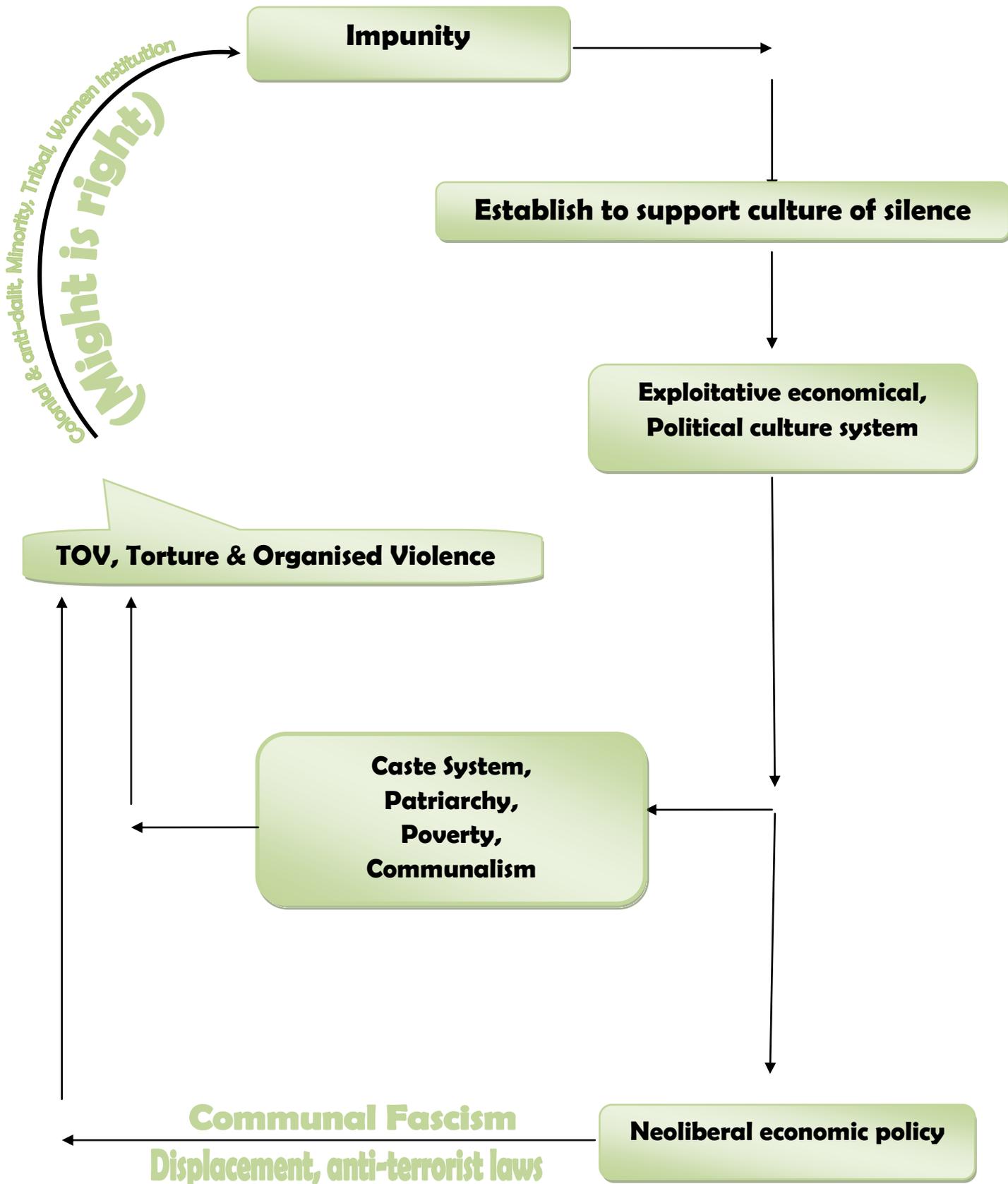


# Community based work of PVCHR against torture and organized violence:

What is the context?



