

# TERROR OF COUNTER-TERROR

Jamia Nagar to Azamgarh: The 'Encounter' and its Aftermath



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## Introduction

On 13 September 2008 five bomb blasts took place in Delhi, killing 26 persons and injuring many more. Police claimed that they were carried out by the Indian Mujahideen group, a recent entrant among the organizations claiming responsibility for such attacks.

On 19 September 2008, a Delhi Police Special Cell team led by Inspector Mohan Chand Sharma carried out a raid at around 10.40 am at Flat no. 108, L-18, Jamia Nagar (near Batla House), allegedly to apprehend the accused of 13 September bomb blasts. Mr Sharma was injured and two youths, Atif Amin and Mohd. Sajid were shot dead. Mohd. Saif, was arrested from the flat and taken into custody. Inspector Sharma later died in hospital. The police said that this incident was an 'encounter' and that they had killed the brutal terrorists who were responsible for the Delhi blasts.

No independent probe was carried out to ascertain the authenticity of the police version of the 'encounter'. While the requirements of law and NHRC guidelines continue to be flouted, the central government categorically refused to allow the demands for a judicial enquiry.

Subsequent findings of police investigation were reported in the press through formal and informal disclosures. Through this, the flat in L-18 Jamia Nagar emerged as the epicenter of terror plots in the country. The incident of 19 September, 2008 seems to have magically uncorked the lid on vast intelligence and information on past and future terror attacks, and their perpetrators.

There is however, strict official silence on exactly *how and by what methods* this intelligence is obtained by the police from those in their custody. This 'evidence', so believably reported by the media as fact, is not acceptable in court as per law – because there is a strong likelihood that confessions extracted in police custody are extracted under duress and torture. Yet, primarily based on this kind of inadmissible evidence, the Delhi Police Special Cell and the Anti Terrorist Squads (ATS) of different states have arrested, detained and interrogated a large number of persons in connection with various recent bomb blasts. A large number of those detained since then from across the country, belong originally to Azamgarh district in UP, presented now in the official version as the *Atankgarh* or '*the nursery of terrorism*'. Several arrested and interrogated also belong to Jamia Nagar, Delhi. Almost all of those arrested and harassed are Muslim.

The arrests, harassment, intimidation, interrogation supposedly aimed at countering terror are continuing till date. Yet even as these supposed 'counter terror' operations by custodians of law have intensified, 'masterminds' killed or arrested, alleged terror networks unearthed and their 'members' detained by the police, attacks by 'terrorists' have continued throughout the country.

Jan Hastakshep and PUDR carried out a fact finding into the incident of 19 September, 2008 focusing on its continuing aftermath. The team visited Jamia Nagar and Azamgarh, and met eyewitnesses, neighbours and families of those arrested and detained, and authorities in Delhi and Azamgarh. Following is the report of the team.

## The Jamia Nagar 'Encounter'

On 19 September 2008 at around 10.40 am a Delhi Police team from the Special Cell in plainclothes reached Flat No. 108 in L-18 Jamia Nagar. They were acting on an intelligence tip-off about possible suspects of the five Delhi blasts a week before. They entered the flat and firing ensued. The police inspector M.C. Sharma was fatally injured, two youths in the house, identified as Atif and Sajid were killed, and one, Mohd. Saif was taken into custody. The police reported that two persons escaped from the house during the 'encounter'. Several questions were raised about this incident, in the press, by residents, and those who visited the site. These questions concern several aspects. How, and when, for instance, did two persons escape from the building when there was only one exit to the building? What was the information on the basis of which the police were acting? Why was the Inspector not wearing a bullet proof vest? If the police were unaware of the identity of those killed and arrested by them, how did they claim, within hours of the incident and without the opportunity of interrogation, that these were the same terrorists responsible for the Delhi blasts- and Atif was the 'mastermind'?

The youths killed had provided their correct particulars as tenants at the police station. What is the proof that the verification form was forged as the police claimed? The caretaker of the house in fact started showing it to the press shortly after the 'encounter' - where was the time to 'forge' the document?

Did the police carry out a Test Identification Parade by the eyewitnesses who claim to have seen those responsible for the Delhi bomb blasts? Was a TIP done before the burial of the two youths who were shot dead? Did the police try to match the sketches of the accused made at the time with those arrested? What are the results of such efforts if they have been made? Where are the postmortem reports of all those who died as a result of what happened in the room?

These and many other questions about this 'encounter' remained unanswered over three months later.

The NHRC asked for a report from the police as questions began to be raised about the

### National Human Rights Commission Recommendations

The procedure commonly followed by the police in encounter killings has been pronounced as unjust, unfair, unreasonable and in violation of the right to life under Article 21 of the Constitution by the National Human Rights Commission (NHRC). The Commission has clearly laid down that:

1. The procedure of drawing up First Information Reports (firs) with the deceased in the encounter as the accused persons and then closing the case without investigation on account of the death of the accused persons was not permissible under law.
2. That when information is received that death was caused in an encounter as a result of firing by the police, prima facie the ingredients of culpable homicide under section 299 of the Indian Penal Code (IPC) are satisfied. This is sufficient to suspect that an offence of culpable homicide has been committed.
3. Any plea like causing of the death does not constitute an offence either because it was done in exercise of the right of private defence or in the exercise of the powers of arrest can be accepted only after investigating into the facts and circumstances.
4. It is in public interest and to avoid the possibility of bias that the investigation in such cases should be entrusted to an independent agency by a general order of the Government.

(Source: NHRC Annual Report 1996-1997)



incident. A Crime Branch inquiry was ordered by the Police Commissioner, as pressure for a probe mounted. An FIR was lodged into the incident. According to reports however it simply names the dead as guilty, accusing them of offences under Sections 186, 307, 332, 353, and Sec. 34 of the IPC, and sections of the Arms

Act, i.e., holding them responsible for obstructing, and injuring a public servant in the course of duty. Of the three deaths that took place as a result of what happened in the flat that day, this FIR thus only accounts for one, i.e., that of Inspector MC Sharma.

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## Chapter II

### The Context

#### 2.1 Detention and Questioning before the 'Encounter'

It is fairly well established that the Special Cell was, after the Delhi blasts, already picking up, interrogating and detaining a number of persons from the area from prior to the 'encounter'. The interrogations, while not always accompanied by physical torture, were prolonged and aggressive. The objective seemed to have been to find Muslims with links with SIMI, or those whom Abu Bashr, hailing from Azamgarh, and accused in the Ahmedabad blasts case, could 'identify'. Abu Bashr had already been under police custody for some time and his testimony extracted in police custody, was hardly going to be reliable, but these concerns did not worry the Special Cell.

The interrogations varied in length from 10 hours to 4-5 days. The interrogation of a senior NGO activist, Abdul Rashid Agwan by Special Cell police, for instance, or that of young businessman Adnan Fahad went on (separately) for 10-11 hours on 14 September. Both were picked up from their houses near Jamia Nagar, at around 11.00 am, detained till about 10.30 pm, and questioned closely and repeatedly about their links with SIMI.

Agwan had been a member of SIMI before its banning and provided police the names of some people he used to know. Police repeatedly questioned him about Abu Bashr, suggesting that he had hosted Bashr, and that Bashr had his phone number. He was also interrogated about his whereabouts at the time of the blasts

– he was with two guests from Hyderabad who had sought to consult him about starting an NGO. The same questions were put to Fahad and additionally he was interrogated minutely about his whereabouts over the previous two weeks, and who all he had met during this time. He was questioned about all his friends and relatives abroad, and deliberately humiliated on the basis of his religion. When he admitted to owning a passport, he was asked tauntingly if he wanted to go to Pakistan.

Physical Torture, Intimidation, and Illegal Detention The experience of a Jamia Millia Islamia student (name withheld to protect the identity) who was picked up by the Special Cell on 18 September and released on the night of 21 September shows that Agwan and Fahad, were lucky to have got away with only mental harassment and a harrowing time.

The student was picked up in the afternoon of 18 September by the Special Cell police in plain clothes from his house near Jamia Nagar and taken to the Special Cell, Lodi Road. He was asked by the police if he knew Abu Bashr. When he denied this, Abu Bashr was brought in, and though he looked like he was under tremendous pressure, he 'identified' him and said that he had met him on 25 July. The student continued to deny this but was subjected to brutal and inhuman police torture. He was made to strip, half sit, and heavy rods were placed on his palms. Whenever his hands shivered, he was hit with rods on his back. In less than an hour of this torture the student, unable to withstand the excruciating pain, said

that he would admit to anything the police wanted.

On the following two days he was beaten repeatedly while the police tried unsuccessfully to get the neighbours at L-18 Jamia Nagar to 'identify' him. Along with the severe beating, he was also continuously communally abused by the Special Cell staff and interrogated repeatedly on account of the fact that he had converted to Islam, while his father is Hindu. At the end of the three days of interrogation in the Special Cell, the police also tried to get him to become 'their' witness and work for them. He was finally released from the terrifying ordeal on 21 September, possibly due to the pressure built by community leaders known to him and also due to the letters and memoranda given to the Lt. Governor and other authorities on his disappearance by his fellow students and neighbours. The Special Cell refused to return the student's I card, library card, wallet, address book, money etc. Which they had confiscated in the course of his detention, though they were approached and the University wrote letters to them demanding the same.

