not a marked detention camp. It was an unmarked and unidentified place never meant for civilian custody. Thus the people arrested by the plainclothed military personnel, kidnapped, blindfolded with both hands chained behind their back were not given any rights to habeas corpus as they were never legally arrested by the army and therefore their whereabouts were not officially confirmed. Consequently, all the detainees were under the 'disappearances' categories and the state had no knowledge about their condition. Such a context is defined as the shredding of the vestige of deniability.

Most of the cases of disappearances (1,234 out of the total of 1,619 persons till 10 December 2004) in Nepal had occurred through plainclothed security personnel. The identities of security personnel are neither disclosed nor established. They can therefore forsake legal accountability. This is the consequence of a deliberate policy choice of the government to escape from increasing domestic as well as international pressure to respect human rights. The need of "plausible deniability" to the government had been provided by such secretive practices. But all the tricks and tactics of denials ironically went up in smoke when Jitman Basher was released from the Bhairavnath Battalion Military Barrack in Maharajgunj after over nine months of custody and treacherous confinement without any charge on 18 October 2004. Though the trauma is precisely horrible for him to remember, his personal catastrophe has however traumatized the nation as a whole when his ordeals were shared and corroborated by others and some of his inmates like the Bandi No. 96, Ganesh Dhakal in a write up Bhairavnath Ganaka Dui Saya Chhaisatthi Din (Dhakal 2006), for example. Jitman Basnet was Bandi No.97.

People recounting their ordeals in the confinement of the army barrack have said that the army had maintained two rules after the abduction or arrest of the alleged Maoist terrorist. It practiced the blindfolding of the person from the moment of his/her arrest and had kept his/her hands tied behind the back throughout the custody period. They were mostly dumped in the suffocating environment and had to survive with deteriorating hygiene and without sanitary facilities by sharing one toilet among 80 to 90 inmates. Foods for them were poor and low quality. Green vegetables were rarely served and never had they tasted meat curry. Dysentery and diarrhoea caused common problem but the denial of medical care made the situation worse. The victims being the Maoists were never treated as patient. The Maoists were meant to suffer either by torture or disease. They were not considered human beings but the Maoists a species that was killable. This ultimately reflects the mentality of the state regarding human beings as expendable. As the Maoists were the enemies of the state, they were not its liability.

The state was rather concerned seriously in preserving its authority with surveillance, coercion and control. Perhaps the reason why Jitman Basher was stringently instructed to report to the military authority in every 15 days' interval at the appointed time and place with stern warning of reprisal in the case of disclosure of happenings inside the Barrack (p.125) was to shadow his 'freed' life by the coercive agency of the state indefinitely; continue to torment his sensitivity of being alive with torturous experience of being watched round the clock even after his release from the camp on 18 October 2004. He was physically freed but was mentally imprisoned by the military authority to which he had to report routinely twice a month. Thus he was constantly followed by the phantoms of torturers issuing him command under threat of being rearrested and made disappeared. The situation becomes further complicated as the possibility of being accused as the 'informer' by the Maoists aroused with the periodic resumption of forced contact with the army disguised in civilian outfits at different odd places continued (p. 130). In such an awkward situation, he was left only with an option of either joining the Maoist group and go underground or leave the country as self-exile (p.128). Such a frustrating situation has shaken him compelling to choose exile after 1 February 2005 Royal coup and return home in July 2006 only after the success of Jana Andolan II.

To sum up, the book consists of some very useful resource materials in the appendix concerning the legal proceedings of the case related to Jitman Basnet's petition for justice. These documents can be of use for any serious perusal of case studies on disappearances and human rights. Again these documents can be employed as a concrete evidence of how the agencies of the government

as well as the Supreme Court can mislead the case from being normal to becoming complicated. Thus these documents can work as a signpost for further research on the case relating to disappearances and human rights as well as the case of state terrorism in Nepal. Having said this, an advisory however remains.

Despite its exclusivity, the book should never be read as an academic excursion or simply as a doctoral dissertation and its merits judged on the scale of standard format. It should be read as a narrative of situation unfolding intimately that is integral to the hidden history of Nepal on which hundreds of dissertations can be written and degrees earned. It should be read as the history of the faceless people or the subaltern whose historical sociology has been negated by the narratives of 'brave deeds' of the governing class. It should therefore be read sensitively as a history in making by breaking the culture of silence; as ethnography of state terror; a genuine record of the time spent by the interns undergoing trauma; and as a reflection of their inexplicable sufferings inside the Bhairavnath Battalion Military Barrack as well, where their lives were suspended between hope and despair with boundless agonies of existence.

The book should be read as an irrefutable testimony to the "crimes against humanity" committed by the state authority with imprisonment and other severe deprivation of physical liberty, torture, rape and other forms of sexual violence, and forcible disappearances of persons. It should also be read as an important benchmark to the Nepali history in which the masses of the people have asserted themselves and reconfigured the domain of the national polity. Notwithstanding the book also being a testimony to the reign of terror that the state unleashes on its own people in defence of national sovereignty, it has unquestionably put the people at the center of the history that has shaken the roots of authoritarianism. In this sense the book is an invaluable testimony to the indisputable case of state terrorism and reflection on violence, in addition to the critical impact of the trauma of repression. The book therefore can serve as a metaphor for recovering the truth in the future.

Unless 'disappearances' are accounted for, perpetrators punished, and the culture of impunity ended, recovering the truth in the case of Nepal is impossible. There may be more unmarked grave sites than Shivpuri jungle as the colour of violence is multifacet. Yet the Truth Commission in reality has to be established in seeking the truth despite the Comprehensive Peace Agreement signed on 22 November 2006 has committed to establish the Commission. "Justice delayed could be justice denied". Yet the Peace and Reconstruction Ministry is sitting on the issue of recovering the truth after it faced the heavy domestic criticism to its proposed TRC Act (Truth and Reconciliation Commission) 17 July 2007 with the provision of 'pardoning' (general amnesty) to the perpetrator of violence.

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Notes

(1.) Giorgio Agamben, 1999. Remnants of Auschwitz: The Witness and the Archive (trans. Daniel-Heller Roazen), New York: Zoon Books.

(2.) But the other 49 inmates, including Nischal Nakarmi, who were also taken to Shivpuri jungle, are yet to return. See, OHCHR-Nepal, "Report of Investigation into Arbitrary Detention, Torture and Disappearances at Maharajgunj RNA Barracks, Kathmandu, in 2003-2004," May 2006: Annex-A. Recently some suspect grave sites are found in Shivpuri jungle. The area is under the investigation of the NHRC. And, it is waiting for the forensic report of investigation from abroad,

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