**TOV, Caste and poverty:** Schedule caste, Indigenous groups and other backward caste are mostly facing atrocities and discrimination in all spheres of life. It verifies in the data collection of 123 survivors in the pilot project, in which 89% of survivors belong to schedule caste, indigenous group and other backward caste (OBC).

5 The general impression that the people from the poor dalits and tribals are primarily not just do menial work in the society, they also form the major source of churning unsocial and criminal people. Unfortunately, there is a culture of silence permeated in the society historically. The privileged people mostly believe and have made the state believe that they cannot go wrong. That is why, one finds most of the custodial torture, and violence and death are committed against marginalized and deprived caste. Many dalits are tortured and subjected to humiliation and degrading treatment in public like garlanded with slippers and sandal, coloring face (*black/white*) and riding over ass etc. So they have the divine right to use and abuse or discriminate against the dalits, tribals and other back ward category people. ***Indian Police learnt from practice of caste system of demoralization and community punishment.*** Demoralizing the lower caste is very common with a view to make them silence, so that they cannot raise their voice. When a person from upper caste commits crime, after trial the person is punished. However when it comes to the lower caste the entire community is punished. This punishment is not from court of law, but from the upper caste and the police provide its sound support in implementing punishment to lower caste.

The refusal of the police to investigate a case of caste discrimination is common and they failed to register cases under Schedule Castes and Schedule tribes (prevention of atrocities) Act.<sup>i</sup> The SC/ST Act meant to ensure proper investigation by a high ranking police official within thirty days is rarely adhered to. As a consequence the accused moves out of the jail. Sometimes police also considers it case of insults and intimidation, which carries a lesser sentence.<sup>ii</sup> According to Justice Ramaswamy, former Supreme Court Judge and member of National Human Rights Commission, police register complaints as code offences instead of Act offences so upper caste perpetrator do not face the higher sentence imposed by the Act.<sup>iii</sup> Different Human Rights Institutions like NHRC and National Commission on Schedule Caste are working as champion against above mentioned misdeed<sup>iv</sup>

Reluctance on the part of the police to register and investigate crime makes the victim much vulnerable. Police assumes that the victims cannot fight case for long and above all cannot pay bribe. By the time the victims fulfill either or both the conditions, the crime scene evidence are destroyed or leading to “go cold,” which ultimately makes prosecution unlikely.<sup>v</sup> Poor crime victims are also likely to be able to call local influential figure to intervene with police on their behalf, while their

perpetrator may have police protection due to political connections. <sup>vi</sup> Various CSOs including PVCHR are using Right to Information (RTI), Act to know the action taken by the authorities and also as follow-up of complains<sup>vii</sup>. The national coalition of SC/ST (Prevention of Atrocities Act)<sup>viii</sup> brought very intensive recommendations before parliamentarians through involvement of its 20 initiating members<sup>ix</sup>.

**Communal violence and TOV\*:** India's secular character provides the freedom to all the countrymen to choose their own religion, a right provided in the Article 14, 15 and 16 of the constitution. It also ensures that the state cannot discriminate on the basis of religion. However, in reality, things are different. The marginalization of the Muslim community, the largest among the minority groups is complete. This has been corroborated by the Prime Minister's High-Level Committees on Minorities in 2006, headed by Justice (Retd.) Rajinder Sachar.<sup>xi</sup> Discrimination is compounded by hatred against Muslims has been initiated and spread by right wing Hindu groups under the patronage of a main national political party resulted in riots. Bhagalpur (1989), Bombay (1992-93) and Gujarat (2002) riots exposed the biased perception of police towards Muslims. Several committees investigating the riot cases have confirmed the dubious role of the police and other state apparatus. The youth and the poor, perceived primarily as trouble making, violent groups were harassed and booked under draconian laws like Terrorism and Disruption Act (TADA) and Prevention of Terrorism Act (POTA) which provides sweeping power to security agency and completely denies civil and political right to the victim. Denial of access to justice is the single most important factor that alienates the Muslim and other minority, Dalit and tribal community from the mainstream.<sup>xii</sup> Seldom have human rights institutions and National Commission for Minorities, primarily constituted to address the violation of rights of the minorities have lived up to its constitutional mandate. The situation is characterized by a relative vacuum insofar as the issues of police torture or protection of human rights are concerned.