*At least four other persons, Muslims in the area, believed to be private sector employees, were, according to reports, picked up and detained for 'interrogation' prior to the 'encounter'. They have been too scared to report and even share their experience at any length. The illegal, unjustified, biased and commonly deployed tactics of intimidation and threats used by the police have succeeded in their objective in these cases.*

## **2.2 Atif Amin and Mohd. Sajid: Dead, Hence Guilty**

Atif Amin and Mohd. Sajid were killed in the flat allegedly in the course of the 'encounter'. The police posthumously accumulated large amounts of evidence against them, and declared Atif to be the mastermind of not only the Delhi blasts but also a central figure in the Ahmedabad, Jaipur and other bomb blasts in the country. He was allegedly heading an Indian Mujahideen 'module' that included

several youths, mostly from Azamgarh, many of whom have been subsequently arrested and implicated by the police. Their being dead meant that there was little hope of being able to counter these charges. The only concrete ante-mortem charge against them was, that they had fired upon the police team led by Inspector MC Sharma which led to the latter's death. This charge, as mentioned before, has not been proved or investigated beyond doubt. The numerous gunshot injuries on Sajid's head, fired from a height and injuries on Atif's body, the failure to make available the post mortem reports to even family members, let alone the public for so long, the failure to make public the ballistic and forensic reports, are among the many points that raise serious doubts about the police story.

Atif and Sajid were thus considered guilty. They were dead – hence unable to challenge the allegations against them. Whatever be the truth, their death was undeniably convenient to the police. It allowed counter-terror cells to implicate, intimidate and arrest a large number of youth in Jamia Nagar, Lucknow and Azamgarh simply on the basis of their connection with Atif and Sajid and with each other.

The team met the bewildered family members of the two youths killed, in Azamgarh. There had been no official communication to them regarding the deaths and they only got to know of the events from the television news. They find it impossible to believe that their sons were 'dreaded terrorists', masterminding bomb blasts. They have not been given the post mortem reports of the youths. The families were forced to bury the bodies in Delhi in the burial ground chosen by the police. At this time the family members in Delhi and others who saw the bodies were able to see the gunshot injuries on Atif's body and Sajid's head. Photographs published in some newspapers also showed these clearly.

**ATIF AMIN** came to Delhi 3 years ago, and not being able to get admission in the Jamia Engineering Course, did a B.Sc. (Tech) course from Manipal University through their Delhi centre. He had got admission in MA in Human Rights and Duties in Jamia in 2008 and had been attending classes

regularly since August. He had been in Delhi for around three years, and had moved into the present house (in L 18 Jamia Nagar) about two months prior to the incident. His father has been working in Dubai for many years. Atif had last visited home in March, when he had accompanied one of his sisters who had gone to Delhi for medical treatment. He had not come in the last few months as he wanted to work hard to get admission in Jamia. Atif's eldest brother stays in Delhi and Atif had observed Iftar and eaten dinner at his house on 18 September. He had informed his family by phone that he would come home on 25 September and celebrate Eid with them. When the family heard the initial reports on TV, they felt that the 'Atif alias Basheer' who had been killed was not 'their' Atif. Atif Amin was 23 years old.

**MOHD. SAJID** was the youngest son of Ansar Ahmad and Zafar Bano of Sanjarpur. He had gone to Delhi just two months ago. He wanted to join the Jamia School in class XI and complete his schooling from Delhi, even though he had completed his studies for class XI in Azamgarh. He and his elders had felt that he would be able to get a better education in Delhi. He appeared in the entrance examination to join the Jamia Senior Secondary School in class XI. He was unable to clear the test.

He stayed on in Delhi, with Atif whom he knew from his village. He was hoping to try to clear the entrance examination again the following year and meanwhile wanted to learn English and prepare for the examination. He had three other brothers. The eldest Arshad, nearly 18 years older than him, works in Saudi Arabia. This was the first time that Sajid had left his home in the village. He was 17 years old.

### **2.3 The Aftermath in Delhi**

#### *The Arrests*

A spate of arrests followed the incident of the 'encounter' and the immediate arrest of Mohd. Saif. While Zeeshan Ahmed was arrested in the evening of 19 September, Zia, Saquib and Shakeel were

arrested in quick succession between the afternoons of 20 and 21 September. The manner of their arrests is curious and carried enormous significance for what followed after.

The first arrest carried out at the time of the 'encounter', was that of Mohd. Saif (23 years) who shared the flat with the youths killed. He was picked up from the flat at the time of the 'encounter' – at around 11.30 am on 19 September – and taken away by the Special Cell. He is reported to have suffered some injuries during the course of the 'encounter'. He is the only non-police eyewitness to the happenings in the flat on the day of encounter. Son of Shadab Ahmad, based in Sanjarpur, Saif had done his MA (History) from Poorvanchal University, Jaunpur in 2008 after graduating from Shibli College. He had gone to Jamia in July to seek admission into a computer course, fallen ill, and returned home after 10 days. He returned to Jamia again on 9 August, and as he knew Atif from earlier, began to share a flat with him.

Zeeshan Ahmed (24 years), another flat mate of Atif and Sajid in L18 Jamia Nagar, was arrested by the police late evening on 19 September. He had left home in the morning of 19 September to write two re-tests at IPM to improve his final semester marks. He heard of the 'encounter' at his flat when he got out of the exam centre. He called his parents in Azamgarh, seeking advice on what to do. His father, Ehsan Ahmed, a commerce teacher at Shibli Intermediate College, and his mother, also a school teacher, advised him that as he was innocent, he should simply approach some television channel and tell the people the truth. Following their advice, Zeeshan went to the office of the TV Today network and told them the truth about himself. This was partially aired on the 'Headlines Today' TV Channel. As Zeeshan came out of the office of the TV channel, he was arrested by the police. By the late afternoon of 20 September, the then Joint Commissioner of Police (Special Cell) Karnail Singh declared him and Saif to be among the main culprits behind the Delhi, Jaipur and Ahmedabad bomb blasts.



The third and fourth persons arrested after the 'encounter' from Jamia Nagar on 20 September were 20 year old Zia ur Rahman, a student of BA in Jamia, and 22 year old Saquib Nisar, a third semester MBA student of Sikkim Manipal University. Saquib and Zia are good friends and Atif was known to them.

Zia ur Rahman was arrested after he had gone to the Jamia Nagar Police Station with his father Abdur Rahman who was the caretaker of the flat at L-18 Jamia Nagar. They went there to show the police the copy of the tenant verification form signed by Atif which had been submitted to the PS on 21 August 2008. Zia and Abdur Rahman had also gone to the PS the night before but could not meet the SHO. At the Police Station both father and son were questioned the whole night and on the morning of 21 September. They were separated and Abdur Rahman was sent to court and jail on the charges that the verification form was fake. His son was then arrested as a 'terror' suspect, who had, conveniently for the police, walked into the Police Station.

Saquib Nisar was picked up from his house at around 4 pm on 20 September by two persons in plainclothes accompanied by two policemen in uniform. They refused to tell Saquib who they were or where they were taking him. They did not identify themselves. He was taken to the Jamia Nagar PS. His father, Nisar Ahmed Azmi went there carrying food to break the fast at Iftar, and seeking to meet his son, at around 5.30 pm and was interrogated there till around 9 pm. Worried, Nisar Ahmed kept waiting and met the SHO to find out what was going on. He was assured that it was a small matter and his son would be back with him the next morning. Even as he was being told this, he could make out that his son was being taken somewhere by another exit of the PS. He understood later that it was to the Special Cell office Lodi Road. By the next day, Saquib had been implicated in the case, as a key accused.

On 21 September at around 2 AM, another youth, Mohd. Shakeel (24 years) was picked up by the Special Cell police as he was sleeping in his family house in Sangam Vihar. He is a final year student of MA (Economics) in Jamia Millia Islamia. He also is a friend of the other two youth arrested on 20 September. The Special Cell had taken Saquib to 'identify' him. The

police picked up Shakeel's brothers Farid and Umar and father Yameen Khan, and took them away to a parked car. They then 'searched' the house and picked up all the papers that they could find in the house. As per pattern they did not give a seizure memo.

They detained Shakeel for 20 minutes apart from his brothers and father and then brought him to the same car in which they had been made to sit. As a consequence of what had transpired between the police and Shakeel, he began to 'confess' in front of his family, stating that he had been responsible for the Ahmedabad blast and the Karol Bagh blasts etc.

Once at the Special Cell Shakeel and his family members were separated and interrogated. The family members were let off at 7.15 am while Shakeel was detained, and soon presented as a dreaded terrorist.

Saquib, Zia and Shakeel were presented in court on 21 September and remanded to police custody. Their faces were wrapped in Arabic scarves by the police when they were brought to court, to project their connection with 'Islamic terror' and identity.

### **Chapter III**

## **Violations of Law**

### *Arrests, Police Custody and Supreme Court Guidelines*

#### **3.1 The violations in arrest**

In the arrest of all the six persons, many of the Supreme Court guidelines on arrest were violated. (See Box)

No arrest memo was signed at the time of any of the arrests. The arresting officials in almost all the cases were not wearing uniform, or any identification. They did not inform the family members of the arrestee about the arrests, nor did they let them know where they were being detained. The families learnt of the arrests through the electronic media.



When they learnt about the place of detention, i.e. The Special Cell at Lodi Colony, several days after the youth had been picked up; the families of the arrestees were not permitted to meet them. The families of the three local youth – Zia, Saquib and Shakeel tried to meet the youth in the custody but were refused by the Special Cell.

On 23 September, Saquib's lawyer was not allowed to meet him. His father was subsequently contacted by the Inspector Ravinder Tyagi of the Special Cell on 30 September, ten days after the youth were picked up and told that he could come and meet his son. (It is to be noted that the CBI has subsequently indicted the same Ravinder Tyagi for falsely framing 2 men in the Sarojini Nagar blast case of 2005). After Tyagi contacted him, Nisar Ahmed got in touch with Zia's sister and they both went with 'sevai' and clothes for Saquib and Zia but were not allowed to meet them. On 1 October, they again went at around 5.30 pm after receiving another call from the Special Cell and were again not allowed to meet the two. Their lawyers were also not permitted to meet them. The families, already fearful and under deep stress, were thus daily traveling the distance to the Special Cell, while they were fasting, were kept waiting outside, and not be permitted to meet their son/brother. On the day of Eid (2 October), they had gone with hope, again after they were called by Inspector R. Tyagi and were turned away twice in the course of the day. Shakeel's family was also called the night before Eid and told that they could meet him at the Special Cell on Eid. They went twice in the course of the day and waited at the Special Cell but were not allowed to meet him.