Thus, in the context of the minority community, the key areas which need to be addressed are:

- a. Insufficient encouragement to work on the civil and political rights of the community, especially, when it comes to raising issues of police torture and organized violence. There is an observed palpable reluctance among the Human Rights Defenders (HRDs) to work with the community due to silence of community and threat of Hindu fascism. PVCHR developed the focus program for Muslim minority and receive a break of silence of community and activation of state<sup>xiii</sup> ;
- b. Complete ignorance of the majority of the victims on how to access the National Commission for Minorities and avail benefits from provisions like free legal-aid. No one monitors whether these facilities are ever used by the target groups;

- c. Lack of information among the HRDs on how to follow and monitor national laws, international human rights instruments and mechanisms useful for crisis management;
- d. Absence of networking amongst local human rights organizations and the absence of an active civil society groups fail to create a need-based campaign for legislative advocacy even among their elected community representatives; and
- e. Constraints of resources (notably material ones) which greatly undermine the effectiveness of the work of human rights defenders.

### **TOV and Patriarchy**

Most women in India suffer directly or indirectly by the existing patriarchal structure of the society. They become either primary or secondary victims in all kinds of torture. The illegal detention and torture of Mr Vinod Kumar Gupta<sup>xiv</sup> made his wife a case of double tier psychological torture. In the RCT – PVCHR collaboration 27.64% women facing torture and organized violence were psychologically supported through testimonial therapy. In fact, Uttar Pradesh remains at the highest position on crime against women primarily due to rape, torture for dowry and harassment against women.<sup>xv</sup>

Discriminatory and organized violence against women includes domestic violence, dowry linked violence, sexual assault and sexual harassment.. All this are indicative of the extent of the problem and proves that human rights initiative in India lacks gender perspective of TOV. Dalit are considered untouchable in Indian society, yet rape of dalit women is not considered forbidden by the upper caste, in fact, the later uses rape as an instrument of continuous subjugation. Dalit women bear a triple burden; discrimination and exploitation based on caste, class and gender. Women are also victim of violence by securities forces and armed opposition groups, traditional justice delivery system like Caste panchayat (illegal body of caste based system in villages)<sup>xvi</sup> and cruel cultural practices like sati, honor killing and witch hunting. Discriminatory attitudes and lack of sensitization to the dynamics of crimes involving sexual or domestic violence leave victims without critical police aid or redress to which they are entitled.<sup>xvii</sup>

The police attitude that domestic violence is primarily of private nature is the most unfortunate trivialization of a grave social evil, that too when the police is empowered to arrest the perpetrator without a warrant.<sup>xviii</sup> The protection of Women from Domestic Violence Act, 2005 was enacted to augment women's immediate protection from violence through emergency relief, including access to temporary protection order and domestic violence shelters.<sup>xix</sup> But lawyers and activists says that due to poor implementation of law, women facing imminent and life threatening violence remain hostage to police attitude. This attitude of the police perhaps stems from its traditional legacy of 'rule of lords', the same like its colonial masters. This is the common bonding between the police and the feudal lords in India which do not believe in the concept of welfare state.

## **Impunity & TOV:**

The culture of impunity is the biggest threat to the rule of law in India. Victims are often threatened to make submission or give statements before the Magistrate so that the case weakens and nothing happens to the perpetrator. If at all, the department or the court decided to take cognizance of the statement of the victim and orders an inquiry against the concerned accused police, it directs the superior officer to undertake the investigation, knowing well that both work in the same office and the higher officer is well versed with the movements and intentions of the subordinate. In the absence of evidence or weak evidence on cases like custodial torture, encounter or disappearances the courts relies more on the police report resulting in acquittal in most of the cases.