At the same time, the ex-Law Minister of India, Advocate Shanti Bhushan, and other eminent lawyers and concerned citizens sought permission from the Special Cell to meet the accused in custody. The police flatly declined to talk to them. It was only after the PIL intervention in the High Court on 3 October that lawyers were allowed to meet the accused.

Nearly three months after they were arrested, the youths picked up by the Delhi Police Special Cell remain in police custody. On 27

October they were sent to Ahmedabad on transit remand to probe their links to the Ahmedabad blasts.

The police have secured this by 'arresting' them separately for five separate cases, and extending remand on this basis. The bulk of their investigation has been in the form of securing 'confessions' in police custody.

### 3.2 Phone Calls from Custody

#### Supreme Court Guidelines on Arrest

Summary of a few salient recommendations of the Supreme Court regarding procedure of arrest and interrogation as given by the Court in the DK Basu vs. State of West Bengal (1996) case:

- The police who carry out arrest and interrogation must wear accurate visible and clear identification and their particulars have to be recorded in a register.
- That an arrest memo must be given at time of arrest, attested by at least one witness who may be a member of family/respectable person of locality. It should be countersigned by arrestee and bear date and time of arrest.
- At least one relative/friend/person known to detainee should be informed of arrest and place of detention as soon as practicable.
- Time and place of arrest and venue of custody must be notified by police within 8-12 hours of occurrence where nearest relative/friend lives in another town/district.
- 'Inspection Memo' must be given by police at time of arrest to arrestee noting physical injuries and state of health.
- Arrestee should be medically examined every 48 hours
- Arrestee must be permitted to meet his lawyer during interrogation.

While the Special Cell did not allow the families or lawyers of the arrested youth in Delhi to meet them they did permit the accused to make indoctrinated phone calls to their families, while they were in custody.

The first phone calls were received by the families in the evening of 1 October. While Saquib and Zia were made to speak to their families on that day, the eve of Eid, Shakeel and Zeeshan were made to call on the evening of 2 October.

The phone calls were normally made by the police and handed over to the youth concerned. Each youth was permitted to speak to each family member and their speeches followed a standard pattern. They told the families that they were very well, and the police were very good and treated them very well, gave them food, let them read Namaz etc. In the case of the calls made on Eid, they also said that the police had given them *sevai* and that they had received the clothes, sweets that the family members had left for them. Then, the youth, speaking in a rehearsed manner in a language and vocabulary, not their own, began to state to their family members that they were responsible for the Ahmedabad and Delhi blasts, and had committed these crimes. In all cases the families stopped them and refused to hear these scripted 'confessions' made in custody. Each call contained exactly the same content, verbatim.

These phone calls were the first contact the families had with their arrested and detained members. The cruelty of permitting the youth to make the calls, and talk to their families – and at the same time forcing them to praise the police treatment, and narrate scripted 'confessions' to their own families is the sign of a severely diabolical mindset. More importantly it indicates the complete and utter abuse of custody on the part of the Special Cell/ATS.

The Lucknow ATS operating on similar lines, allowed Arif Naseem, whom they arrested for the Lucknow blasts, on 27 September, to speak to his family on 4 October. Apart from the other conversation, which was similar to the Delhi detainees, Arif also said,

"They don't beat me, and are very nice to me." He urged his family to meet the police and that they would change their mind about the police if they did. When probed he said that he did not have access to newspapers or television.

After this the phone was kept on hold for about a minute. Then Arif returned to the phone, and said several things which his family members could not understand. He said that his mother should only come alone, unaccompanied by anyone, and once she reached Lucknow station, she could call up "a girl" – a very "good girl who studies in college" (whose name and phone number he gave her). This girl would make some excuse to her family, come away to receive Arif's mother and bring her to the ATS office where Arif was.

The second thing he said was that his family could take the money that was kept with Dr. Tariq, who lived close to where Arif stayed in Lucknow. He said that the money would be of great use to them. It was unclear to his family why they would need the money or who this Dr. Tariq was.

He then started narrating his 'confession' saying that he was involved in the bomb blasts – he kept saying '*Mera involvement hai! Maine galti kiya hai!*' and also '*Saif ne bataya isliye mera involvement hai!*' He used the English word 'involvement' every time. He spoke a little to his mother and more to his sister- all in this mode.

His language and vocabulary were very different from his normal conversation – he spoke far more in Urdu instead of the local dialect he normally conversed in at home. He also normally spoke very little, while he spoke a lot on the phone. He spoke in this mode to his mother and sister. It was obvious to them that he was speaking under great duress.

### 3.3 Custodial 'confessions' and the Press

Certain other practices of the Special Cell in the course of the conduct of investigation of the case give strength to the argument that the investigation is biased, wrongful and inept. There is evidence of this in the way they have violated the law on custody by leaking to the media the supposed results of their

interrogation. These were all orally stated at police organized press conferences after the 'encounter', not backed up by written police press statements. The strongest evidence of the police bias is present in the form of the cover story carried by 'India Today', 13 October. The statements claimed to be exclusive interviews, of three arrestees, 'confessing' to their involvement in the bomb blasts. These 'confessions' were made in police custody and in the presence of the police at a time when neither the relatives nor the lawyers of the arrestees were permitted to meet them, or even informed of their arrest. The 'interview' seems to have been taken on the very same day that the three were arrested, as is stated by the journalist who took the interview in the opening lines of his 'report' and projects them as those responsible for the blasts creating an impression that they are hardened religious fundamentalists with no remorse for their actions.

It is extremely disturbing to note that the police appear to be relying excessively on such 'confessions' as opposed to proper evidence gathering and investigation as a shortcut to 'solving' the blasts cases. Self incriminatory statements by accused made in police custody are not admissible in court (Sec.25, Indian Evidence Act) as evidence. This is precisely because the police have often been found guilty of employing force, coercion, and other illegal means to get confessions from persons in their custody.

The fact that the police who are investigating the case, have given this kind of access to a journalist, and sought to publicize such 'confessions' continuously, long before the matter comes to court, exposes their bias. It demonstrates conclusively the impossibility of a fair investigation into this case by the Special Cell.

### **3.4 Jamia Nagar after the 'Encounter'**

Jamia Nagar continued to be very tense for some time after the 'encounter'. The manner in which the Delhi Special Cell had conducted the arrests of the unsuspecting friends and flat-mates of the dead accused, had generated tremendous fear in the area. The way, the police

continued to pick up 'suspects' subsequently, added to the terror amongst the people. On 23 September, for instance, the Special Cell came looking for a cousin of Atif who stayed nearby. Their behaviour was very aggressive. When they did not find him, they immediately literally grabbed his minor younger brother and pulled him into their car, despite his family's requests and pleading. They took him to the Lodi Road Special Cell office and interrogated him. He was released after a few hours owing also to the intervention of a human rights team and lawyers who were visiting that area. Several others were apparently similarly rounded up in the wake of the 'encounter' for interrogation.

While the terror of 'counter terror' held sway in Jamia Nagar, there was slowly a partial return of some confidence in the area. When, for instance, on 16 October, just under a month after the 'encounter', a team of 5-6 drunk UP policemen, traveling in a car without number plates, tried to pick up a man in Shaheen Bagh, near Jamia Nagar, the people in the neighborhood, fearing that it was an attempt to abduct and carry out another 'encounter' by the police, managed to collectively stop the car, take out the man, and even managed to hold one policeman and hand him to the local police. It appeared that the UP police were trying to apprehend some petty criminals. But it was again the manner and irregular procedure in the arrest, the fact that they were in an unnumbered car, dragging a man into their vehicle- and essentially the history of the people's experiences with and complete mistrust and loss of faith in the police in the area that made the people intervene and stop the car.

Yet the terror of the state remains as an uneasy undertone in the area even today. Those who were picked up before and after the 'encounter' or those whose families are from Azamgarh still live in mortal dread of the knock on the door or the telephone call from the policeman in mufti who would simply order them to go with them. As they have seen in several of the cases whether or not they are actually guilty, once 'caught' by the Special Cell for interrogation as 'terrorists', they would be presumed guilty by the police and an uncritical media and public.

### **3.5 Proceedings in Court**



The police have filed 5 separate cases against the accused for each of the blasts. They followed a policy of arresting the accused sequentially for the blasts and obtained separate two week remand to 'investigate' each accused for each of the cases. The five youth arrested were remanded to police custody (Saif and Zeeshan presented together accused in the Gaffar Market blasts and Zia, Saquib and Shakeel the following day, swathed in Arabic scarves) initially till 4 October, when they were again remanded to police custody till 16 October, and then to police custody in another of the 5 blast cases till 27 October. On 27 October the Gujarat police were given transit remand of the five arrestees to take them to various sites of bomb blasts in Gujarat for investigation.

While the accused were actually being simultaneously charged and investigated for their role in different blasts as is evident from the police reports in the media right from the beginning, the police statement in Court and the strategy of sequential arrests was simply a cynical method of securing continuous police custody. Police custody after 15 days is not the norm in law. The accused have to be sent to judicial custody – the police can recall them into police custody at any point to aid investigation by presenting adequate reasons. Yet police custody was repeatedly extended by the courts in this case.

Two months later, charge sheets have been filed in two of the Delhi bomb blast cases. Not surprisingly, though the firs were separate, several of the arrestees have been 'found' to be guilty in the two cases. The arrestees have been continuously in police custody now for over three months. This is a complete violation of their fundamental rights under Article 22 of the Constitution and Section 167 (2) of the crpc. If the same strategy (of showing sequential arrests in different firs and extending the police custody for 15 days separately for each FIR) continues to be followed in the Gujarat blast cases and it remains unchallenged by the courts the accused could just remain continuously in police custody – there are 18 firs in connection with the Gujarat blasts.

Prolonged police custody is more dangerous in this case because of the excessive reliance of the police on so called 'confessions' in custody, as mentioned earlier. The reputation of the police and particularly the counter-terror agencies for employing force, coercion, and other illegal means to get confessions from those in their custody has been notoriously exposed recently in the Mecca Masjid and Malegaon blasts cases for example.

Police custody, especially for such a prolonged period, is thus not simply violation of the basic rights of the accused, it renders the arrestees immensely vulnerable.

The callous disregard for law and legal procedures on the part of the Special Cell in this case from the very outset gives no confidence that the investigation case will be handled justly or fairly and even accurately. Here it may be recalled that it was only after the Delhi High Court order on 3 October, the Delhi Police permitted the families of the accused to meet them in the Special Cell.

## Chapter IV

### From Delhi to Azamgarh

The day of the encounter at Jamia Nagar also brought the district of Azamgarh into the national media. The use of terms like 'nursery of terror' to

describe it, were far from innocuous. To the recent history of these terms was added a reality that Azamgarh continues to suffer.

Azamgarh, one of the backward districts of eastern Uttar Pradesh, lies in the fertile plains of the Ganga-Ghaghra Doab. Having no industry, university or engineering/medical College, the main economic activity is agriculture. Few towns of the district, once known for their exemplary crafts, are

#### Of Courts and Torture

On 3 November, Sadhvi Pragya Thakur, accused in the Malegaon blast case, alleged the custodial torture at the hands of the investigating authority, the ATS, Mumbai in the court of the Nashik Chief Judicial Magistrate and on 17 November, along with other accused filed a slew of petitions before the same court. Another suspect, Lt. Col Srikant Purohit who had earlier denied torture, made a written submission before a Pune court alleging custodial torture. On 24 November all 7 suspects reiterated their allegations before a MCOCA court in Mumbai. The court asked the state government and the ATS to respond, refused the ATS' plea for their police remand under MCOCA and heeded the Sadhvi's request for a medical check-up. The National Security Adviser advised investigation into the charges of torture and the NHRC issued a notice to the state government on the alleged custodial torture of the suspects.

Similarly, the AP government's not only acknowledged the severe custodial torture ranging from physical to sexual and communal abuse against those who were picked up in connection with the Mecca Masjid blast in Hyderabad in 2007, but also offered economic rehabilitation to the innocent victims of police brutality. (*Indian Express*, 14 Nov. 2008).

But the same did not happen in the case of the Mumbai train blasts a couple of years ago. The families of Faisal Sheikh, Mohammad Rahil and Mohammad Muzammil had submitted affidavits before the PM and the Chief Minister alleging not only torture of the accused but also of the families by the very same ATS who are now under the scanner. Faizal Sheikh's father was stripped before his sons in the Kuria office of the ATS and beaten and threatened. His wife was kept in illegal custody and threatened with violence (*Mail Today*, 21 Nov. 2008). In cases of those who are supposedly. Lawyers of those picked up in May 2007 from Maharashtra, including Arun Ferreira have alleged torture in police custody, yet nothing has ever happened.

In 1997 India signed the UN Convention against torture and other cruel and inhuman and degrading treatment or punishment but failed to ratify the same. Acts of custodial torture are so routine and systemic that most often complaints are totally disregarded and overlooked.

In this larger context of widespread abuse practiced by men in uniform, the court directives in the Malegaon case are indeed welcome. However, is it a coincidence that the various courts which acted promptly particularly in the Malegaon case and the accused belonged to a Hindutva group?

**Note:** Apart from specific references given, newspaper articles on the investigations into Malegaon in *The Indian Express*, *The Hindu*, *The Times of India*, *The Hindustan Times* 4 Nov – 27 Nov 2008 were consulted and MCOCA Special Cases Nos. 21/06 and 23/08 - *The State of Maharashtra vs Aesif Khan Bashir Khan*, (dated 25/09/2006 to 23/06/2008; and 21/12/2006 to 24/6/2008 respectively) perused to inform the understanding reflected above.

getting pushed into oblivion under the assault of corporate dictated neo-liberal economic policies. Young boys and girls seeking higher education and professional training go to other cities – Lucknow, Varanasi, Aligarh and Delhi being the favorite destinations. The residents of Azamgarh, or *Azmi* as they call themselves, have a history of over a century of migrating in search of work from Kanpur, Calcutta and Bombay to Burma, Malaysia and Indonesia. The same continues today, the location now also including countries of the Gulf. Remittances by people working in various parts of the world, is a major source of income apart from agriculture and crafts, particularly the handloom.

In 1883, prior to the formation of the Indian National Congress, Shibli Nomani, a nationalist scholar, started an academy for the modern, nationalist education. During freedom movement, Shibli National College, which is now celebrating the 125<sup>th</sup> year of its foundation, was one of the prominent centers of nationalist activities in eastern UP and hence was special target of British. Many leaders of the national movement, including Mahatma Gandhi and Nehru, used to visit the college to hold meetings and consultations. The Hindu-Muslim population in the city is almost evenly divided, though the average Muslim population in the district is around 13 percent. The district boasts of its luminaries like Shibli Nomani, Ayodhya Singh Hariauidh, Rahul Sankrityayan, Kaifi Azmi and many others. Thus Azamgarh does not fit into the 'bigot' Islamic attribute orchestrated by the rulers and echoed by the media. Bringing Azamgarh into the gun sights of the anti-terror squads has also meant transforming the image of the "terrorist" from Madarsa-educated bearded young man with round cap or Arabic head-scarf to modern educated and clean-shaven young men.

The villages in news with terrorism – Sanjarpur, Saraimaer and Binapara – the Muslim majority villages too have been untouched with any kind of serious communal tension or strife. Availability of work in the Gulf has seen a number of men migrating there to escape poverty at home. The remittances made by

them were used for educating their children and improving living standards by building pucca houses in villages. Most of them went out to work as skilled/unskilled labourers and realized the importance of education for a dignified life and hence a good education to their children became the priority. The Shibli National College has also been stressing English and computer education in order to avail of the employment opportunities coming up over the last decade. The presence of youth from Azamgarh in Delhi and other cities, obtaining education, professional training or working in corporate offices at various levels is the reflection of the developments described above.

#### 4.1 Recent Developments

Azamgarh has, however, not remained wholly insulated from the communal build-up across the country over the past decade or so that is marked by a virulent attack on minorities accusing them of conversion or terrorism. Since the earlier period of BJP rule in the state, a number of attempts have been made to contaminate the atmosphere in the city by attacking the communal peace, the culture of tolerance and in particular its symbol, the Shibli National College.

In the year 2000, the BJP government made a premeditated attack on Shibli National (Post Graduate) College, which competes with premier academic institutions of the country. In the entire region it is the only college with a girl's hostel – Kaifi Azmi Girls Hostel – sponsored by the actress and social activist, Shabana Azmi. That year the Republic Day programme was conducted in accordance with the schedule issued by the district administration and concluded with the recitation of the national anthem. A group of students claiming to be from the ABVP – the student front of the BJP – tried to force the college to restart the function to organize the recitation of *Vande Matram*. The Principal was threatened with dire consequences. They returned to vandalize the college, manhandle employees, and raise provocative slogans. They then vandalized Muslim shops nearby. Police in turn arrested the shopkeepers whose shops had been ransacked and looted. The Principal and a senior professor of the college were arrested on the



fabricated charge of sedition on the behest of Rangnath Mishra, the then Minister of state of home affairs (also a minister in the present BSP government). They were subsequently released on bail. The Allahabad High Court had unequivocally criticized this act of the local administration. A team of Janhastakshep had gone there and had found in its report the BJP government of UP and the ABVP guilty of anti-national activities like minority bashing and fuelling the communal tension. (See Appendix 2). It is to be noted that several of the so-called 'terrorists' killed and arrested in the Jamia Nagar 'encounter' case, had studied in this prestigious secular institution and some had studied in Jyoti Niketan, a reputed convent school in the area.

In 2005, ABVP attempted to disrupt the students' union election at Shibli College and in the ensuing feud one student was killed. ABVP and Bajrang Dal damaged houses and vehicles of many prominent Muslims of the town, including Dr. Javed Akhtar, a very reputed citizen and orthopedic.

Recently re-election was held for the Azamgarh parliamentary constituency due to the seat falling vacant on account of the disqualification of the then BSP MP, Ramakant Yadav. His power stems from a criminal background concerning property and government contracts. To avoid prosecution, he had flitted alternately between the SP and the BSP. After the recent expulsion from the BSP, he was fielded as the BJP candidate. Though he lost the election, the slogan used in the campaign *U.P. ab Gujarat banega, Azamgarh shuruat karega* (U.P. will, now, become Gujarat and Azamgarh would make the beginning) generated some communal tension in the area. The fact of a locally powerful person with criminal background becoming associated with the BJP has serious implications for communal harmony and the long established composite culture in the district.

On 7 September 2008, Adityanath, the BJP MP from Gorakhpur, notoriously known for rousing communal tension and animosity in Gorakhpur and elsewhere, announced an "anti-terrorist" rally at the DAV College in Azamgarh. In collusion with district and police authorities, his motorcade caravan,

instead of driving through the route permitted, was allowed to go through the congested Muslim localities, further congested due to shopping in the month of Ramzan. Rallyists on motor cycles and jeeps were shouting provocative and abusive slogans. According to eye-witnesses who happened to be there on that unfortunate day, miscreants in two jeeps stopped and continued provocative slogans, after the rest of the motorcade had left. Residents pelted stones at them and a fight ensued. In people's living memory, this is the only instance of communal violence witnessed by the town in which one life was lost. While the SP and DM of the district were suspended for permitting this build-up, Adityanath christened Azamgarh as *Aatankgarh*, a term that was echoed by media and the police.