The insensitivity of the Judiciary and Human Rights Institutions makes it extremely culpable in contributing to 'impunity' that persists and aggravates the problem. Evidence indicates that the poor are increasingly being criminalized. The limitation of the enforceable power of the National Human Rights Commission, India, has been a matter of concern for everyone. 'Legal' impunity is embedded in provisions like Section 197 and Section 132 of Indian Code of Criminal Procedure (Cr.Pc.) as well as Section 6 of the Armed Forces Special Power Act (AFSPA). In fact almost every section of the Cr.Pc. provides some kind of impunity. For example Section 46 empowered the police to shoot to kill any accused who was charged with a crime punishable by death, if that accused person attempted to escape from police custody. The police of Andhra Pradesh and Uttar Pradesh state has made extensive use of this section to cover up the fake encounter killing of hundreds detainees.

Experience showed that the government habitually denied sanction for prosecution of members of police and security forces whenever any 'private criminal complaint' was filed against them. In many cases, the police routinely, refused to record First Information Report (FIR) against misdeeds of police personnel. In cases where due to sustained campaign by victims' families and human rights defenders, FIRs were lodged, these were never properly investigated. In the rarest of rare cases under immense pressure of the public the government ordered investigations by the agencies of the state governments or that of the centre into complaints against police or security personnel. Unfortunately even when such investigations established prima-facie cases against the accused police or security personnel, the guilty persons went unpunished as bureaucrats in the ministries of Home and Defence deny sanction for prosecution of the guilty.

This practice has divided the citizens of India into two categories – one who are ruled by law, who can be punished by the law courts for their misdeeds - and the other who are protected and cannot be punished by law courts unless their employer, the State sanctions their prosecution. The freedom enjoyed by the killers of the Dalits and minorities - be it the Sikhs, Muslims, Christians and Buddhists - whether it was in Parasbigha,

Bhagalpur, Delhi, Kanpur, Maliana, Hasimpura, Merrut, Mumbai, Ahmedabad, Baroda, Godhra and many other parts of the country since independence, bear testimony to this double standard of our political system.

South Asia Forum for Human Rights (India) organized a Planning Meeting on 4-5 January 2008, at New Delhi and commenced the campaign against impunity, where PVCHR is a part of campaign<sup>xx</sup>. Recently Human Rights Watch furnished an intensive recommendation for combat of impunity in India<sup>xxi</sup>. Campaign on Cr.Pc 197 with the members of NATT which is proposed in torture bill 2010<sup>xxii</sup> and together will Wide Angle on the repeal of Armed Forces (Special Powers) Act of 1958<sup>xxiii</sup>

### **Who is the target population?**

The TOV survivors, who will receive testimonial therapy, with its attendant therapeutic and social benefits; the survivors mostly belonging to dalits, indigenous, minority and women;

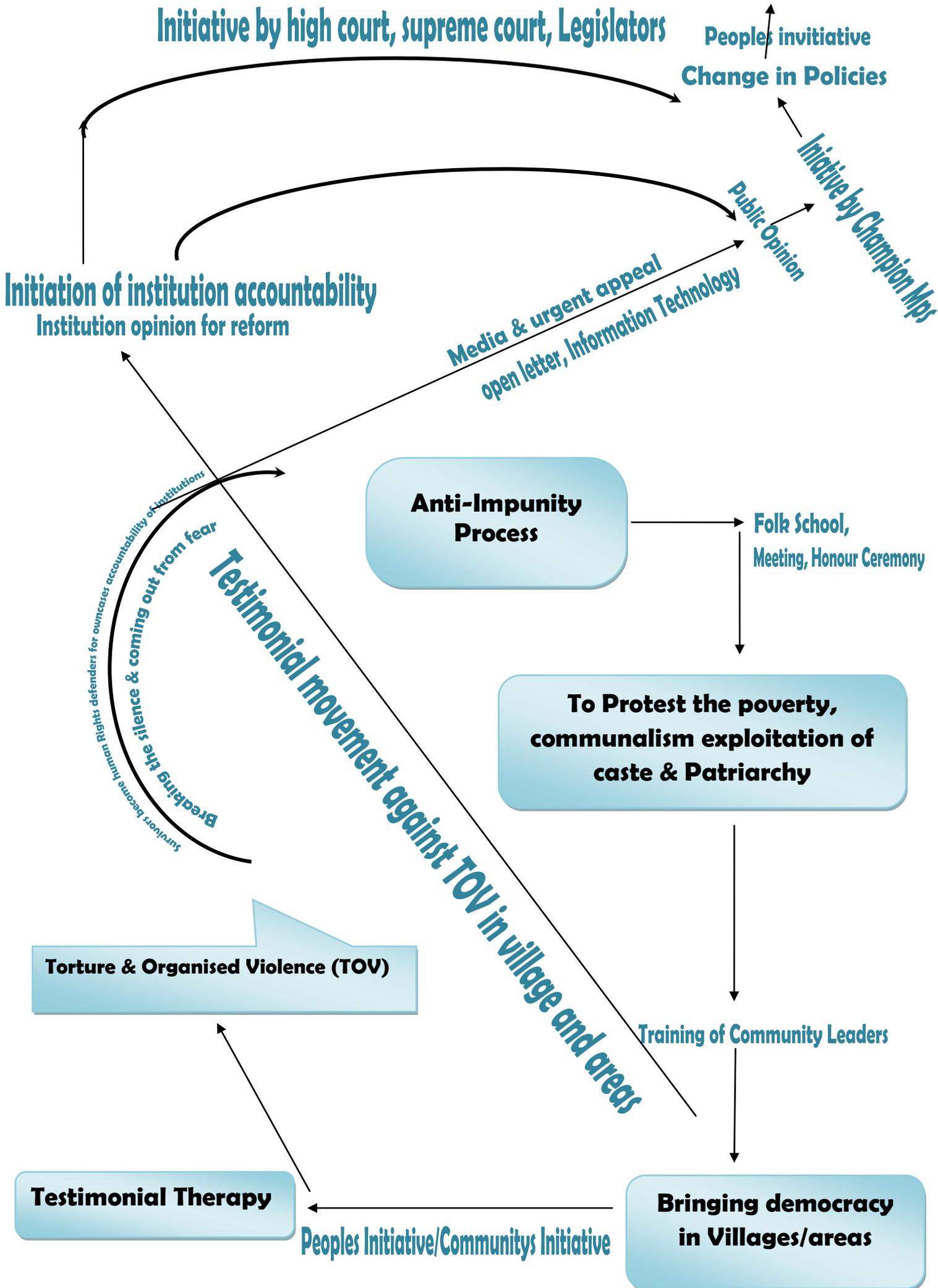
### **What is the theory that informs the intervention?**

Torture free village under model block process is focusing on survivors & institutional reform through;

- Healing (Testimonial Therapy)
- Legal Redress
- Solidarity & Protection
- Institutional Reform (Advocacy)

### ***On the given below indicators:***

- Understanding about their rights
- Equal rights to women
- No caste based discrimination
- Reach out of people to the institution
- Religious freedom
- Political awareness
- Fearless society
- Having feeling of one of all and all for one
- Assurance of child rights
- Livelihood opportunity
- Community participation at all level
- Assurance of essential facilities
- Awareness for clean and green environment



## What resources are needed?

1. Trained staff on testimonial therapy
2. Communication material: poster , pamphlet and wall painting
3. The direct support to survivors of torture through testimonial therapy. The main activities includes
  - Organize community based honor ceremonies & folk school to foster community awareness and empowerment of survivor of TOV in model blocks
  - Convey the pain and agony within minimum soft testimonies to promote legal intervention at human rights institutions at national and provincial level, concerned government department and UN mechanism especially special procedures on torture, violence against women, racial and caste discrimination.
  - With the consent of the survivor of TOV, to use the honor ceremony for advocacy against impunity and to obtain justice.
  - Interface with the police department, human right institutions, policy makers and media

## How is sustainability being addressed?

The sustainability is addressed through the above indicators i.e. Breaking the silence, imparting the knowledge building for prevention and elimination of torture, organization building and elimination of gap between survivors and institutions at grassroots level.