There have been five recent incidents of use of explosives in public places or attacks on security forces that are identified as 'terrorism' in the state of Uttar Pradesh. Starting with the attack at Ayodhya on 5 July 2005, where all those involved were killed. The others were the serial bomb blasts at three places in Varanasi on 7 March 2006, at Gorakhpur on 22 May 2007, the blasts in courts at Lucknow, Varanasi and Faizabad on 23 November 2007 and the attack on the CRPF camp at Rampur on 1 June 2008. The arrests that have taken place in this connection have raised more doubts than solutions. For instance, Tariq Qasim was arrested from Azamgarh town in broad daylight on 12 December 2007, but his arrest was shown 10 days later from Barabanki. Police refused to provide a seizure memo of the literature and mobile phones taken from his house. According to the FIR he was alleged to be the state president of huji, but the same does not find mention in the chargesheet filed. Khalid Mujahid was arrested from a refreshment shop in Jaunpur on 16 December 2007. His arrest was shown along with that of Tariq Kasim from Barabanki. An enquiry commission is currently inquiring the matter. The West Bengal police arrested Altaf Alam (Raju Bangali) on 27 December 2007 and his arrest was recorded two days later. Police claimed that his arrest was based on the testimonies of Khalid and Tariq arrested earlier and 150 Kgs. Of RDX explosive was recovered from him. After 22 days he was acquitted when police was unable to

find any evidence against him, not even the authenticity of the name attributed to him. He alleged violent torture while in custody and the W. Bengal government offered compensation.

The latest in this series of such arrests is that of Abu Bashr, accused for the bomb blasts in Gujarat, Rajasthan and probably Hyderabad, which guided various security agencies of different states to discover/invent a "nursery of terror" in Azamgarh. He was arrested from his home at Binapara village in the presence of many witnesses on 14 August 2008 and reported in the press the next day. Yet the official record shows the arrest from Lucknow on 16 August. According to Dr. Ifikhar Ahmad, the Principal of Shibli College and others, who know Abu Bashr, the state authorities were falsely designated Abu Bashr as a 'master mind'. His acquaintance with the youths living the house at L-18 Jamia Nagar led the anti-terror establishment to them. They in turn were labelled 'master minds' and killed by the Special Cell. Bashr, Dr. Ahmad said, was a mentally unstable and physically weak young man, belonging to a poor family from Binapara. His mother is from Sanjarpur. Being from the same village he knew the youths staying in the flat. At the time of his arrest he was teaching in a school in Hyderabad run by one of his acquaintances, had come home to see his hospitalised father who is suffering from paralysis.

#### 4.2 After the Delhi 'Encounter'

Five persons arrested by the Delhi Police Special Cell after the 'encounter' at Jamia Nagar, belong to Azamgarh. As is the norm among students and others migrating to Delhi, people from a region generally share the same flat. Thus those killed as well as the one arrested from the location, belong to Azamgarh. Since the focus of the police investigation was centered on those residing at the particular flat and those belonging to Muslim families from Azamgarh, later arrested and wanted persons by simple logic of necessity hail from this district, and more particularly from the same villages and localities. The line of investigation, more than

any other reason, makes the residents of Azamgarh suspect.

The impact of this has been singularly terrifying for the Muslims of Azamgarh. It was one thing that a bigoted Hindu fundamentalist had termed Azamgarh as a hub of terrorist' and quite another when the state, its police and anti-terror squads were involved in this campaign. Throughout the days and nights as the TV incessantly rolled out pictures and clips from the 'encounter' site, camera crews were collecting at Sanjarpur village, families and neighbours in shock and grief were being forced to make comments. If nothing else, shots of their village had started appearing with suitably revolting captions. The village residents decided to ask the cameras to stop rolling and to leave them alone. The persistence of the camera crews led to tension. Police was called in and some youth tried to use force to prevent the TV channels from telecasting. With the police attempting to protect the camera crews, the windscreen of a police vehicle was broken. Police immediately arrested three persons in this connection. Another 10 were named as accused in the FIR lodged. These three were still behind bars when the team visited Azamgarh three weeks later.

The raids, searches and photographing by the police, phone calls from those in police custody to their families and fear of being implicated through any association whatsoever with the inhabitants of the Jamia Nagar flat, have unleashed a terror among Muslim families in Azamgarh district. The terror has led to parents fearing sending their children back to their places of study and a number of youth going missing fearing that their past association with those arrested or killed in Delhi would make them suspect. Parents of such missing youth, fearing about disclosing the fact as it would make their children suspect in the eyes of the police, are worried about the condition of their sons and unaware whether they are being kept in illegal police custody.

#### 4.3 Police Raids at Sanjarpur and Sarai Meer

The Delhi Police Special Cell conducted the first raids and searches on the night of 19-20 September in the houses of Mohd. Sajid (who had been killed) and Mohd.Saif (arrested) in



Sanjarpur and Atif Amin in nearby Saraimaer. The personnel did not officially inform the families of the death or arrest of their family members. They took away Atif's bank passbook from the house. In Mohd.Saif's house they took away one diary and some photographs. No seizure memo was prepared at the site, and naturally no record of the seizure was provided to the families.

Raids were also conducted in other houses too. On 22 September, the UP Anti-terror Squad and the Delhi Police Special Cell raided three houses in Sanjarpur village.

The first house which was searched that day was Arif Naseem's. He was a close childhood friend of Atif. He had been living in Lucknow since 2005 and preparing for the medical college entrance examination. He was missing when the police team searched his house in the early hours of 22 September. The family was worried about his whereabouts and his well-being. The police team took away a photo album and three photographs of his sister and brother-in-law without providing any record of the same. The police declared his arrest on 29 September from Lucknow. No intimation of the arrest was given to the family. From October 2 onwards, and particularly from October 4, the family members got phone calls from Arif in the ATS custody. Arif spoke to them and 'confessed' to his crimes, on the pattern of similar 'confessional' phone calls by those being detained in Delhi (as described in Chapter III, Section 3.2 in this report). The press reported that he was being held for his role in the Lucknow blasts.

The police team then walked into Khalid's and Salman's houses at around 7 am and 8:30 am. The police had implicated Khalid (22 yrs) a third year B.Pharm student of Jamia Hamdard University, and one of the flat mates of Atif, in the Delhi bomb blasts case while Salman (16 yrs) was being accused in the Gorakhpur blasts.

Khalid's widowed mother and sister in law were the only ones present in the house. At Salman's house his mother and two aunts were present. The team swarmed over the houses with 6-7 policemen in each room, and a large number around the family members there. The women were worried about the fate of the

missing sons and the manner of the police raid terrorized them. Khalid's mother was worried how her son would be surviving as he had no money with him, while Salman's mother, whose son had gone out of the house for the first time two months ago to take admission in Lucknow for his Intermediate level, could only cry and express her acute fear and anxiety how her young quiet son would be faring.

The police kept demanding the whereabouts of the children and threatening to arrest the family members if they did not tell them the truth. The police broke open the locks of trunks without waiting to be provided with keys. They took photographs of each of the family members with mobile phones. They threw things about from the trunks and shelves including the Quran, which was tossed on the ground.

In Khalid's house the police kept interrogating his mother about her source of income, and how she had managed to support her son, casting aspersions as to the source of the money. She kept trying to tell them that she had her husband's pension (he had been a middle school teacher who died 5 years ago) and one of her sons was working in a vegetable shop in Saudi Arabia, and additionally they had sold some land. They refused to believe her and kept threatening her with arrest if she lied to them. In Salman's house the police team threatened to display the photographs that they were taking of the women, including his unmarried aunt and told her specifically that she would not be able to get married if they did so as she would be labeled as a terrorist.

On 23 September, the Delhi police team also carried search operations at dawn in Azamgarh town. The house of Dr. Javed Akhtar, among the most respected orthopaedic specialists in Azamgarh, was raided. Asadullah, his 23 year old younger son, had completed undergraduate degree in pharmacy from Integral University, Lucknow. He had gone to Delhi in May-June 2008 to appear in the entrance examination for the course in pharmacy management in Jamia Hamdard University and had stayed at L-18, Jamia Nagar. After returning he had been in Azamgarh town, till his sudden disappearance on 19 September 2008, after his photograph was flashed on the television channel IBN 7.



Dr. Javed Akhtar lodged complaints regarding this with the local Police Station and sent registered letters to the SP, DIG and IG of Police.

The party of 40-50 policemen arrived at dawn. Dr. Akhtar opened the door when he heard insistent, loud knocking. Policemen in uniform and plain clothes entered the house and spread all over. They took away his wife's mobile phone, a photo album and Asadullah's admit card without any seizure memo. Saquib Nisar had been brought with them to 'identify' people.

The police picked up Dr. Akhtar's two other sons and a nephew from the house. Dr. Javed Akhtar also accompanied them. They were taken to the police lines and from there to the Kotwali P.S. According to him, the officials of Delhi Special Cell asked them futile questions, like whether they have girl friends, what they think about Narendra Modi and so on. They were also questioned about his sons friends, listed on the mobile phone. He felt that the police were communal in their questioning and specifically asked only about his son's Muslim friends, while his closest friend was in fact a Hindu youth. Dr. Akhtar is an executive member of the Indian Medical Association, an awardee of a prize for promoting communal amity, and feels that the manner of the raid conducted on his house, the conduct of the state authorities were communally targeted.

Dr. Akhtar said that at least three other persons had also gone 'missing'. All those 'missing' were being linked to the case as their phone numbers were allegedly found with those killed/arrested, and due to their having stayed in the Jamia Nagar flat. As Dr. Akhtar and others in Azamgarh pointed out, a number of youth in the area, who had gone to Delhi, seeking to better their chances of employment and education used to stay in Delhi with others whom they knew from their area, belonging to their family, neighborhood, school or college. Several youth from Azamgarh had thus stayed for short or longer stints with the slain youth in their house. This was ordinary practice in the case of all small town-big city migrations. Thus Dr. Akhtar does not deny that his son

stayed in the flat at L-18 Jamia Nagar. But he questions whether, this act, or simply knowing the youth killed as 'terrorists', by itself made a person a terrorist?

Another search operation conducted by the Maharashtra Police dragged on from 27 September till 3 October at Sanjarpur. They were looking for Abu Rashid who belonged to Sanjarpur. He worked in a spectacles shop in Mumbai. He was in Sanjarpur on leave when the 'encounter' took place. The Maharashtra Police and ATS began harassing and interrogating Abu Rashid's brother, Abu Talib who was in Mumbai, asking him about Rashid's whereabouts. Talib asked his brother to return to Mumbai and clear his name. On 24 September Abu Rashid boarded a train for Mumbai after leaving Sanjarpur. He has not been heard of since. Maharashtra Police at that time was claiming that Abu Rashid was a 'mastermind' in several terror attacks in the country, as opposed to Delhi Police's claim about the killed Atif.

On 27 September the Maharashtra police arrived in Sanjarpur with Abu Talib, and ordered him to look for Abu Rashid. He was threatened by the police, and told not talk to many people, nor talk with the press. They kept contacting Talib through the day, calling from two or three different phone numbers, asking him if he had found Rashid. They then carried out a raid on the family house on 3 October. They did not find anything. They got the villagers to attest that they had not found Rashid. Talib remained there to support his father through this harrowing time, though the police team went back. On 10 October the Maharashtra ATS then sent Rashid's uncle to Sanjarpur to look for him.

The fear of these raids and impending arrests have led to many others disappearing. As an instance we were told that in Kharewan village, after some police enquiries looking for a 'Khalid', all children and youth with the name Khalid have gone missing. Similarly after the Mumbai police made enquiries about some 'Shahnawaz', a Shahnawaz (separate from

Mohd. Saif's brother, also missing) has disappeared. People remain unsure whether he is in hiding or in undeclared police custody.

#### 4.4 Illegal Detention and Arrest of PUHR Activists

During the visit to Azamgarh, our team was accompanied by activists from the Uttar Pradesh units of the PUHR and PUCL. Among the PUHR activists were Vinod Yadav and Sarfaraz from the Azamgarh unit.

The PUHR had been actively campaigning against the state sponsored propaganda aimed at identifying Azamgarh district as the hotbed of terrorism. They had been part of organising various mass protests in Lucknow, Azamgarh, Faizabad, Ballia and Gorakhpur to highlight the terrorising of Muslims and the falsity of police claims and illegality of police actions. Given the terror unleashed on the Muslims of Azamgarh after the Jamia Nagar police 'encounter' in Delhi, the PUHR activists were trying to provide legal help to the families of those arrested.

On 24 October 2008, the two activists of the People's Union for Human Rights (PUHR), Vinod Yadav and Sarfaraz, travelled to Lucknow. From around evening, their families were unable to contact them over phone. After waiting for an entire day, they filed missing persons report with the police. Meanwhile newspapers on 25 October 2008 carried a report that PUHR activists were successful in stopping harassment and intimidation by STF/ATS of Muslim youth from Azamgarh traveling to Delhi by train. Recently, police had also disallowed the protest meetings by the PUHR. Given this background and the sudden disappearance, family members suspected the hand of the ATS in the disappearance.

After protests and demand by a wide-ranging set of organizations that the two be produced immediately, the ATS confirmed the illegal detention on 27 October, produced them in court and made them co-accused in a case under sections 419 and 420 IPC! Despite the account of their illegal detention, the magistrate did not release them, preferring to send them to jail.

A bail application at the district court was turned down. The matter was listed with the Sessions Court, but hearing was delayed, till finally bail was granted. For reason best known to the court, two sureties of Rs. 50,000 each were demanded as the bail condition. They were finally released on bail after being kept in jail for nearly a month.

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## Chapter V

### Observations

1. Our first observation is that there are still many unanswered questions regarding the Jamia Nagar 'encounter' of 19 September 2008. The reason why this assumes utmost significance is because the entire chain of counter terror operations unleashed subsequently, was linked to the youth killed in L-18 Jamia Nagar that day. All those who knew Atif particularly, or were in any way connected to him, or his village, school, locality, or family in Azamgarh were brought within the ring of suspicion. The police began hunting for them, harassed their families if they were not found, and framed those that were. The youth who were killed were also presented as 'dreaded terrorists' after they were killed. Their connection to the crimes they are accused of including the Delhi bomb blast cases cannot be contested because they are dead. And their death remains uninvestigated. It is not surprising therefore that in the recently filed chargesheets in two of the five Delhi blast cases, that Atif has been held as the "mastermind", exactly as per the police's original statement.
2. No independent investigation as required by the NHRC guidelines and the law has been launched into the incident of the 'encounter' killing. Upon public pressure and a demand by the NHRC, a Crime Branch investigation was launched on the basis of the FIR into the killings that took place in the flat on 19 September. The FIR mentions the dead and arrested occupants of the flat as the accused. Contrary to this procedure, the NHRC has stipulated that in order to ensure fairness (i) an FIR should be filed against those whose opening of fire resulted in the deaths; and (ii) the same should be investigated by an agency independent of the police conducting the

'encounter'. The procedure is necessary to ensure that individuals do not sit as judges on their own actions. The investigation by the Crime Branch, which is under the Delhi Police, in the present 'encounter', through an FIR which

(i) The primary method seems to be to extract confessions, i.e., pressurizing the accused in police custody to admit to whatever the investigators desire. The law too recognizes that investigation can degenerate to this level and therefore deviate from seeking the truth. Therefore such confessions are

inadmissible in court. Still these very confessions enable the police to condemn the accused even before the trial, and extend the duration of police custody.

(ii) Considerable reliance has been placed on electronic evidence. The easy possibility of the tampering of such evidence, makes conclusions based on this suspect.

(iii) The Special Cell ACP Sanjeev Yadav who was heading the investigation into the present Delhi bomb blasts cases was found to have been part of a team which has been indicted by the CBI for wrongfully arresting, framing, and planting RDX on two men in connection with the 2005 Sarojini Nagar blast case in Delhi. The two persons thus arrested have spent over two and a half years in jail on this count, apart from withstanding harassment from the police and the Special Cell.

(iv) The Special Cell has been guilty of grave misuse of police custody particularly by forcing the accused to be interviewed by the media even when their lawyers were prevented from meeting them. A more generalized and condemnable practice is the releasing of custodial confessions to the press.

(v) The Special Cell has attempted to intimidate the families of the accused by making the arrested youth 'confess' to their families to pressurize them into silence and increase their vulnerability.

(vi) The Special Cell has violated Supreme Court guidelines on arrest (*DK Basu vs State of W.Bengal*) and basic procedural norms – by not informing about arrest, or place of detention, not letting the family

already skewed, defeats the attempt to arrive at the truth.

3. The present investigation into the Delhi bomb blast cases is unreliable because–

members, lawyers meet the arrestees, or failing to provide seizure memos for goods seized during raids.

4. The conduct of the ATS, STF, Special Cell in cases of bomb blasts has been communally biased. This happens quite unsurprisingly through bypassing the procedures, norms and relying on shortcuts, and naturally leads to dependence on prejudices and stereotypes to pick up, interrogate and arrest people. In the present case young educated Muslim youth from Azamgarh were the target. The manner of the raids, the terror unleashed among the public, both in Jamia Nagar and in Azamgarh, points to a presumption of guilt of Muslims in the minds of the investigation, one that is also evident in their personal conduct and behaviour. The impact of such prejudice on people already in custody can be grasped from the details of torture recently exposed in the Mecca Masjid blast case in Hyderabad of 2007.

5. It appears that the anti-terror forces can act on communal and unjust lines simply because they feel confident in doing so. The fear of terrorist attacks has made sections of civil society and the political class accept everything that is claimed to be done to fight terrorism. Thus the label of 'terrorist' applied on any person becomes sufficient for the denial of basic rights. The state forces thus act with impunity because of this tacit acceptance among people to surrender democratic rights in the name of countering terror.

6. This communalization has extended to sections of the legal community. Resolutions of bar associations to refuse to represent terrorist case accused, assault on lawyers



who agree to represent the accused further deplete the possibility of redress for a wrongfully charged person.

7. A section of media has been unprofessional in reporting, referring to the accused uncritically as terrorist and portraying anyone questioning actions of the police as anti-national.

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## Chapter VI

### Conclusion

In October 2005, bomb blasts occurred at the crowded marketplace at Sarojini Nagar in Delhi. A few months later, the Special Cell of the Delhi Police arrested Mohd. Moarif Qamar and Irshad Ali in February 2006. Inspectors M.C. Sharma and ACP Sanjeev Kumar Yadav had led this police team. Few days later, the team claimed to have recovered a stock of arms and ammunition and RDX explosive from them. The accused were claimed to be Al Badr terrorists and were charged, among others, for waging war against the state. The charge-sheet filed in May 2006 mentions that the investigation was done by three police sub-inspectors of the Special Cell and the inspector and the ACP "were always kept in the loop".

The accused appealed to the High Court and in late 2006 investigation was handed over to the CBI. In November 2008, the CBI established that the two accused were innocent (*Indian Express*, 26 Nov. 2008). The report also recommended filing of criminal charges against three police sub-inspectors. The two innocent persons suffered being maligned, and being locked up for nearly three years. The

origin of the arms, ammunition and explosives that were planted by the police remains unknown.

The police team that conducted the 'encounter' at Jamia Nagar, was led by Inspector M.C. Sharma and at least one of the sub-inspectors involved in the frame-up described above. ACP Sanjeev Kumar Yadav has been the one probing the Delhi blasts. Such a situation quite naturally brings forth grievous fears that things may not quite be as simple as they are reported to be.

What propels us as a society towards such an outcome is the argument that in the case of terror suspects, the police claims should be accepted without question, that procedural errors should be overlooked, that laws should be altered to assume the accused to be guilty, increase the period of detention without charge, that bail should be made impossible, and crimes be defined anew based on the perceived intention of the accused. Those who wield power claim that this is necessary to deal with crimes of terror and that any attempt to make the police answerable would demoralize it.

The state and a section of the media are presenting the dichotomy of choices between tolerating the inhuman terrorist attack and the surrender of the rights. Not questioning the police version does not lead to better investigation but to impunity. Condoning violations of investigation procedures leads to confessions through custodial torture. That promulgating the legal changes being suggested would make it more difficult to distinguish innocence from guilt, and would prolong the suffering of the innocent.

Any attempt to counter serious crimes thus needs a more meticulous adherence to established procedures in investigation to prevent wrongful indictment and a more careful appreciation of the evidence gathered to

prevent lies from masquerading as the truth. In short, countering such crimes demands a greater, not lesser, faith in democracy.

The present report and our demands are attempts to reverse the destructive drift that has beset our country and its polity.

**We demand:**

1. An independent, time bound comprehensive probe by a sitting Judge of the Supreme Court into the 'encounter' at Jamia Nagar.
2. The accused being held in continuous police custody for

- 3 months to be sent to judicial custody.
3. Action against the personnel of the Special Cell for violation of rules pertaining to arrest and custody.
  4. The anti-terror investigations must stop targeting particular communities and creating an atmosphere of terror among people.

## Appendices

### Appendix –1

#### Excerpts from a few of the team's interviews with different persons in Azamgarh

**Ehsan Ahmad**, a commerce lecturer in Shibli Inter College, father of Zeeshan Ahmad, is in a state of shock, disbelief and despair. Subsequently after recovering from the shock, Mr. Ehsan Ahmad came to Delhi to meet his son before he was taken to Gujarat along with 4 others. Zeeshan passed his class XII from *Jyoti Niketan*, one of the two most sought after convent schools in Azamgarh with fairly good score and graduated in Commerce from Zakir Hussain College of University of Delhi. Currently he is doing a course in management from IIPM, New Delhi. Since

December 2007, he has been working with the Monarch International Company. His lap-top computer confiscated by the Special Cell, is provided by the company. Both the teacher parents are suffering from acute high blood pressure. They have to look after their only other child, a disabled younger son. Fear and humiliation has virtually killed them.

**Mohammad Amin's** house in Saraimir presented a gloomy look. Mohammad Amin, father of Atif Amin, the 'mastermind' killed in the Jamia Nagar 'encounter' works in Dubai to remit some money back home so that his children could have a better education and his family, a better living. After more than 3 weeks after getting the news of the death of his son, Mohd. Amin was sitting with an expressionless face and blank look in his eyes, unable to believe or accept that his son was a terrorist. He was hardly in position to talk, yet on our insistence answered the questions in a choked voice. Atif, born in Sanjarpur passed his class X from nearby Binapara and Intermediate from Shibli Inter College. He had visited home in March 2008 to meet his ailing sister. He had phoned home that he would come on 25<sup>th</sup> September for celebrating Eid and that Eid never came in his life. According to him, "Atif could have been anything but a criminal or a terrorist".

**Shadab Ahmad**, father of Mohammad Saif the 'terrorist' arrested from L-18, Jamia Nagar is very worried about his sons- Saif who has been in police custody since 19

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September, and Shah Nawaz. The latter, a doctor, had done his internship from Balrampur Hospital and had been working in Meo hospital, Lucknow. He has been missing since the 'encounter', and his mobile number is switched off. Shadab surmises that the Special Cell and other police would have called him repeatedly after the incident and he must have switched off his mobile. His continued disappearance is deeply worrisome to his family. Shadab and people around him cannot believe that a shy village boy like Saif who had been in Delhi for just over a month could be an accomplice of a "terror mastermind".

**Munshi Yadav** runs a shop in Sanjarpur for over 26 years. When confronted with the description of "Azamgarh as nursery of terrorism", he asked the counter question that if police is correct then why they did they show the arrest of Abu Basher from Lucknow when they actually arrested him from Binapara after laying the virtual seize of the village. Munshi

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Yadav, a member of the peace committee formed by the district administration, proudly tells the absence of any communal tension in the area and accuses the media for demonizing Azamgarh and Sanjarpur. He can't believe that these well behaved educated boys could do any thing of the sort they are charged with.

**Prof. Iqbal Ahmad** is a retired professor of Psychology in Shibli College. As most of the youths alleged to be terrorists belong to the same village or its vicinity, he knows most of them. He vouched for their innocence and strongly rejected the allegations against them. In his opinion, most of them have been studious intelligent youths seeking a respectable place in the market of employment. These villages have high education rate both among boys and girls, 70-80%. People have high remittance income from all over the world and as verified by the other people in the meeting – Hindus and Muslims both – this has been going on since before independence. These villages boast of having produced many doctors, engineers, academicians, administrators, judges, journalists and entrepreneurs. The situation at Sanjarpur and Azamgarh reminded Prof Iqbal of the days of the Emergency, with the sight of scores of policemen searching each and every house for long without proper authorization or following any proper procedure. They however, did not find any thing incriminating.

**Wasiuddin**, an advocate in Azamgarh knows Zeeshan very well as the class mate of his younger son. He vouched for the innocence of Zeeshan as a decent boy, good and sincere in studies. He reported on the randomness and arbitrariness of the police operations. For instance, the police went to search for one Khalid from the nearby Kharawan village and under terror and fear all boys with Khalid name in the village have simply disappeared. Indian Mujahideen, according to him, is a fake organization and its origin and purpose should be thoroughly probed by some impartial agency.

**Mohammad Arshad**, brother of 17 year "encountered" "terrorist", Sajid, looks like a lost man. He works in Saudi Arabia. He came to Delhi upon hearing the news of the killing of his brother, whom he had wanted to see as a pilot, in an 'encounter' as a "dreaded terrorist". He was in a state of acute shock and disbelief and unable to reconcile with what had happened. His mother was still in a state of trauma. Arshad seemed to be at a loss for words, and did not say much, except repeating over and over that his brother could not be a terrorist. He and others present in Sanjarpur,

asked one question about Sajid's death – that if Sajid was actually killed in an 'encounter', why did the bullets pierce his head from the top, vertically?

**G.S. Priyadarshi**, the District Magistrate of Azamgarh, a young Commerce graduate from Delhi's SRCC, was generally skeptical of all the specific questions pertaining law and order, harassment of minorities and permission by district authorities to BJP leader Adityanath to arouse communal frenzy in Azamgarh, prior to the Delhi 'encounter'. Nevertheless he accepted that there were irregularities in handling these affairs and that was why the DIG and the Deputy Commissioner were suspended and the DM and the SP transferred.

**Harmandir Pandey**, a school teacher, is an old CPI stalwart, with nostalgic memories of the past when Azamgarh used to be a bastion of socialists and communists. Proud of the composite culture and the history of the communal harmony in the district in general and in the city in particular, Pandey accuses the media and the police along with the "fascist forces" of the Hindutva for communalising the district and maligning its image. He recalled with anger, the previous incidents by these forces, of creating trouble in the Shibli National College, the arrest of principal Dr. Iftikhar Ahmad at the bidding of the then Home Minister in BJP Government and again a minister in the BSP government and so on. The raids at the houses of the prominent people like Dr. Javed Akhtar and Dr. Fakhr e Alam, according to Pandey is meant to malign the image of Azamgarh. In his observation, the Jamia Encounter was "a fake one like many fake encounters in Gujarat and Maharashtra", as he knew couple of boys and holds a very positive opinion about them. "For the first time, Azamgarh witnessed a minor communal tension aroused and designed by the Hindutva forces led by the Adityanath, the BJP MP and the criminal-politician Ramakant Yadav". He wants an impartial judicial enquiry into the whole episode and the culprits to be booked under the law. He is deeply critical of the irresponsible behaviour of the media.

**Dr. Iftikhar Ahmad**, has been the main target of the Hindutva forces for a long time, not as an individual but as the Principal of Shibli National College symbolising Azamgarh's long secular tradition. He cannot forget being



humiliated by the BJP government which interned him under the fabricated charges of 'sedition' but he is more concerned about the state of events indicating the fascist style of communal polarisation in the country. He is also deeply concerned about the destruction of historically established communal harmony and peace in the city and the district through minority bashing all over the country in general and in Azamgarh in particular. He considered the police version of the Jamia Nagar 'encounter' was a fabrication and felt that the youths killed were innocent. He wanted a judicial probe in the whole matter and stoppage of torture on the arrested boys. He was pained at the role of media and its totally partisan intervention. He lamented that incessant attacks by the media strengthened the impression that it would be impossible for Muslims of Azamgarh to get justice. People had become afraid of talking openly. Dr. Iftikhar Ahmed felt that the Muslims of Azamgarh were living under the terror of "anti terrorist squad" (ATS).

## Appendix -2

### **Excerpts from report by Jan Hastakshep led team on attack by Hindutva forces on an educational institution, SNPGC, Azamgarh in connivance with administration and judiciary (Jan-Feb 2000)**

#### **Background to Investigation:**

This report concerns the unfortunate events which began on January 26, 2000, the Fifty first Republic Day of India in Shibli National Post-Graduate College, Azamgarh. It was reported in the press that riots had taken place in Azamgarh over a dispute on the singing of 'Vande Matram' during Republic Day celebrations in Shibli College. It was also reported that students had been taking out rallies in Azamgarh city raising the slogan, "*Hindustan mein rehna hoga, to Vande Matram kehna hoga*" (It is a must to sing Vande Matram to live in India). After three days of violence resulting in damage to the properties of some Muslims, and about 14 days of curfew the issue seemed to have died down. The government took no action against the local police which abetted the hooliganism by ABVP activists by remaining mute spectators. During the second half of February once again the issue came into prominence with the arrest of the Principal of the Shibli College, attachment

of the residence of one teacher, charges of bias against the minorities by the CJM and the district judge and a complaint of contempt of court by the district judge against two Muslim lawyers.

#### **The Observations:**

- ❑ A dispute was raised by 3-4 students belonging to the ABVP, the student wing of the RSS after the Republic Day celebrations at SNPGC, Azamgarh demanding the singing of 'Vande Matram' as part of the official programme of 26<sup>th</sup> January 2000. College administration maintained that the function was held as per guidelines issued by the district magistrate.
- ❑ On 27<sup>th</sup> January a group of ABVP activists went around damaging the property of the college and of some Muslims and raising anti-Muslim provocative slogans. Curfew was imposed that lasted till 30<sup>th</sup> January and was finally totally lifted on 10<sup>th</sup> February. Violence continued till 29<sup>th</sup> January. The College property was damaged and the historic library, Darul Musanefeem, was attacked.
- ❑ Many innocent Muslim boys were arrested after being charged of shouting expletives against 'Mother India' and 'Hindu dharma'. They were brutally tortured in jail.
- ❑ The Principal of the college and a senior professor were arrested and subjected to 3 days of imprisonment as a common offender on a complaint by students who were responsible for the attack on the college.
- ❑ The response of the administration was very peculiar. The higher officials, the SSP and the DM, did not reach the spot despite the written complaint from the Principal. The police got into action only in the evening when it started rounding up by-standers and those involved in dousing the fire with water, leaving the rioters to feast on the properties of the minorities.
- ❑ The RSS cadres in an organized and planned manner started looting and burning, exclusively the properties

of some well-off Muslims in the vicinity. Curfew was imposed after substantial property had already been damaged for more than 6 hours. The properties and the establishments of Muslims continued to be burnt and looted till 29<sup>th</sup> January.

- ❑ *Instead of restraining and arresting the rioters, in the presence of the DM and the SSP, the CO, Sri Pradyuman Singh came to the college and shouted at the teachers. Meanwhile, the RSS cadres in league with the anti social elements were allowed to throw bombs and fire from katta (country made pistols) in the vicinity of the college complex in presence of the police and district administration. The hooligans tried to set on fire the internationally reputed library of the Darul Musanefeem which consisting of more than 40,000 books out of which 3500 are rare manuscripts. It could be saved due to exemplary courage shown by the library staff; Dr. Jawed Ali Khan, a History Professor of the college; and Shiv Shankar Singh and Shri Krishan Yadav, two employees of the Post Office located in the Library building.*
- ❑ Curfew lasted for more than 14 days. Many innocents were arrested and prosecuted. It is pertinent that the neighbourhood of the college has a mixed population and there has never been any communal disturbance amongst the neighbours. The miscreants did not belong to the area but came from outside.

#### **Government's Response and role of BJP:**

- ❑ Under the pressure of the public opinion, the government transferred the commissioner, the DM and the SSP, without effecting changes in the junior level officers.
- ❑ The UP minister of state for home, Sri Rangnath Mishra went to Azamgarh on 16.02.2000 and met the boys who were behind the attacks. He refused a judicial inquiry and stated that the matter will be inquired by the Commissioner.
- ❑ . The police requested for issuance of arrest warrants against the Principal and a Professor, Dr. Zafar "for disgracing" the national flag, but the Allahabad High Court had issued specific orders stating that "no arrest should be made without reasonable satisfaction reached after some investigation as to the genuineness and bonafide of a complaint..."

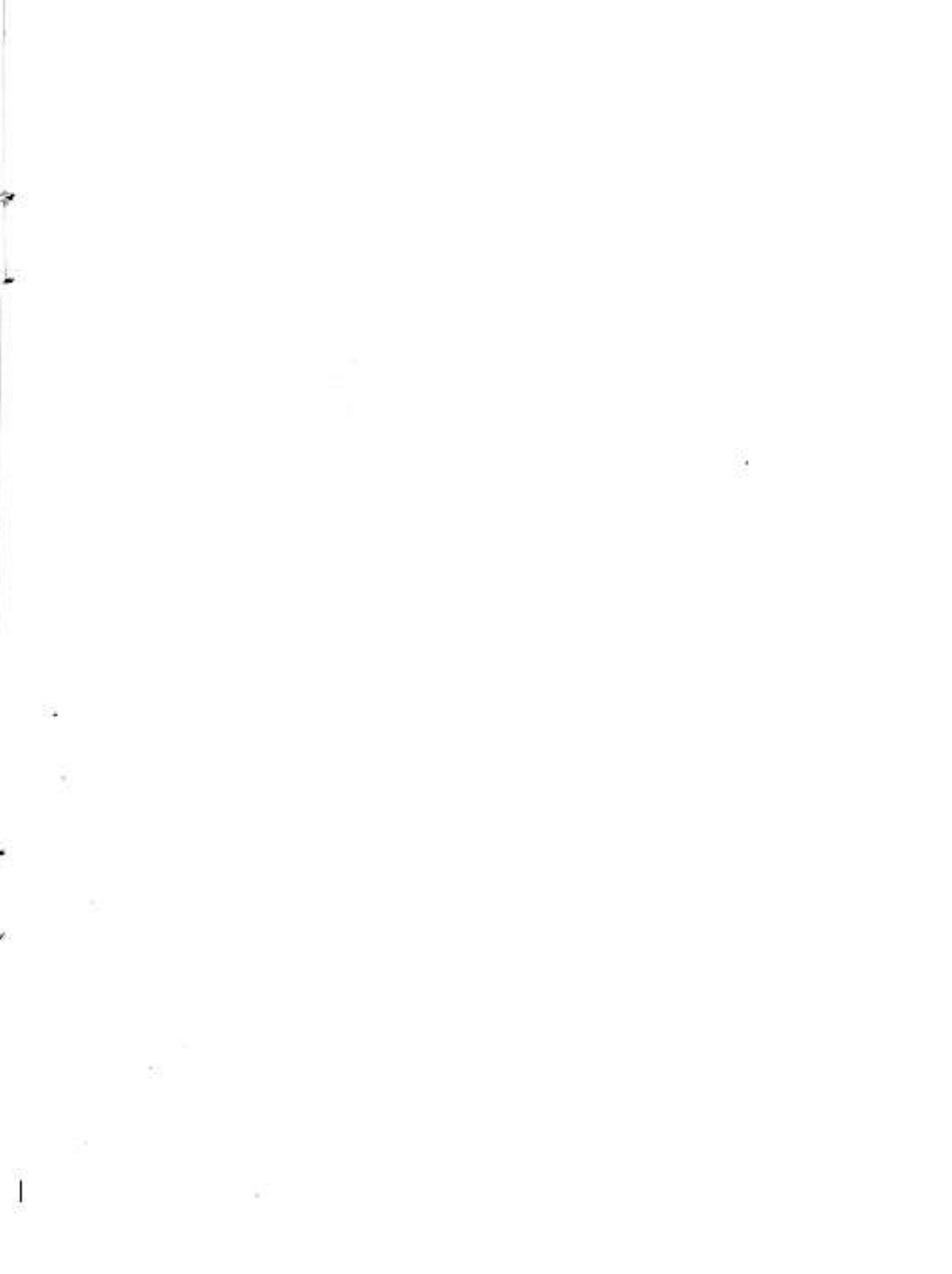
- ❑ The High Court's instructions were sidelined by the report of the local Thana filed before the CJM on 16.02.2000, within 24 hours after the previous arrest warrants became ineffective due to the High Court order. He issued non-bailable warrants. He neither bothered to ask for statements of other officials who were present on the official Republic Day function nor did he take cognizance of the statements of teachers published in the press on 7<sup>th</sup> February 2000.
- ❑ It is also important to note that on the unnamed FIR of an ABVP member, 14 persons in the age group of 15-25 years were rounded up and put behind bars. The CJM rejected their bail applications outright. Some of the arrested boys were daily wage workers in a bakery and the rest were students of the college. They were charged under section 2 of the Prevention of Insult to National Honour Act 1971 and section 7 of the Criminal Law Amendment act.
- ❑ Arrested boys were kept in jail for more than 45 days. They were not allowed to sleep for four continuous days, beaten black and blue in the jail everyday, repeatedly forced to shout 'Jai Hanuman', sodomized by the hard core criminals and were released only by the order of the Allahabad High Court.

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*The fact-finding team was represented in Delhi by Dr. N. Bhattacharyya and Ish Mishra (both of Jan Hastakshep), Shahana Bhattacharya (PUDK). It was joined by senior Advocates Prashant Bhushan and N.D. Pancholi, and by JMI faculty members Dr. Imtiaz and Sreerekha.*

*The team in Azamgarh comprised Dr. N. Bhattacharyya and Ish Mishra (both of Jan Hastakshep), Shahana Bhattacharya and Harish Dhawan (both of PUDR). Members of the APCR, NCHRO, PUHR and PUC joined the Jan Hastakshep-PUDR team in the course of the fact-finding in Azamgarh.*





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