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<sup>i</sup> Schedule castes and Schedule Tribes (Prevention of Atrocities) Act, 1995, sec. 3. For the discussion of this provision see Human Right Watch, Broken People: Caste Violation against India's untouchables (New York": Human Right Watch 1999). Police fail to register FIR under Act is due both to bias and lack of familiarity with the Act. See also Human Right Watch, Hidden Apartheid: caste discrimination against India untouchables.

<sup>ii</sup> (Justice Ramaswamy, "Attitude and Approach" unpublished paper presented at judge colloquium organized by NHRC and HRLN, December, 2005 quoted in National Campaign on Dalits Human Rights, "Shadow Report to the UN CERT 2007).

<sup>iii</sup> (Human Right Watch, Broken People: Caste Violence against India's "Untouchables", Human Rights Watch, New York, 1999))

<sup>iv</sup> [www.scribd.com/.../National-Human-Rights-Commissions-intervention-in-case-of-police-firing](http://www.scribd.com/.../National-Human-Rights-Commissions-intervention-in-case-of-police-firing) -

<sup>v</sup> K.V Thomas , "Corruption in Indian Police", p.8 Centre for Media studies and Transparency International India, "TII CMS corruption study 2007 with focus on BPL household. Arvind Verma,

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“Cultural roots of police corruption in India, “Policing: an international Journal of police strategies and management.

<sup>vi</sup> Alexander ed., Police in the new millennium, Allied Publishers, New Delhi, 2002

<sup>vii</sup> [righttoinformation.gov.in](http://righttoinformation.gov.in)

<sup>viii</sup> [http://www.ncdhr.org.in/others/11\\_Aug\\_Consultation\\_Report.pdf](http://www.ncdhr.org.in/others/11_Aug_Consultation_Report.pdf)

<sup>ix</sup> (PVCHR is one of them).

<sup>x</sup> Please see map 2 of annex - 9

<sup>xi</sup> <http://minorityaffairs.gov.in/newsite/sachar/sachar.asp>

<sup>xii</sup> <http://pvchr.blogspot.com/2010/02/india-please-immediate-support-to-mr.html>

<sup>xiii</sup> [www.twocircles.net/.../chidambaram look march 09 police firing muslims varanasi.html](http://www.twocircles.net/.../chidambaram_look_march_09_police_firing_muslims_varanasi.html)

[http://www.twocircles.net/2009nov17/people s tribunal condition muslim weavers varanasi tomorrow.html](http://www.twocircles.net/2009nov17/people_s_tribunal_condition_muslim_weavers_varanasi_tomorrow.html)

<http://pvchr.blogspot.com/2010/04/testimony-of-salim-uncensor-of-pain-and.html>

<sup>xiv</sup> <http://pvchr.blogspot.com/2010/02/india-again-vinod-kumar-gupta-and-his.html>

<sup>xv</sup> <http://new.nic.in/>

<sup>xvi</sup> <http://www.hindu.com/2006/11/26/stories/2006112602221000.htm>

<sup>xvii</sup> National Commission for Women, “Course curriculum on Gender Sensitization of Judicial Personnel” April 2009

<sup>xviii</sup> Section 498 A, Indian Penal Code

<sup>xix</sup> Protection of Women from Domestic Violence Act, 2005 Sec. 22 – 27).

<sup>xx</sup> [http://www.safhr.org/campaigns\\_impunity.html](http://www.safhr.org/campaigns_impunity.html)

<sup>xxi</sup> <http://testimony-india.blogspot.com/2010/04/end-impunity-for-police-abuse-and.html>

<sup>xxii</sup> <http://pvchr.blogspot.com/2010/04/anti-torture-bill-2010.html>

<sup>xxiii</sup>

[http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed\\_forces\\_special\\_power\\_act\\_1958.htm](http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm)