



Torture in India 2008

A State of Denial



Asian Centre For Human Rights



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Contents

1. EXECUTIVE SUMMARY: IMPUNITY AND TORTURE IN INDIA	1
2. METHODOLOGY	6
3. TORTURE IN POLICE CUSTODY	7
I. PATTERNS AND PRACTICES OF TORTURE IN POLICE CUSTODY	7
A. Custodial death	7
B. Extracting confessions	12
C. Police failure to implement legal protections	16
D. Failure of legal protections	18
E. Torture resulting from a failure to pay bribes	20
II. CUSTODIAL TORTURE OF WOMEN	20
III. CUSTODIAL TORTURE OF CHILDREN	23
IV. MEDICAL ACQUIESCENCE	25
V. POLICE REFORM AND IMPUNITY	26
4. TORTURE IN THE CUSTODY OF THE ARMED FORCES	31
I. WHO ARE THE ARMED FORCES IN INDIA?	31
II. TORTURE, REFORM AND IMPUNITY IN THE ARMED FORCES	31
III. TORTURE IN THE CUSTODY OF THE ARMED FORCES	33
5. TORTURE BY ARMED OPPOSITION GROUPS (AOGS)	40
I. NAXALITES' USE OF TORTURE	41
II. TORTURE BY AOGS IN THE NORTH EAST	43
6. TORTURE IN JUDICIAL CUSTODY	45
I. TORTURE IN PRISON CUSTODY	45
II. PRISON ADMINISTRATIONS IN INDIA	52
7. TORTURE BY OTHER PUBLIC OFFICIALS AND NON-STATE ACTORS	55
I. TORTURE BY OTHER PUBLIC OFFICIALS	55
II. TORTURE BY OTHER NON-STATE ACTORS	55
A. Torture by upper castes	56
B. Use of torture by recovery agents of the Banks	58
C. Use of torture by Panchayats	59
D. Use of torture by some civil society organisations	59
8. JUDICIAL INTERVENTIONS AGAINST TORTURE	61
I. JUDGEMENTS AWARDING COMPENSATION	62
II. JUDGEMENTS AWARDING PUNISHMENTS	75
9. NHRC'S FAILURE TO ADDRESS TORTURE	88
10. SCRUTINY BY UNITED NATIONS BODIES	95
11. THE RESPONSE OF THE INDIAN GOVERNMENT	99
I. UNCERTAIN COMMITMENT TO A NATIONAL LAW OUTLAWING TORTURE	99
II. NON-COOPERATION WITH THE UNITED NATIONS	100
12. RECOMMENDATIONS:	101
ANNEX I: FIGURES OF CUSTODIAL DEATHS REPORTED TO THE NHRC FROM THE YEAR 2003-2008	103

I. Executive summary: impunity and torture in India

"Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter." - Supreme Court of India, M.P. v. Shyamsunder Trivedi (State of Madhya Pradesh v. Shyam Sunder Trivedi and Ors. 1995 (4) SCC 262)

On 1 April 2007, Maoists killed two farmers identified as Amit (26) and Hungaram (50) of Bhansi village for selling land to the Essar Steel Company in Dantewada district of Chhattisgarh. The Maoists allegedly tortured them and then slit their throats.¹

On the night of 11 December 2007, a minor tribal girl, daughter of Mr Rajaram Debbarma of Gopal Nagar village in West Tripura was allegedly raped by Sub-Inspector Nandan Baidya (30) while in custody at Bisramganj police station in West Tripura. On 9 December 2007, the victim had eloped with a non-tribal youth identified as Subrata Deb. A police team led by Sub-Inspector Nandan Baidya took them into custody after the girl's father Mr Rajaram Debbarma, a farmer, reported the events as abduction. However, Sub-Inspector Nandan Baidya released them after allegedly taking a bribe of Rs 5,000. On 11 December 2007, both the minor tribal girl and her boy friend, Subrata Deb were again taken into custody by Sub Inspector Nandan Baidya. At around 02.30 hours Sub Inspector Baidya sent away woman constable, Munna Roy from the police station and then allegedly raped the victim. The victim was released in the morning. Sub Inspector Baidya issued threats to the victim not to disclose the incident to anybody. Sub Inspector Baidya has been suspended and arrested.²

"Torture in India 2008: A State of Denial" by the Asian Centre for Human Rights (ACHR) is the first nationwide assessment of the use of torture in India. It examines the use and scale of torture in a country that constitutes more than 16% of the population of the world.

Given the scale of the task, this report is not exhaustive. It rather aims to chronicle patterns, practices and the implications of the widespread use of torture. The report covers violations and abuses by India's burgeoning armed opposition groups but equally the security forces and prison officials in India.

1. Naxals kill 2 farmers for giving land to Essar Steel, The Indian Express, 2 April 2007

2. Tripura cop arrested for rape - Sub-inspector assaults tribal girl in custody, The Telegraph, 17 December 2007

The report focuses particular attention on the widespread use of torture against both women and children in India.

The extent of the problem of torture in India:

There are no accurate data on the use of torture in India. The paucity of information is an issue of concern. For example, the National Human Rights Commission (NHRC) produces figures on custodial deaths. These represent only a very limited account: cases of torture that do not result in death are not recorded. The NHRC figures do not differentiate between deaths due to legitimate causes like old age, and deaths as a result of torture.

Most credible human rights groups observe the following trends in India. Torture is routine amongst armed opposition groups. Torture is integral to counter-insurgency operations conducted by the military. Torture is used routinely in police detention. While torture is applied less systematically by prison officials, their complicity with prisoner gang violence and ill treatment implicit in appalling prison conditions are serious violations. This report concurs with these findings.

Any official denials of this level of torture should be balanced against the view of the Supreme Court of India that has pointed out that the police who *'more often than not seek to pervert the truth'*.³ Denials should be measured against directives of the NHRC itself - an official statutory body established under a parliamentary Act. In 1993 the NHRC issued a public directive on custodial deaths which expressed concern over:⁴

"(...) reported attempts to suppress or present a different picture of these incidents".

Again in 2005, in a directive issued to State Chief Ministers on post-mortem examinations of custodial deaths the NHRC stated:

"a systematic attempt is being made to suppress the truth and the [post mortem] report is merely the police version of the incident".

Allegations of torture are, of course, not necessarily torture, but they reveal the scale of the problem and more fundamentally require action by the Government of India. The failure of the state to act is in itself a violation of human rights. And based on its actions in the many cases presented in this report, the failure is of serious concern. In a country with a functioning rule of law the burden is on the State to provide the means, laws and mechanisms to protect all citizens, even those deprived of liberty, from abuse either by the state or other body or individual. Where these protections fail the State must initiate impartial

3. See quote one.

4. Letter No. No. 66/SG/NHRC/93

investigation, establish the facts based on the available evidence and, should there be sufficient evidence, proceed to trial.

This report finds serious weakness in institutions that should check torture in India. The Courts have proven a powerful tool against torture but are hampered by lack of specific legislation, immunities offered under the Criminal Procedure Code and national security laws as well as the more general problem of judicial delay.

The focus of concern centres on the NHRC. In the past the NHRC has made a positive contribution but its powers, including the power to conduct investigations have not effectively deployed against torture. NHRC's preference for interim monetary compensation over recommending prosecution is a cause for further concern. More troublingly, this report documents a particular case where the NHRC has closed it after the investigating authorities (including a senior police chief official) have concluded that torture took place. The NHRC has denied the complainants access to this important evidence and a fair hearing despite the legal obligation to do so. ACHR asserts that this is a routine practice and there is a need for urgent review.

A State of Denial:

India is in a worrying state of denial. The Home Minister attributes custodial deaths to "illness/natural death, escaping from custody, suicides, attacks by other criminals, riots, due to accidents and during treatment or hospitalisation".⁵ These attitudes are widespread and explain in part the inadequacy of India's actions to combat torture in the legal, political and institutional domain.

There are two clear steps that have been repeatedly recommended for the eradication of torture: the enactment of a national law against torture and the ratification of the United Nations Convention Against Torture. The government's position on adopting a national law against torture is at best unclear. India has not ratified the UN Convention Against Torture despite a commitment to do so while signing the same in 1997. To its credit India has found the will to enact legal protections against torture of persons belonging to vulnerable groups like women, children, scheduled castes and scheduled tribes. But it is unclear why or how these laws will be meaningfully implemented when torture remains an acceptable operational practice of the law enforcement personnel.

These attitudes also explain the persistence of the compounding problem of impunity for acts of torture in India particularly in regions affected by armed conflict. To take legal measures against the armed forces deployed in conflict situations, prior permission from central government is mandatory (under Section 197 of the Criminal Procedure Code and Section 6 of the Armed Forces

5. UNSTARRED QUESTION NO 1281 ANSWERED ON 12.03.2008

Special Powers Act of 1958). Unsurprisingly prior permission has seldom been granted or requested. Even in cases where the Government's Central Bureau of Investigation has found compelling evidence of torture by the security forces, permission to prosecute has been denied. It reveals a dangerous weakness in India's system of justice: a pervasive regime of impunity.

Impunity creates a dangerous perception among the security forces that they are above the law. It requires wider change than ratification and enactment of a national law against torture. Impunity results in the well documented practice of torture as well as other grave human rights violations. The implications of impunity for the health of India's democracy and its rule of law go beyond individual cases of abuse.

Checks and balances in any democracy are neither static nor guaranteed. If not defended, protections weaken over time, particularly, when challenged by the demands of internal conflict. This is why the individual emblematic cases in this report are so important. They are indicators - emblems - of a wider institutional malaise but at the same time represent opportunities to restore the rule of law.

One of the central themes of this report is that reform has been needed for a very long time. Torture in India is part of an inherited legacy. Indian criminal and penal laws and their accompanying institutions derive from archaic and punitive colonial legislation and institutional practice. Part of the solution to torture in India is an imperative need for an inclusive public debate on reform of the security forces and indeed a public debate on the use of torture as part of that reform process. Arguing for reform is not particularly contentious, indeed there is widespread acceptance, at least in the domain of the police and prison service, of its need. Yet a reform process has not happened despite establishment of repeated commissions and their endless recommendations.

Reform will require substantial political will. There is new urgency for reform. As the Prime Minister has pointed out, the threat from India's armed opposition groups is increasingly serious. If human rights violations, committed both by the security forces and armed groups, are not promptly, thoroughly, independently and impartially investigated and those responsible brought to justice, the system which allowed them to commit those crimes will remain intact. It is difficult to see how reform would succeed under such circumstances.

The consequences are serious: the prospects for counter insurgency success will diminish significantly and the space for ever more violent and extreme Armed Opposition Groups (AOGs) will grow ever greater; AOGs that will continue to commit appalling acts of torture with impunity. This does not of course mean that AOGs have no legal obligations. The report details their obligations under humanitarian law.

ACHR accepts that mistakes happen in conflict and in the conduct of normal police operations, but the willingness, or otherwise, of the security forces and the

State to address these 'mistakes' sets the tone for the conduct of any counter-insurgency and indeed the provision of normal public security.

Mistakes, unless quickly nipped in the bud, soon become routine. The routine use of torture and other violations perpetrated with impunity by Indian security forces, at best, sends a worrying message. It is unclear how security forces' contempt for the rule of law will contribute to respect for the rule of law by the people.

Suhas Chakma
Director

2. Methodology

This report does not seek to provide an exhaustive examination of torture in India. The purpose of the research is to examine primary trends of torture and investigate their implications. The report is primarily focused on three central areas of concern with regard to the state: the use of torture by the police, by prison authorities and the military/armed forces. It examines the primary reason behind the use of torture - the extraction of confession. The report provides separate analysis of the use of torture against particularly vulnerable groups notably women, children, scheduled castes and scheduled tribes.

Particular attention is given to institutional responses to torture. Attention is paid to concerns over role of India's National Human Rights Commission. The report examines the role of the judiciary in the eradication of torture and provides specific judgements. The report also examines the use of torture by Armed Opposition Groups (AOGs). It examines the important and overarching issue of impunity and the need for reform of the security sector.

The report presents individual cases of torture and analysis. In each Section the relevant international and national protections are examined in theory and in practice.

Finally, the report examines the response of the international human rights system and the lack of inadequate response of the government of India to combat torture.

3. Torture in police custody

I. Patterns and practices of torture in police custody

Analysis of torture suggests the period of highest risk is the first twenty four hours following detention. There are no safeguards to guarantee that a person taken into custody will be recorded or anyone arrested will have prompt access to a lawyer and impartial medical examination upon arrival and release. The lack of an effective system of continued and independent monitoring of all places of detention further facilitates torture.

A. Custodial death

In 2006-2007, the NHRC received a total of 1,597 custodial death cases including 118 cases in police custody, 1,477 cases in judicial custody and two cases in the custody of defence and paramilitary forces. In 2005-2006 the NHRC received 1,575 custodial deaths including 124 in police custody and 1,451 in judicial custody.⁶ In 2004-2005, NHRC received 1,493 cases of custodial deaths including 136 deaths in police custody and 1,357 deaths in judicial custody.⁷

In 2003-2004, there were 1,340 custodial death cases including 183 in police custody and 1,157 in judicial custody. In 2002-2003, NHRC received 1,463 custodial death cases including 162 deaths in police custody and 1,300 deaths in judicial custody, one death in the custody of para-military forces.⁸

The statistics of NHRC imply that in the last five years 7,468 persons at an average of 1,494 persons per year or four persons in a day died in police and prison custody in India. However, these figures represent only a fraction of the actual cases of torture. Cases of torture not resulting in death are not recorded. They do not differentiate between deaths in custody resulting from legitimate causes, for example old age, and due to the use of torture. Moreover, the NHRC has no mandate to investigate or record human rights violations perpetrated by military and para-military forces. NHRC often reports that there were no custodial deaths resulting from torture in the conflict afflicted state of Manipur or in Jammu and Kashmir. This assertion lies uneasily with the high levels of well documented cases in those states. As this report demonstrates, torture is integral to counter-insurgency operations.

Individual cases of custodial death through torture:

On 18 February 2007, Mr Vinod Chandorkar was allegedly tortured to death in the custody of Wadala police station in Mumbai, Maharashtra. He was arrested

6. Information obtained by ACHR from NHRC through RTI application

7. NHRC's Annual Report 2004-2005

8. NHRC's Annual Report 2003-2004 and Annual Report 2002-2003

earlier in the day on the basis of a complaint filed by his wife alleging domestic violence. After the opposition parties raised the question in the State Assembly House, Deputy Chief Minister R R Patil ordered an investigation into the incident by the Criminal Investigation Department.⁹

On 24 April 2007, Hafiz Kamaluddin, a Madrassa teacher, died after allegedly being tortured in the custody of the Police Post of Prem Nagar under the Sultanpuri Police Station in North-West district of Delhi. The police claimed that Kamaluddin was mad, quarreled with a cycle rickshaw puller and was injured; injuries that resulted in his death at the Sanjay Gandhi Hospital. The People's Union of Civil Liberties (PUCL) which investigated the case found serious anomalies in the police claim. Many people at the hospital stated that they saw a Muslim man lying on the ground with his legs and hands bound. He repeatedly requested for water but the police refused. The police could not produce the alleged rickshaw puller Rajender with whom Kamaluddin had allegedly quarreled. When people protested his death at the hospital premises, police detained about 34 persons and beat them at the police station. For example, one Irfan Ulla Khan (67) alleged that the Head Constable caught him by his beard, spat on his face, and beat him. Many others who were interviewed by PUCL alleged similar ill-treatment at the police station.¹⁰ The Delhi government ordered a magisterial investigation.

On the night of 14 June 2007, Mr Bhaskar Behera (20) (son of Rohit Behera) was beaten to death by a police team headed by Assistant Sub-Inspector NK Das at Rajnagar village under Athgarh police station in Orissa. Mr Behera was mistakenly identified as a suspect.¹¹

On 11 July 2007, one Mr Manoj (33) was illegally detained by the police on the grounds that he was 'found in suspicious circumstances' near Kottanad in Kerala. He was taken to Perumpetty Police Station in Malappally taluk, the smallest administrative unit, of Pathanamthitta district of Kerala and was allegedly tortured to death.¹²

On 21 September 2007, Mr Matabur Ali of Brahmangaon village died in the custody of the Kalain police station in Cachar district of Asom. He was arrested on 20 September 2007 following a family feud. A magisterial probe was ordered.¹³

On 22 September 2007, Mr Sathilal Singh alias Bholu of Na Pukuri area in Tinsukia of Asom died in the custody of the Tinsukia police station. He was

9. Patil orders CID probe into custodial death, The Free Press Journal, 31 March 2007

10. Custody death of Hafiz Kamaluddin and subsequent atrocities by police in Delhi, Sultanpuri, PUCL, available at: <http://www.pucl.org/Topics/custody-deaths/2007/hafiz-kamaluddin.html>

11. Police beat youth to death in Athgarh, The Kailinga Times, 16 June 2007

12. Man dies in custody, The Hindu, 12 July 2007

13. Police station torched, The Sentinel, 22 September 2007

detained in connection with theft. His family alleged that the deceased died as a result of the torture inflicted while in detention.¹⁴

On 11 December 2007, Mr Syed Ali (50), a resident of Parapangadu in Kerala, was allegedly tortured to death in Vadapalani police station in Chennai of Tamil Nadu. The deceased sold tea at 100-Foot Road, Vadapalani. Following information that lottery tickets were being sold in the area, police picked up Mr Syed Ali and another suspect for interrogation. The police claimed that the victim complained of ill health and was rushed to a private nursing home in the same locality, where he was declared dead. Mr Syed Ali's son Jamshid and other relatives alleged that he was assaulted by the policemen at the police station, and injuries sustained caused his death.¹⁵

On 16 December 2007, Mr Maqsood Shareef (28), a resident of Kondappa Badavane under Yelahanka police station in Bangalore, died at the Jayadeva Hospital, Bangalore in Karnataka, a few hours after he was detained by the police. He was detained at Kengeri police station in Bangalore after a gang fight. The police also arrested Ejaz (48), Asifullah Khan (40), Nusrath Ali (22), Shoukath Ali (22) and Khaleel Pasha (34) on related charges. According to Station House Officer of Kengeri police station, K C Asundi, Maqsood Shareef complained of severe pain in the chest one hour after his detention. He was taken to Jayadeva Hospital where he died while undergoing treatment. However, the family of the deceased claim that Mr Shareef suffered no heart related ailment. Mr Maqsood Shareef's wife, Ms Shabana Begum alleged that he was tortured to death by the police.¹⁶

Custodial death through torture: alleged suicide

The police routinely cite "suicide" as a cause of death in custody. In 2007, many victims allegedly committed suicide by variety of means.

In a reply to the Rajya Sabha, Upper House of Indian Parliament, on 12 March 2008, Home Minister Shivraj Patil cited suicide as one of the primary causes of custodial death.¹⁷ The Home Minister failed to clarify as to why so many accused had committed suicide in police detention, what had led them to act in this manner and how they had accessed the means (knives, poisons and open electric cables) etc. It equally ignores the psychological impact of torture that can inculcate feelings of deep guilt and depression sufficient to cause suicide.

14. 'Custodial' death sparks off controversy, 2 suspended, The Sentinel, 25 Sept

15. RDO inquiry ordered into alleged custodial death, The Hindu, 13 December 2007

16. Death sparks tension, The Deccan Herald, 17 December 2007

17. UNSTARRED QUESTION NO 1281 ANSWERED ON 12.03.2008

Alleged suicide and international law:

The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provide that there shall be: "*thorough, prompt and impartial investigation*" of all suspected cases of unlawful killing, including where complaints by relatives suggest unnatural death. The principles state that if the "*body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy [which] shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. ... In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.*" The principles also state that families of the deceased and their legal representatives shall have access to all information relevant to the investigation, and have the right to insist that a medical representative be present at the autopsy.

Suicide does occur. However, ACHR's examination of a number of cases suggests that the causes of death are often cause for concern, particularly over regular allegation, by the family of the use of torture; torture that either impacted on the victims actions or resulted in death that was subsequently covered up. This is supported by the rulings of the Courts and the directives of the NHRC. The issue is the failure of the State to act.

ACHR investigated the alleged suicide of Mr Rohtas Singh, son of Pratap Singh of Banchari village of Hodal sub-division in Faridabad district of Haryana on 17 April 2007 within hours of his arrest. ACHR conducted an on-the-spot investigation and found compelling evidence to suggest that the victim died as a result of torture. The police claimed that the victim committed suicide with a quilt cover. The question as to where the quilt cover came from during early summer was not answered. Nor were the injuries to various parts of body of the deceased, most obviously, on the chest and legs explained. Nor was the bleeding through ear and nose explained. The Post Mortem Report (PMR) recorded that the ante-mortem injuries were "*caused by blunt force*". The PMR recorded "*death by hanging*" but it failed to indicate whether it was a case of suicide or homicide.¹⁸

In another case, ACHR was informed by the family that Grohon D. Shira (37), (son of Elesing D. Shira) of Darang A'Kep (Nongalbibra) village was arrested by police from Baghmara police station in the South Garo Hills district of Meghalaya and remanded to seven days police custody (in connection with case number 32 (6) 2007 under Sections 307/326/427 of Indian Penal Code read with Section 3/5 of Explosive Substances Act) registered with the Baghmara police station on 12 October 2007. He was allegedly tortured to death sometime during

18. The full report of ACHR's investigation in the custodial death of Rohtas Singh is available at <http://www.achrweb.org/ncpt/rohtas.pdf>

the night of 17 October 2007. The police claimed that he had hanged himself inside the police station toilet by using his T-shirt. In this case too, the Post Mortem Report concluded that the cause of death was "hanging" without commenting whether it was suicide or homicide.¹⁹

In 2007 ACHR documented number of cases where police accused the victims of committing suicide. Some of the cases are given below:

Case 1: On 2 April 2007, Mr Ram Lal Sahu (50) allegedly committed suicide in the Bandri police station in Sagar district of Madhya Pradesh following his arrest on 1 April 2007. Assistant Sub Inspector Mr Purushottam Tiwari and constable Mr Arun Kumar were suspended over the death.²⁰

Case 2: On 16 April 2007, Mr Kunnu Swain died in the custody of Pandesara police station in Surat of Gujarat a few hours after he was arrested on charges of theft. The police claimed that he hanged himself by tying his shirt to iron rods in the police lock-up. A magisterial inquiry was ordered.²¹

Case 3: On 8 May 2007, Mr Abdul Rasheed (son of Abdul Rehman) allegedly committed suicide by slitting his throat at Buddal police station in Rajouri in Jammu and Kashmir. He was arrested on the charge of murder.²² It is unclear as to how the deceased had access to a knife.

Case 4: On 16 May 2007, Mr Chunilal Kissan (35) allegedly committed suicide by hanging himself with a towel inside the bathroom at the Brahmanitaranga police station in Sundargarh district of Orissa. He had been arrested in connection with a theft case on the same day.²³ ACHR investigated the case and was informed by the local human rights defenders that the victim was tortured to death. This was substantiated by the wife of the victim who saw injuries on the dead body. NGOs were denied access to the body. The death body was cremated immediately with the consent of victim's wife after the police promised to pay some compensation. After cremation, the police refused to pay any compensation.

Case 5: On 21 May 2007, Ms Geeta Devi (30) allegedly committed suicide by consuming poison alleging police torture shortly after she was released from police custody of Gourihar police station under Chhattarpur district of Madhya Pradesh. She was interrogated in connection with theft.²⁴

19. Communication from a partner NGO in Meghalaya

20. Two police officials suspended, *The Pioneer*, 4 April 2007

21. Surat custodial deaths: Lock-up check ordered, *The Times of India*, 19 April 2007

22. COPS SUSPENDED - Protests rock Budhal over custodial death, *The Tribune*, 10 May 2007

23. Tension after lock-up death, *The Statesman*, 18 May 2007

24. 'Harassed' woman commits suicide in Chhattarpur, *The Pioneer*, 24 May 2007

Case 6: On 11 June 2007, Mr Chandgi Ram (about 65 years), an under-trial prisoner in a rape case, allegedly committed suicide using a towel in the lock-up at Pataudi police station in Gurgaon of Haryana. He was arrested on 7 June 2007.²⁵

Case 7: On 25 June 2007, Mr B. Parameswar Reddy (35), a murder suspect was arrested and held in the lock-up of Nalla Chervu police station of Anantapur district in Andhra Pradesh. On 26 June 2007, he died in suspicious circumstances. The police claimed that he hanged himself with a piece of cloth from the ceiling. However, the victim's relatives alleged that Sub-Inspector Devanand and Kadiri Circle Inspector Lakshmi Narayan had beaten Mr Parameswar Reddy to death.²⁶

Case 8: On 9 November 2007, Mr Bikram Vishwakarma was allegedly tortured to death in Singtam police station in East Sikkim district in Sikkim. The victim was arrested on 8 November 2007 in connection with theft. The police claimed that he had hanged himself in the toilet of the police station using his underwear.²⁷

Case 9: On 3 August 2007, Mr Jujjuri Satyanarayana of Tirumalakunta of Ashwaraopet mandal in Khammam district of Andhra Pradesh died in the Nakrekal police station under Nalgonda district of Andhra Pradesh. The police claimed he hanged himself with his pants in the toilet.²⁸

Case 10: On 19 August 2007, Mr Mandip Kumar was allegedly tortured to death at the Dasuya police station at Dasuya town under Hoshiarpur district of Punjab. The police claimed he had committed suicide by touching exposed electric cables but his family alleges that he was tortured during two-day police remand.²⁹ Following the death, a First Information Report was registered against the Station House Officer (SHO) and Investigation Officer. However, the police authorities failed to arrest the accused police officials. On 23 August 2007, the relatives of the deceased met the Deputy Commissioner of Hoshiarpur in order to demand the arrest of those responsible for the death.³⁰

B. Extracting confessions

"Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our

25. 65-yr-old rape accused hangs self in custody, The Times, 12 June 2007

26. Suspect found dead in lock-up, The Deccan Chronicle, 27 June 2007

27. Lock-up death under probe, The Telegraph, India, 12 November 2007

28. Man ends life in police station, The Hindu, 4 August 2007

29. 2 COPS SUSPENDED - Youth dies in custody, The Tribune, 20 August 2007

30. CUSTODIAL DEATH - Cops' arrest demanded, The Tribune, 24 August 2007

constitutional culture than a State of Official running berserk regardless of human rights. Article 21, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in police and prison establishments have sympathy for the humanist creed of that article instead of a rough treatment by police for getting information or confession." - Supreme Court of India (AIR 1981 SC 625)

Under Section 24 of the Evidence Act of India confessions made under coercion are inadmissible as evidence. It states: "*A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him*".

Extracting confessions: Police torture and common crimes

A large number of reported cases of torture and custodial death result from attempts to extract a confession relating to theft or other petty offences. Clearly this suggests that the suspects belonging to the lower economic and social strata are particularly vulnerable.

On 18 May 2007, Mr Fumman Singh, resident of Kotu Wala village in Ferozepore district of Punjab, was subjected to torture after he was arrested on the charges of theft. The police allegedly stripped him in the presence of other suspects in the police lock up and subjected him to humiliation. Then, he was allegedly bound with ropes and beaten. Four police personnel allegedly stood on his legs during the beating and extracted a confession. He denies the crime and later retracted the confession.³¹

Mr Kamal Acharjee, resident of Kalir Bazar village under Sabroom subdivision of South Tripura, Tripura was admitted to Manu Bazar hospital in a critical condition after being allegedly subjected to torture to extract a confession for murder.³² On 31 July 2007 Mr Acharjee was picked up from his house and detained at the Manu Bazar police lock-up. He was then allegedly subjected to torture by Sabroom Sub-Divisional Police Officer (SDPO) Mr Amarjit Debbarma to extract confession with regard to the death of Mr Haricharan Tripura, an activist of the Communist Party of India (Marxist). Mr Acharjee stated that: "*The SDPO pushed pins under nail, even thrust chilly powder into anus and nose. Then they beat me with prickly rose-flower branches all over the body*". He apparently fainted as a result of the torture.³³

31. POLICE TORTURE - Rights body seeks report, The Tribune, 23 May 2007

32. Torture slur on police in Tripura, The Telegraph, 3 August 2007

33. Torture slur on police in Tripura, The Telegraph, 3 August 2007

On 2 October 2007, police picked up a low caste dalit identified as Mr Ram Milan (22), (son of late Bairagi) of Mitawa village, under Maharaj Ganj police station in Jaunpur district of Uttar Pradesh. He was detained in connection with a murder. While taking him to the police station, the police beat him up. In the Maharaj Ganj police station, the station officer, Mr Kanchan Singh, allegedly forced the victim to confess to the crime. When he protested his innocence, they put planks of wood on his knees and two policemen walked on the wood. On 3 October 2007, he was released on the condition that he would present himself to the police station when called to do so.³⁴

On 7 October 2007 at around 0100 hours, 15 to 20 policemen (some of them in civilian clothes) raided the house of Mr Tarkeshwar Tiwari (21) (son of Someshwar Tiwari) at Bhabanpura village, under Sakaldeeha police station, in Chandauli district, Uttar Pradesh. They arrested Mr Tarkeshwar Tiwari and his brother-in-law, Mr Sachitanand, without an arrest memo. They were detained in the police lock up overnight. The police implicated them in the murder of one Manoj alias Guddu Yogendra Singh. The police allegedly attempted to extract confessions. Mr Tarkeshwar Tiwari stated that he was beaten up by the police when he pleaded his innocence. On 8 October 2007, as a result of public protest Mr Tiwari was released while Mr Sachitanand was sent to prison.³⁵

On 10 October 2007, Mr Sanjay Yadav, a day labourer of Matigaon village, under Chandauli police station, in Chandauli district, Uttar Pradesh was arrested without an arrest memo and detained in the lock up of Chandauli police station. In police custody, he was allegedly beaten up in order to extract a confession. He was released at 1500 hours on 11 October 2007.³⁶

On the night of 19 October 2007, Mr Ghanshyam Choudhary (son of Nanuram Choudhary) of Khatipura, was allegedly tortured to death in police custody at Heera Nagar Police Station in Indore of Madhya Pradesh. He was detained on suspicion of theft. Heera Nagar police station in-charge, Mr D P Ahirwar and other police personnel, who were drunk, allegedly tied the deceased to a tree and beat him up. His condition deteriorated in the police lock-up. Subsequently, he was taken to Bapat hospital from where he was taken to Maharaja Yashwantrao hospital, Indore where he died.³⁷

On 19 December 2007, Mr Ganesh Barnawal was arrested by the police on suspicion of murder in Deoghar in Jharkhand. He was allegedly tortured by the police to extract a confession. According to the victim, two policemen tied exposed wires around his neck and subjected him to electric shocks until he lost consciousness. On 20 December 2007 he was released in a serious condition.³⁸

34. Information provided by People's Vigilance Committee on Human Rights (PVCHR)

35. Ibid

36. Ibid

37. Custodial death: Irate mob torch police station, The Central Chronicle, 21 October 2007

38. Torture slur on Deoghar cops, The Telegraph, India, 22 December 2007

Extracting confession: police torture and crimes of murder and rape

Those who are arrested on suspicion of rape and murder are routinely subjected to torture to extract a confession.

Mr Ashok Shah, a political leader associated with the Communist Party of India (Marxist-Leninist), died following torture by police on 5 October 2007. He was arrested on charges of attempted rape in Runi Saidpur under Sitamarhi district of Bihar.³⁹

On 23 April 2007, Mr Rishi Kumar (son of Mr Falail Singh) of Kundi Chirala in Thathri area of Doda district in Jammu and Kashmir was arrested on charges of murder. On 24 April 2008, Mr Kumar died in custody. It was alleged that he was subjected to torture by in-charge of Karara police post, Sub Inspector Mr Irfan Wani.⁴⁰

Extracting confession: police torture and dowry crimes

A large number of those detained on dowry charges - property or valuable security that the female in a marriage has to give to her husband - are also subjected to torture.

On 23 January 2007 Mr Prabhas Singh of Khurhan village under Alamnagar police station died at the Sadar Hospital of Medhapura district of Bihar after being subjected to torture. According to the doctors, there was blood in his mouth, nose and ears when he was brought to the hospital. He was picked up by the police of Alamnagar police station in Madhepura district of Bihar on 22 January 2007 in connection with a dowry case filed by his wife. Sub-Inspector Mr Shiv Shankar Chowdhury allegedly demanded a bribe from the victim to withdraw the case. Singh obviously refused or failed to make the payment and was then allegedly tortured to death. The police registered a case of murder against Sub-Inspector Chowdhury.⁴¹

On 22 May 2007, Mr Samir Martha of Sadheigada village in Orissa was allegedly tortured to death at Khurda police station. The deceased and his parents, Kuber Martha and Chanchala, were arrested following a complaint by Mr Samir Martha's wife Gitanjali alleging dowry related violence. The deceased's parents alleged that Mr Samir Martha was tortured in custody. He was first taken to Khurda district hospital, then transferred to the Capital Hospital and finally taken to SCB Medical College, Cuttack, where he was declared dead.⁴²

On 19 October 2007, Mr Pamujula Ramanaiah (66) of Indukurpeta died at the Kovur police station in Nellore district of Andhra Pradesh. He was arrested on

39. Bihar CPI(ML) leader dies in custody, The Indian Express, 6 October 2007

40. Custodial death triggeres protest protest in Thathri, The Kashmir Times, 26 April 2007

41. Man refuses to bribe cop, dies in custody, The Indian Express, 24 January 2007

42. Custodial death in Khurda, The Pioneer, 24 May 2007

18 October 2007 in connection with a dowry harassment case filed by his daughter-in-law, Ms Pamujula Sakunthala. The police claimed that the deceased suddenly fainted at the police station and was taken to the government hospital in Kovur but later died during medical treatment.⁴³

C. Police failure to implement legal protections

Article 22(2) of the Constitution of India makes it mandatory for production of an arrested/detained person *"before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."*

The police seldom produce those arrested within 24 hours. Many are never produced before the court and are released after torture from the custody. On 18 September 2007, Mr Kamla Prasad Yadva (son of Kanhaiya Lal) was arrested by the police at Horaiya village in Jaunpur district of Uttar Pradesh. Tilak Dhari, a resident of the same village had apparently lodged a complaint with the police against Mr Kamla Prasad purportedly in an attempt to take his land. Two policemen including Vivek Singh, the in-charge of police chowky of Bhaupur Newariya, took the victim to the police station. The victim was beaten up on the way to the police station as well as at the police station. As a result of torture, he fainted. His ears were injured during the treatment. He was deprived of food. The next day, he was released. Fearing further police action the victim did not seek medical assistance.⁴⁴

At about 1830 hours on 8 October 2007, a policeman arrived at the fruit shop of Mr Bhageran Mahto (45) (son of Adalat Mahto of Bihar) at Benaras, Uttar Pradesh. The policeman brought a witness with him. The witness identified Mahto as the buyer of a stolen mobile phone. Mr Bhageran Mahto was taken to Mahmoorganj police chowki, Benaras, Uttar Pradesh. He alleged that there the policemen planted guns and bullets on him and issued further false allegations. Mr Bhageran Mahto was then taken to Manuadih Police Station. It is then alleged that three policemen and the station officer, Mr Shiva Nand Mishra, beat his legs with sticks. At 23:00 hours policemen tied his hands. He was forced to lie on a bench. He was then tortured again. While two policemen held Bhageran Mahto down, poured water in his nose and mouth. He was released on 9 October 2007. No charges were framed against the victim.⁴⁵

On 23 November 2007, Mr Kewal Ram (42) (son of Gopal Das) and watchman at the Jammu & Kashmir Co-operative Housing Corporation at Mishriwalla on

43. Old man dies in custody, The Deccan Chronicle, 20 October 2007

44. Information provided by People's Vigilance Committee on Human Rights (PVCHR)

45. Ibid

the outskirts of Jammu, allegedly succumbed to injuries sustained during a beating inflicted by the police. According to the information available, Mr Kewal Ram was posted at a construction site. Mr Kewal Ram was apparently working at the construction site with another watchman, Mr Hazara Singh (alias Bholla). At 00.30 hours Assistant Sub Inspector Mr Lal Chand, accompanied by two constables arrived at the site and instructed both watchmen to leave. When they refused, the police attacked them. While Mr Hazara Singh managed to escape, the police's attacks left Kewal Ram in a critical condition. He was discovered and taken to the Sub District Hospital in Sarwal by his family. He later died in transit to the Government Medical College Hospital.⁴⁶

On 11 April 2007, Mr Vijay Kumar (32), resident of Silla Khera village and Mr Jora Singh, (son of Rai Singh) of Sind Tehsil, an administrative headquarter of a number of villages, under Kaithal district of Haryana were detained by police headed by Assistant Sub Inspector Parma Nand. They were charged under Section 109 of the Indian Penal Code relating to punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment. He was detained and tortured at the Sadar police station in Kaithal district of Haryana. The medical legal report (MLR) reported significant injury to the body.⁴⁷

On 14 April 2007, businessman Mr Suresh Chandra Rout was detained at Dhamra Police outpost in Bhadrak district of Orissa and subjected to torture by the officer in-charge, Mr Mohanty. The victim was picked up by Mr Mohanty without any apparent reason while returning from Kontai in West Bengal to Dhamra.⁴⁸

On the night of 16 August 2007, Mr Ashok, a physically challenged painter, went to lodge a First Information Report at Nasirpur police post of the Sihani Gate Police Station in Ghaziabad of Uttar Pradesh. According to his statement, a drunken police constable attacked him. During the attack he was repeatedly kicked and punched and Mr Ashok's artificial leg was disposed of. The policeman hit the victim repeatedly with a rifle butt until the victim lost consciousness. Doctors at the Ghaziabad District Hospital in Uttar Pradesh had to amputate half of two fingers of the right hand of Mr Ashok because of the injuries sustained during the attack.⁴⁹

Many victims are forced to sign blank confessions before being released. On 25 May 2007 Manipur Police detained Mr Moirangthem Budha Singh (27) (son of Mr. Tombi Singh) of Ngangkhalawai Awang Leikai, at Moirang police station in Bishnupur district of Manipur. He was detained for five days without being produced before the court. During his illegal detention in the lock up, he was

46. Man dies after police beating in Jammu suburb, The Kashmir Times, 24 February 2007

47. Police harassment alleged, The Tribune, 14 April 2007

48. Cop suspended for torture, The Pragativdi, 24 April 2007

49. Painter thrashed by cop, loses fingers, The Times of India, 21 August 2007

allegedly coerced into signing a blank confession. He was then transferred to Sajiwa Jail. He was produced before the Chief Judicial Magistrate, Bishunupur on 5 June 2007 and released on bail.⁵⁰

On 1 March 2007, Mr Chandrabhan (24) (son of Babulal) was allegedly tortured to death after being held in the Pipri police station in Gwalior in Madhya Pradesh. He was allegedly tortured for having eloped with his girlfriend, Ms Ramshri Bai Lodhi. The couple eloped on 26 February 2007. Ms Ramshri Bai Lodhi's family then filed a complaint with the Pipri police station. The police arrested the couple in Patkheri village. They were held in separate lockup cells. The police claimed that the victim then committed suicide. However, the relatives of the deceased alleged that he died after succumbing to wounds inflicted from torture.⁵¹

On 8 March 2007, a senior Maoist leader identified as Mr Nathun Kahar was allegedly tortured to death in the custody of Konch police at the police station in Gaya district of Bihar. Mr Kahar was arrested on 6 March 2007. He was denied access to a magistrate.⁵²

On 4 September 2007, Mr Girish Shiggaon (28) was allegedly tortured to death at Keshwapur Police Station in Hubli in Karnataka. He was detained in connection with an alleged gambling crime. After his death, the deceased's body was allegedly dumped in an open sewer by the police.⁵³

On 12 November 2007, Mr Goutam Ravidas was arrested by the police of Gajole Police Station in Malda district of West Bengal. He was detained on charges of torturing his wife for a dowry. He was illegally detained for two days without being produced in court and during that time allegedly subjected to torture. On 14 November 2007, he died in custody.⁵⁴

On 23 December 2007, Mr Anees alias Oole (18) of Banjaran Khera village under Malihabad police station in Lucknow of Uttar Pradesh, was arrested following a scuffle. On 24 December 2007, Anees's mother visited him in the police lock up. Anees reportedly alleged he had been tortured by the police on 23 December 2007. On 25 December 2007, he was found dead in custody.⁵⁵

D. Failure of legal protections

While the legal provision to produce suspected criminals before the Courts is an effective protection this is not always the case. Many victims of police torture are

50. Complaint of Asian Centre for Human Rights with the National Human Rights Commission of India dated 5 December 2007

51. Youth commits suicide in police custody, *The Pioneer*, 2 March 2007

52. Senior Naxalite dies in custody, *The Telegraph*, 9 March 2007

53. Irate mob attacks police station, *The Deccan Herald*, 5 September 2007

54. Custody death heat on cops, *The Telegraph, India*, 15 November 2007

55. Cops suspended over custodial death, *The Times of India*, 27 December 2007 (online)

produced before the Courts even following the violation. It is difficult to view this as anything other than blatant contempt for the rule of law.

On 10 July 2007, Mr Rajesh (18), a resident of Khair in Aligarh district of Uttar Pradesh, was arrested by the police of Nithauli Kalan Police Station in Etah, Uttar Pradesh. He was arrested on charges of abduction and rape. He was allegedly tortured during the night of 10 July 2007. In the morning of 11 July 2007, he was produced before a court in Etah. His health had deteriorated. He collapsed on the verandah of the Court and died.⁵⁶

On 2 August 2007, Mr Giasuddin Mondal (28) was arrested by police from Deganga Police Station in North 24 Parganas district of West Bengal. Although he was taken by Sub Inspector Ayub Ali from his shop on 2 August 2007, the police claimed that he was arrested on 4 August 2007 in connection with dacoity (banditry) and two other charges. He was produced before Barasat Court on 4 August 2007. He alleged torture. In addition to beatings he alleged that Julfikar Ali Mollaha, the officer in charge of the police station, sprayed acid in his rectum during the interrogation.⁵⁷

On 14 February 2007, Mr Ajay Kumar Yadav (30) (son of Ramrekha Yadav) of Debi Mandir Lane under Liluah police station in Howrah district of West Bengal, was detained by police after his wife went missing. He was detained and brought before a court. The Court remanded Mr Yadav to the custody of the police for five days. Mr Yadav alleged that during his remand sentence he was tortured by Sub Inspector Asit Saw and Investigation Officer Sourabh Banerjee at the Bally police station in Howrah. While granting the remand order, the Court specifically warned the police not to subject the detainee to physical or mental torture. As a result, he suffered serious injury and was unable to stand when produced before the court. The medical investigation concluded that the victim had been beaten and tortured with a blunt instrument as there was sustained bruising (haematoma) covering the body.⁵⁸

On 16 May 2007, Mr Ektar Sheikh (42) (son of Late Harun Rasid Seikh) of Dadpur in Murshidabad district of West Bengal, was arrested by the police of Doulatabad Police Station in connection with an alleged abduction. On 17 May 2007, he was remanded to police custody for five days by the Chief Judicial Magistrate of Baharampur. In police custody, he was allegedly tortured by Sub Inspector Dulal Sarkar, Sub Inspector Abdur Rahaman, Assistant sub Inspector Nitish Mondal and Assistant Sub Inspector Asraf Ali. His health deteriorated and as a result he was produced before court before the five days had lapsed. The Judge ordered an explanation from the Investigating officer, Mr. Abdur Rahaman and to submit a report immediately. Mr Ektar Sheikh was sent to Berhampore

56. Alleged torture : Youth dies at court, The Indian Express, 12 July 2007

57. Police 'tortures' trader in custody, The Statesman, 11 September 2007

58. Information received from MASUM, Kolkata

Central Jail. There he was apparently denied appropriate medical treatment. On 11 July 2007, Mr Ektar Sheikh died in Berhampore Hospital.⁵⁹

On 26 November 2007, an under-trial identified as Mr Amarnath Singh was remanded to police custody for a period of two days. During remand he was allegedly tortured by the police at Mango police station in Jamshedpur of Jharkhand. Following his detention Mr Singh was unable to stand straight. He complained of severe pain and other injuries. Following his detention he was admitted to Mahatma Gandhi Memorial Medical College and Hospital, Jharkhand.⁶⁰

E. Torture resulting from a failure to pay bribes

On 5 March 2007, Mrs. Kabita Mondal, Mrs. Bithika Mondal, Mr. Abinash Mondal, Asima Mondal and Srikanta Mondal of Murshidabad district of West Bengal were beaten up by four members of the Border Security Force, including the Company Commandant Jirendar Singh, of Char Raja Nagar Camp, Murshidabad. Mrs. Kabita Mondal, who was eight months pregnant at the time, was beaten unconscious. According to the information, the border security personnel reportedly forced their way into the house and demanded a cow as a bribe. When the occupants refused they were beaten with sticks.⁶¹

On 8 December 2007, one Jogi (surname unknown), a resident of Shahbad Markanda in Kurukshetra, Haryana was arrested by the Criminal Investigation Agency (CIA) police from his residence in connection with an alleged theft. Jogi's family were denied access to the victim and the police allegedly demanded Rs 2,00,000(US\$ 5,000) for his release. On 17 December 2007, Jogi was allegedly tortured to death at Shahbad police station in Panchkula district of Haryana.⁶²

On 9 June 2007, 30-year-old Jawahar (surname unknown), a truck driver, was beaten to death by a Traffic Sub Inspector (SI) for allegedly jumping the traffic signal at Man Sarover Garden near Uttam Nagar in West Delhi. According to a relative, the SI had asked for a bribe which Jawahar refused. The medical report confirmed multiple injuries, primarily on the head.⁶³

II. Custodial torture of women

In its report to the seventh session of the UN Human Rights Council (3- 28 March 2008), the UN Special Rapporteur on Torture dealt with the issue of torture of women at length. The Special Rapporteur held that:

59. Communications sent by MASUM, Kolkata

60. Undertrial torture slur on cops, The Telegraph, 29 November 2007

61. Information received from MASUM, Kolkata

62. Custodial Death - Seven cops suspended, The Tribune, 19 December 2007

63. Traffic cop beats truck driver to death, The Pioneer, 20 June 2007

"Custodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching, "virginity testing", being stripped naked, invasive body searches, insults and humiliations of a sexual nature, etc.⁶⁴ It is widely recognized, including by former Special Rapporteurs on torture⁶⁵ and by regional jurisprudence that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials".⁶⁶

In a 1997 decision on a case of custodial rape the European Court of Human Rights acknowledged that:

"rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim (...) rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence".⁶⁷

Highlighting international criminal law, the Special Rapporteur further stated that "the International Criminal Tribunal for the former Yugoslavia decisions in the Celebici and Furundzija cases have contributed to the international recognition of rape as a form of torture.⁶⁸

International criminal tribunals, in their jurisprudence, have broadened the scope of crimes of sexual violence that can be prosecuted as rape to include oral sex and vaginal or anal penetration through the use of objects or any part of the aggressor's body.⁶⁹ This is crucial because in many countries rape is still defined as "carnal access", reducing it to penetration with the male sexual organ. It is noteworthy that other forms of sexual violence, whether defined as rape or not,

64. See for instance Committee against Torture concluding observations on Mexico, CAT/C/MEX/CO/4; on Guyana, CAT/C/GUY/CO/1; on Togo, CAT/C/TGO/CO/1; on Burundi, CAT/C/BDI/CO/1

65. See E/CN.4/1992/SR.21, para. 35 and E/CN.4/1995/34, para. 19

66. For instance, the Committee against Torture found in its decision V.L. v. Switzerland (CAT/C/37/D/262/2005) that "the sexual abuse by the police in this case constitutes torture even though it was perpetrated outside formal detention facilities", para. 8.10; see also Mejía v. Perú, Inter-American Commission on Human Rights, annual report 1995, OEA/Ser.L/V/II.91. Doc. 7. rev., case 10, 970

67. European Court of Human Rights, Aydin v. Turkey (57/1996/676/866)

68. See judgements on Prosecutor v. Delalic, et al., case No. IT-96-21-T, 16 November 1998 and Prosecutor v. Furundzija, case No. IT-95-17/1-T, 10 December 1

69. International Criminal Court, Elements of Crimes, article 8 (2) (b) (xxii)-1 of the ICC Elements of Crimes

may constitute torture or ill-treatment⁷⁰ and must not be dealt with as minor offences.⁷¹

The Special Rapporteur held that:

"When Government officials use rape, the suffering inflicted might go beyond the suffering caused by classic torture, partly because of the intended and often resulting isolation of the survivor. In some cultures a rape victim may be rejected or formally banished from her community or family. This rejection greatly hinders the psychological recovery of the victim and often condemns her to destitution and extreme poverty. Even when rape survivors are not rejected they still face important difficulties in establishing intimate relationships.⁷² Furthermore, raped women are often infected with sexually transmitted diseases or may experience unwanted pregnancies, miscarriages, forced abortions or denial of abortion.⁷³ Because of the stigma attached to sexual violence, official torturers deliberately use rape to humiliate and punish victims but also to destroy entire families and communities. This is particularly clear when State officials force family members to rape their female relatives or to witness their rape. The Akayesu decision, in which the International Criminal Tribunal for Rwanda (ICTR) recognized rape as a form of genocide in the same way as any other act committed with specific intent to destroy a particular group, is a striking acknowledgment of the destructive potential of rape. The ICTR made it explicit that these rapes resulted in the physical and psychological destruction of Tutsi women, their families and their communities".⁷⁴

Torture of women in custody including rape is reported regularly in India. Custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel. Official reporting is nothing short of appalling.

70. For instance, the Inter-American Court of Human Rights resorted to the international jurisprudence on rape to conclude that "the acts of sexual violence to which an inmate was submitted under an alleged finger vaginal 'examination' constituted sexual rape that due to its effects constituted torture." See Miguel Castro-Castro Prison v. Peru, Inter-American Court of Human Rights judgement of 25 November 2006, para. 312

71. As for example in a case currently under consideration in Mexico (Ana María Velasco ontra Doroteo Blas Marcelo, 79/2006, juzgado Primero Penal de Tenango de Valle, Estado de México), where a policeman forced his penis into her mouth and was charged with having committed a "libidinous act". In relation to the same incident, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women sent a joint allegation letter to the Government of Mexico on 18 December 2006 concerning, inter alia, the sexual abuse of a group of women by police officers during incidents in San Salvador Atenco on 3 and 4 May 2006, to which the Government responded on 17 May 2007.

72. See for example, Evelyn Mary Aswad, "Torture by means of rape", Georgetown Law Journal, vol. 84, No. 5 (May 1996), p. 1913. Available at: <http://spr.org/pdf/Torture%20by%20Means%20of%20Rape.pdf>

73. See also A/54/426, A/55/290, A/59/324, E/CN.4/1995/34 and E/CN.4/1998/54

74. Prosecutor v. Akayesu, ICTR-96-4, 13 February 1996, amended 17 June 1997

According to National Crime Records Bureau (NCRB), two custodial rape cases were reported in India (one each from Andhra Pradesh and Maharashtra) in 2006, seven custodial rape cases in 2005 and two custodial rape cases in 2004.⁷⁵

On 21 May 2007, Ms Geeta Devi (30) committed suicide by consuming poison. She alleged that she was tortured during detention in police custody at Gourihar police station under Chhattarpur district in Madhya Pradesh. She was detained by the police on 20 May 2007 in connection with the theft of a motorcycle and released late in the same night. She committed suicide at her residence the next day.⁷⁶

Women belonging to Scheduled Castes and Scheduled Tribes remain particularly vulnerable. On 16 May 2007, Ms Suman Kale (45), a tribal woman, died after she was allegedly tortured for three days while held illegally in police custody at Ahmednagar in Maharashtra. She was arrested on suspicion of providing shelter to dacoits.⁷⁷

On 27 March 2007, a Dalit woman, (20 years old) of Bhimnagar area of Kashipur town was allegedly raped by a Sub-inspector and the 'in-charge' of the police post at Industrial Training Institute, Mr R.K. Saklani and two other policemen at Chaiti Mela camp in Udham Singh Nagar district of Uttaranchal. The victim was raped when she went to lodge a First Information Report against three youths for gang raping her on 24 March 2007. The police later charged both the victim and her legal representative Sanjay Rohilla with theft.⁷⁸

III. Custodial torture of children

Though the government of India has not ratified the UN Convention against Torture, it has ratified the United Nations Convention on the Rights of the Child that expressly forbids the use of torture against children.

Article 37(a) of the Convention on the Rights of the Child (CRC) states: "*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.*"

Article 37(b) of CRC forbids illegal detention. It states, "(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".

75. 2006 Annual Report of the National Crime Records Bureau, Ministry of Home Affairs, available at <http://ncrb.nic.in/cii2006/cii-2006/CHAP13.pdf>

76. 'Harassed' woman commits suicide in Chhattarpur, The Pioneer, 24 May 2007

77. Pardhi woman dies in custody, relatives allege torture, The Indian Express, 17 May 2007

78. Complaint of Asian Centre for Human Rights to the NHRC dated 6 April 2007

India has made attempts to criminalise these practices in the Juvenile Justice (Care and Protection) Act of 2000 that outlaws illegal detention and torture of children. However while there are clear legal protections for children the reality is very different. Children are regularly subjected to torture, placed in illegal detention and at high risk of further violation (detained with adults). A commitment to protecting children would require a step change in the overall environment. It is difficult to see why the torture of children is likely to end before ending of general torture.

On 6 February 2007, Ms Banashree Malik, a minor girl of six years old (daughter of Pasupati Mondal) of Gopalnagar Paschim village in Singur, Hooghly district of West Bengal was beaten by police on accusation that her father was involved with Krishi Jami Bachao Committee an organisation resisting land acquisition by the State government on behalf of the TATA company at Singur. Some local people rescued her and she was admitted to Singur Rural Hospital as a result of the injuries sustained during the attack.⁷⁹

Police personnel of the Shastri Nagar Police Station in Patna of Bihar detained two minors identified as Rakesh (8 years old) and Rahul (6 years old) for nearly six hours without food and water for allegedly stealing berries from a local market. The minor boys say that they were beaten-up and locked up along with several convicts. It was only when the local residents and media teams arrived at the police station that both minors were released.⁸⁰

On 6 August 2007, two tribal children identified as Bhutan Khalko (6) and Bhuto Khalko (4), residents of tribal colony near the Barasat Municipality, were picked up by the police on the charges of stealing and illegally detained at Barasat police station in North 24 Parganas district in West Bengal for three days from 6-8 August 2007. They were released without charge.⁸¹

Once girls are taken into custody, the risks of sexual violence including rape and torture is high. On 15 August 2007, a 17-year-old Dalit girl identified as Seema, resident of Jagadishpur village, was arrested after she was found near the Gaur Police Station in Basti district of Uttar Pradesh. The police detained her overnight at the police station. The victim was allegedly tortured. She was released from the Gaur Police Station on 16 August 2007 without charge. She died a few hours after her release.⁸²

On the night of 25 December 2007, a minor girl (name withheld) was allegedly raped by Station House Officer (SHO), Manoj Rai at Raniganj police station in

79. Communications from MASUM, Kolkata

80. Complaint of Asian Centre for Human Rights to the National Human Rights Commission of India dated 26 June 2007

81. Tribals protest police action, The Statesman, 14 August 2007

82. Dalit girl detained by police, dies after stay at Thana, The Indian Express, 19 August 2007

Jethwara in Pratapgarh district of Uttar Pradesh. On 25 December 2007, the victim was picked up by the police while eloping with her boyfriend. She was illegally detained at the Raniganj police station by the SHO Manoj Rai. Her family tried to gain access to her but the SHO told them to return in the morning. She was illegally detained overnight. At some point in the night of 25 December 2007, Mr Rai raped the minor.⁸³

IV. Medical acquiescence

The role of medical professionals in establishing accountability for torture is crucial. The United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have laid down specific guidelines.

Principle 4(b) states that *"it is a contravention of medical ethics for health personnel, particularly physicians to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments."*

Apart from participation in torture of the detainees by some doctors, violations of the medical ethics during post mortem are regularly reported but seldom investigated or acted upon. In a rare case i.e. the Bilkis Bano gang rape and massacre during the Gujarat riots of 2002, two doctors were found guilty of failing to conduct appropriate medical and postmortem tests on the rape and murder victims. The Central Bureau of Investigation found that they failed to take the victims to a hospital for postmortem and inappropriately conducted tests at the scene of crime.⁸⁴

On 10 August 1993, responding to concerns over the poor quality of post mortem inquiries the NHRC further instructed Chief Ministers of States that all post-mortems of custodial deaths would now need to be videoed and sent to the Commission.

The NHRC stated that *"Scrutiny of the reports in respect of all these custodial deaths by the Commission very often shows that the postmortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death"*.

The NHRC moreover underlined its concern over deliberate cover-up, noting: *"a*

83. Police officer raped me: Girl, The Asian Age, 27 December 2007

84. Bilkis identifies 12 accused in court, The Tribune, 23 February 2005, available at <http://www.tribuneindia.com/2005/20050223/nation.htm#2>

systematic attempt is being made to suppress the truth and the report is merely the police version of the incident. The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death....."

The NHRC went on to record to express its concern over Police pressure on the medical profession: *"The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all postmortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video filming and such occasions should be very limited."*⁸⁵

This issue is an ongoing concern as the following cases make clear:

On 9 February 2007, Krishnapada Das (son of Vanu Das) of Purba Dwarikapur village in South 24 Parganas district in West Bengal was arrested by officers of the Pathor Pratima Police Station for allegedly beating up his wife. At midnight on 10 February 2007 he was allegedly found hanging from the rod of a window in the lock up. Several eyewitnesses from the village stated that they saw several injuries on the deceased's body and face. The police failed to identify any injury during their investigation. After examination of the deceased, Kaliprasad Mukhopadhyay, Block Medical Officer (Health) of Pathorpratima Block Health Center also found no injury except the mark of the noose on the throat.⁸⁶

Similarly on 29 March 2007, Hayat Seikh, (son of Saidul Seikh) of village Beldanga Par House, died at a hospital after he was allegedly subjected to torture by police, including Office-in-Charge Sandip Sen and Sub-Inspector Durgaprasad Mazumdar, at the Beldanga police station in Murshidabad district of West Bengal. On 17 March, the deceased was arrested from his house on suspicion of murder. The deceased was illegally detained in the police lock up from 17 March 2007 to 23 March 2007. He was not produced before the Court during this period. According to Manab Adhikar Suraksha Mancha, a local human rights group he was allegedly subjected to torture. However, the post-mortem report of the deceased alleged that the victim had died of jaundice.⁸⁷

V. Police reform and impunity

There is little disagreement that the institution of the police in India is in urgent need of reform. The police in India operate under the Police Act of 1861. The Act

85. Vide letter No. 66/SG/NHRC/93

86. Communications sent by MASUM, Kolkata

87. Ibid

was first introduced by the British in the aftermath of the Sepoy Mutiny of 1857. The police were given a para-military orientation and the legislation is both oppressive and punitive in character.

National Security Laws

The period of unrest in the 1980s in the Punjab saw the enactment of a series of national security laws. The laws were enforced elsewhere in India. The 1980 National Security Act (NSA), amended in 1984 provided powers to preventively detain people suspected of activities prejudicial to the defense of India, the relations of India with foreign powers or the security of India for up to two years in Punjab and up to one year in the rest of India.

The Terrorist Affected Areas (Special Courts) Act followed the NSA in 1984. The Terrorist and Disruptive Activities (Prevention) Act, in force from 1985 to 1995, subsequently provided the police with extensive powers of arrest and detention.

These laws contributed to impunity, freeing the police from accountability to the criminal justice system for actions undertaken in good faith, and weakening the sense of accountability to the judiciary and society and encouraging continuing misuse of police powers.

In the absence of any political, institutional or legal reform it is perhaps unsurprising that an oppressive inherited police structure would tend to be self-perpetuating.

Political momentum for reform has tended to catalyse in periods of political repression. The very public, excessive and politicized response of the police has drawn attention to institutional failure and human rights violation. But as political tension has passed the momentum has been lost.

Negligible political concern has been paid to the causes of these excessive responses - the use of human rights violations, particularly the use of torture on individuals as part of policing in India.

The first attempts at reform resulted from the behaviour of the police during the Emergency of 1975-77 and documented in the Shah Commission report. The Janata Party led government established National Commission for Police Reform on 15 November 1977. The Commission submitted eight reports with specific recommendations on a wide range of issues by 1980.

The Congress, which returned to power in 1980, failed to implement these reports. In 1984, anti-Sikh riots witnessed the participation of the police in the violence against the Sikhs. This was followed by its massive communalisation, leading up to the demolition of the Babri Masjid in 1992, the Mumbai riots in 1992-93 and the Gujarat riots in 2002, which witnessed the active participation of and facilitation by the police in the mass violation of the rights of minority communities.

The Supreme Court has recognised the need for reform. Pursuant to the directions of the Supreme Court (Writ Petition (Civil) No. 310 of 1996), on 25 May 1998, the Government of India established a committee headed by Mr. J.F. Ribeiro, Indian Police Service (Retd.):

"to review action taken to implement the recommendations of the National Police Commission, National Human Rights Commission and the Vohra Committee, to suggest ways and means to implement the pending recommendations of the above Commissions/Committee and consider and make recommendations regarding any other matter which the Government may refer to the Committee or which the Committee considers necessary in this behalf".

In January 2000, the Government of India announced the establishment of another Committee on Police Reforms headed by Shri. K. Padmanabhaiah, former Home Secretary to the Government of India.

On 20 September 2005, a committee of experts headed by Soli J Sorabjee was set up to draft a new Police Act. The Committee submitted the draft of a Model Police Act to the Government on 30 October 2006. A copy of the draft has been sent to all State Governments/Union Territory administrations for their consideration. As of June 2007, Assam, Bihar, Haryana, Himachal Pradesh, Karnataka, Kerala, Rajasthan and Tripura have enacted draft Police legislation while Andhra Pradesh, Chhattisgarh, Jammu and Kashmir, Jharkhand, Orissa, Punjab, Sikkim, Tamil Nadu and West Bengal were in the process of drafting. Goa, Gujarat, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland, Uttar Pradesh and Uttarakhand have not complied with the order of the Supreme Court.

The Supreme Court in its Judgement of 31st December 2006 in Writ Petition (Civil) No.310 of 1996 directed the Union Government and State Governments to set up mechanisms and file affidavits of compliance by 3 January 2007. Inter-alia the directions were to:

- i) Constitute a State Security Commission on any of the models recommended by the National Human Right Commission, the Reberio Committee or the Sorabjee Committee;
- ii) Separate investigating police from law & order police, starting with towns/urban areas having population of ten lakh or more, and gradually extend to smaller towns/urban areas also;
- iii) Constitute Police Complaints Authorities at the State and District level for looking into complaints against police officers.

Immunity from prosecution

At present, the existing legal framework perpetuates torture by offering immunity from prosecution to State agents.

The government justifies immunity on the grounds of providing protection to the Security services to discharge their official duties. Under Section 197 of the Criminal Procedure Code no action can be taken against "a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government, a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed with the affairs of the Union, of the Central Government, a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government, Armed Forces of the Union while acting or purporting to act in the discharge of his official duty members of the forces of the State government charged with the maintenance of public order *"without prior permission of the concerned government"*.

The government rarely gives the permission. For example, with regard to the custodial death of Devinder Singh in Uttar Pradesh on 16 July 1996, an investigation by Crime Branch-CB-CID found 10 police officials involved for his death. However, a prosecution has not started. And According to the NHRC: *"the sanction for their prosecution has not so far been accorded"*. At the time of the incident, the State of Uttar Pradesh was under Presidential Rule. So the case had to be referred to the Union Home Ministry (MHA) to grant the sanction. MHA informed the NHRC⁸⁸ that the matter had been referred to the Law Ministry for opinion.

On 25 July 2007, NHRC closed the case observing it: *"expects that a decision regarding grant of sanction shall be taken expeditiously by the Central Government or the State Government whichever is competent and the officials responsible for the death of Devinder Singh shall be brought to book."*⁸⁹

Even if permission were to be given, it will take another decade to conclude the trial. This can then be appealed in the High Court and Supreme Court.

The army enjoys similar immunity. Under Section 45 of the Indian Criminal Procedure Code: *"no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government"*.

Prospects for reform

By themselves Supreme Court instructions and indeed piecemeal reform are

88. Vide letter dated nil May, 2007

89. Case Details of File Number: 36/24(32)/96-LD

unlikely to reduce incidence of torture and other human rights violations unless the government of India addresses the impunity of law enforcement personnel. Without addressing impunity the systems will remain in place and subvert reform.

4. Torture in the custody of the armed forces

I. Who are the armed forces in India?

As the Ministry of Home Affairs (MHA) in its 2007-2008 Annual Report states "Though in terms of Entries 1 and 2 of List II - 'State List' - in the Seventh Schedule to the Constitution of India, 'public order' and 'police' are the responsibilities of States, Article 355 of the Constitution enjoins the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution."

There are three types of central armed forces deployed in conflict situations.

- Indian army personnel are deployed for counter-insurgency operations.
- Central Government of India has its security forces known as the armed forces. There are seven Central Security Forces under the Ministry of Home Affairs, namely Assam Rifles (AR), Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Indo-Tibetan Border Police (ITBP), National Security Guard (NSG) and Sashastra Seema Bal (SSB).⁹⁰ Among them, the Assam Rifles works under the operational control of the Army and deployed in the North East and Jammu and Kashmir.
- State armed police like the Naga Battallion which can be deployed in other States afflicted by armed conflicts.

II. Torture, reform and impunity in the Armed Forces

The cases presented below are consistent with very serious human rights violations committed by the Army and other para military forces deployed in India's conflict afflicted areas. There is a clear imperative for reform. But the prospects for reform presented with regard to the police are applicable to the other branches of the security forces.

Unless impunity is challenged, reform will fail. The army has immunity from prosecution. Section 6 of the Armed Forces Special Powers Act of 1958 applicable in armed conflict situations in North East and Jammu and Kashmir provides that:

"No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act."

90. Annual Report 2007-2008, Ministry of Home Affairs, Government of India

Impunity creates a dangerous perception among the security forces that they are above the law. The result is the well documented practice of torture as well as other grave violations during operations. But the implications of impunity for the health of India's democracy and its rule of law go beyond individual abuse. Checks and balances in any democracy are neither static nor guaranteed. If not defended, protections weaken over time particularly when challenged by the demands of internal conflict. This is why the individual emblematic cases in this report are so important. They are indicators - emblems - of a wider institutional malaise but at the same time represent opportunities to restore the rule of law.

One of the central themes of this report is that reform has been needed for a very long time. Torture in India is part of an inherited legacy. Indian criminal and penal laws and their accompanying institutions derive from archaic and punitive colonial legislation and institutional practice. Part of the solution to torture in India is an imperative need for an inclusive public debate on reform of the security forces and indeed a public debate on the use of torture as part of that reform process. Arguing for reform is not particularly contentious, indeed there is widespread acceptance, at least in the domain of the police and prison service, of its need, yet a reform process has not happened despite repeated commissions and endless recommendation.

Reform will require substantial political will. But there is new urgency to reform. As the Prime Minister has pointed out, the threat from India's armed opposition groups is increasingly serious. If human rights violations, committed both by the security forces and armed groups, are not promptly, thoroughly, independently and impartially investigated and those responsible brought to justice, the system which allowed them to commit those crimes will remain intact. It is difficult to see how reform would succeed under such circumstances.

The consequences are serious: the prospects for counter insurgency success will diminish significantly and the space for ever more violent and extreme Armed Opposition Groups will grow ever greater; Armed Opposition Groups that will continue to commit appalling acts of torture with impunity.

ACHR accepts that mistakes happen in conflicts and in the conduct of normal police operations, but the willingness, or otherwise, of the security forces and the State to address these 'mistakes' sets the tone for the conduct of any counter-insurgency and indeed the provision of normal public security.

Mistakes, unless quickly nipped in the bud, soon become routine. The routine use of torture and other violations perpetrated with impunity by Indian security forces, at best, sends a worrying message. It is unclear how security force contempt for the rule of law will contribute to respect for the rule of law by the people.

III. Torture in the custody of the armed forces

There have been consistent reports of torture and other human rights violations. A large number of cases of torture by the security forces were reported from Chhattisgarh, Manipur and Jammu and Kashmir.

Understanding the extent of the problem:

Before dealing with individual cases of torture it is important to place these violations in context, to understand the scale of the problem. This is perhaps best demonstrated by the following case of extra-judicial killing. On 13 March 2007, the Naga battalion of India Reserve Battalion (IRB) allegedly shot dead eleven children, aged between two and sixteen as well as a young man. They were killed during an anti-insurgency operation at Nendra village in Dantewada district of Chhattisgarh. The battalion was accompanied by armed cadres of the Salwa Judum, a private militia sponsored by the state government of Chhattisgarh. The IRB personnel and the Salwa Judum cadres were returning from a search operation when they spotted the children washing by the side of a well in the village. The security forces and Salwa Judum cadres allegedly opened fire. Later, they are alleged to have shot dead Soyam Nareya (male, age unknown) of the same village who was returning from work. The deceased have been identified as Soyam Rama (16), son of Dula; Soyam Raju (2), son of Penta; Vajam Rama (11), son of Ganga; Madakam Ramily (5), son of Ganga; Madakam Buddaraiah (14), son of Unga; Midiyam Nagaiah (5), son of Bajari; Sodi Irma (12), son of Yarma; Podium Adama (7), son of Unga; Vetti Raju (9), son of Masa; Madakam Ithe (13), son of Kessa, and Soyam Raju (12), son of Bheemulu.⁹¹

Cases of torture:

Mr Soraisham Gopeshor Singh, assistant teacher of Suranjoy English Academy at Mekola Bazaar in Imphal West district of Manipur, was subjected to harassment by 22nd Maratha Light Infantry personnel stationed at Patsoi in Imphal, Manipur. On the night of 16 August 2007, members of the 22nd Maratha Light Infantry came to Soraisham Gopeshor Singh's house in Kodompokpi Maning Leikai. He was accused of being Mr M.C. Luwang, a member of the banned United National Liberation Front (UNLF). He was accused of extortion. After his elder brother Mr Soraisham Sanajaoba Singh identified himself as a retired member of the Manipur Rifles, the army personnel decided not to arrest Soraisham Gopeshor Singh. On 17 August 2007 and 18 August 2007, Soraisham Gopeshor Singh was summoned by the 22nd Maratha Light Infantry. He came to the camp with his relatives, local social workers and the local Member of Legislative Assembly, Mr RK Anand and the Superintendent of Police, Imphal West. They all attested that he was not M.C. Luwang of the UNLF. On 1 September 2007, he was again detained, this time by members of the 57th

91. UA-266-2007: INDIA: Eleven children and a young man shot dead in Chhattisgarh by the Indian Reserve Battalion, Asian Human Rights Commission, 31 August 2007

Mountain Division. This time he was allegedly tortured in their custody to coerce a confession of involvement with militant groups. On 2 September 2007, he was released with a verbal apology from an officer of the 57th Mountain Division.⁹²

On 29 November 2007, Mr Elangbam Sanayaima (estimated 25 years old⁹³), (son of Elangbam Inaocha) was picked up from his house at Hiyanglam Warakhong in Thoubal district of Manipur by members of the 21st Assam Rifles stationed at Keirak. He was detained on what appear to be false charges relating to membership of the banned United National Liberation Front (UNLF). While in custody, he was allegedly tortured to extract a confession of involvement with the UNLF. Prior to handing him over to the police, security personnel threatened to kill him if he did not confess his membership of the UNLF. He was later released but the charges remain in force.⁹⁴

On 14 December 2007, three men identified as Mr Debokanta Gogoi (38), Mr Phani Gogoi (33) and Mr Samel Aind (38) were detained during military operations at Hatigarh and Diksam villages in Dibrugarh district of Assam. They were detained by the 268th Field Regiment camped at Sarojini Tea Estate. The army personnel assaulted/harassed many villagers including women when they failed to identify the whereabouts of of the United Liberation Front of Assam (ULFA). The three youths - Debokanta Gogoi, Phani Gogoi and Samel Aind - were then allegedly tortured in army custody in order to coerce a confession of association with ULFA. While Mr Debokanta Gogoi and Mr Samel Aind were released on 14 December 2007, Mr Phani Gogoi was handed over to the police and then released on 15 December 2007 in the absence of evidence.⁹⁵

At around midnight of 23rd August 2007, Mr Wahengbam Binoy alias Roshan (22) (son of W. Ibopishak) of Khuman Maning Leikai under Wangoi police station in Bishnupur district of Manipur was arrested by the 22nd Maratha Light Infantry (9 Sector under HQ IGAR (S)). He was allegedly tortured in custody and forced to sign a blank paper before being handed over to the Nambol police station on 24th August 2007. On 24th August 2007, the Army issued a press statement stating that a cadre of the banned Kanglei Yaol Kanna Lup (KYKL a revolutionary movement in Manipur) had been apprehended by the Army from Khuman. He was released on bail on 31 August 2007.⁹⁶

Members of the 4th Assam Rifles personnel stationed at Chingmeirong in Imphal of Manipur detained Mr Potshangbam Shantikumar Singh (39) (son of P. Kullachandra Singh) on 4 May 2007. He was detained on charges of membership of the banned Kanglei Yaol Kanna Lup (KYKL). He was kicked, stripped naked,

92. Complaint of ACHR to NHRC dated 10 September 2007

93. Elangbam Sanayaima has no birth record

94. Complaint of ACHR to NHRC (NHRC Case No. 45/14/12/07-08-PF)

95. Complaint of ACHR to NHRC (NHRC complaint No. 188/3/5/07-08-AF)

96. Complaint of ACHR to NHRC (NHRC Complaint No. 40/14/1/07-08-AF)

waterboarded and he was subjected to electric shocks. He was denied food and was forced to sleep on the wet floor. On 9 May 2007, Mr Shantikumar Singh was released on bail. On 5th July 2007, Mr Santikumar Singh was again arrested, this time by the 2nd Maratha Light Infantry stationed in Patsoi. They again accused him of membership of the KYKL. He was again allegedly stripped naked and again tortured. On 9th July 2007, the police produced him before the Judicial Magistrate First Class Bishnupur Court and he was sent to jail. On 25 July 2007, he was released on bail.⁹⁷

Encounter killings following torture:

The term encounter killings is a euphemism used to describe extra judicial killings in which police or the military kill innocents, suspects, criminals or members of armed opposition groups in alleged encounters. Encounter killings have been a feature of law enforcement in India for decades. These again rose to public prominence in 1980s in Andhra Pradesh and Mumbai. The euphemistic nature of the problem is underlined by the fact that some of Mumbai's police became known as 'Encounter Specialists'. The security forces use these means to apply 'speedy justice' and circumvent the formal legal system.

Encounter killings contravene international law. Article 3 of the Universal Declaration of Human Rights states, *"everyone has the right to life, liberty and security of person."*

Further, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*

Article 4 of the ICCPR states that this right cannot be waived *"even in times of public emergency threatening the life of the nation."*

Under Article 2(3)(a) and (b) of the ICCPR, State parties are obliged to ensure that remedies are available to the victims of human rights violations and that those remedies are effective.

The National Human Rights Commission issued "Guidelines/Procedures to be followed in dealing with deaths occurring in encounter deaths" to be followed by the State Governments in dealing with deaths occurring in encounters with the police on 29 March 1997. The Guidelines were subsequently revised on 2 December 2003. The States are required to inform the NHRC of all cases of deaths resulting from police encounters. The Commission also recommended the modified procedure to be followed by State Governments in all cases of deaths, in the course of police action. The NHRC stipulated that such cases should be investigated by an independent investigating agency, such as the State Crime Branch - Criminal Investigation Department (CBCID), and whenever a specific

⁹⁷. Complaint of ACHR to NHRC (NHRC Complaint No. 39/14/4/07-08)

complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR⁹⁸ to this effect must be registered under appropriate Sections of the Penal Code. The NHRC recommended that these cases should be investigated by the State CBCID that a Magisterial Inquiry should be held and the family of the deceased should be involved in the inquiry.

The NHRC directed all the Chief Ministers and Administrators to send a six monthly statement of all cases of deaths in police action in the States.

Further, the Supreme Court in its judgement on the constitutional validity of the Armed Forces Special Powers Act in October 1997 stated:

"(15) A person arrested and taken into custody in exercise of the powers under Section 4(c) of the Central Act should be handed over to the officer-in-charge of the nearest police station with least possible delay so that he can be produced before nearest magistrate within 24 hours of such arrest excluding the time taken for journey from the place of arrest to the court of magistrate".

Despite the ruling arrests by the armed forces regularly take place without following this stipulation. During the night of 26th April 2007, Mr Nongmaithem Tomba alias Chingnung (36), son of Bashikongba of Kumbi Kangeibung Mapal in Bishnupur district in Manipur, was allegedly shot dead by troops of 7th Assam Rifles while in their custody after he was picked up from his residence. His body was handed over to the Kumbi police station. The Army claimed that he had been killed in an encounter.⁹⁹

At around 08.30 hours on 29th April 2007, Mr Athokpam Manja (47) (son of Late A. Nodiyachand) was picked up from his house at Bashikhong Torbam Leikai under Irilbung Police Station in Imphal East district, Manipur, by Manipur Police Commandos. He allegedly died in custody as a result of torture on the same day.¹⁰⁰

Mr Budheswar Moran alias Budhee alias Budhay, a tea-garden worker was tortured and killed in a fake encounter on 6 May 2007 by personnel of the 6th Jammu and Kashmir Rifles at Doomdooma in Tinsukia district of Asom. Initially, the army claimed that Mr Moran was a member of the banned United Liberation Front of Asom (ULFA) and that the army personnel had recovered weapons, explosives and incriminating documents on him. Army authorities later admitted that Mr Moran's death was "unfortunate". They conceded he was innocent and promised to punish those officials involved.¹⁰¹

98. First Information Report

99. Alleged killing of Kumbi youth by AR rouses local folks ire, The Kanglaonline, 28 April 2007

100. Complaint of ACHR to NHRC dated 11 June 2007

101. Army admits to staged encounter in Assam, The Deccan Herald, 11 May 2007

On 17 November 2007, Mr Riyaz Ahmad of Yarikhah village was killed in the custody of the 9th Rashtriya Rifles personnel at Damhal Hanjipora village under Kulgam district of Jammu and Kashmir. In the early morning of 17 November 2007, Mr Riyaz Ahmad and his brothers, Mr Manzoor Ahmad and Mr Fayaz Ahmad left home to go to their bakery in Damhal. They were detained by soldiers of 9th Rashtriya Rifles. While Mr Manzoor Ahmad and Mr Fayaz Ahmad were released, Mr Riyaz Ahmad's dead body was later found in a field. Despite the detention army maintained that Riyaz was killed in crossfire in an encounter with militants.¹⁰²

On 19 August 2007, a Karbi tribal youth identified as Mr Singh Timung (21), a student of Diphu Government College, was arrested by the Assam Police and the Central Reserve Police Force (CRPF) during an anti-insurgency operation at Inglang Kiri village in Karbi Anglong district in Asom. The deceased was President of Borlangfar unit of the Karbi Students' Association (KSA). He was allegedly killed after torture. The security forces claimed that he was a member of the Karbi Longri North Cachar Liberation Front.¹⁰³

On the night of 29 July 2007, Mr Maibam Ratankumar Singh (about 40) was arrested without an arrest memo (warrant) from his house at Kwakeithel Dewan Leikai Imphal. He was detained by members of the Jammu and Kashmir Light Infantry Division (stationed at Khwairapan pump house in Bishnupur district, Manipur). Mr Singh is a lecturer in the History Department at S. Kula Women's College, Nambol Kongkham in West Imphal. The Army personnel accused him of being a member of an underground armed group. At the army camp, his arms and legs were bound by army personnel. He was then subjected to waterboarding - simulated drowning. Electric wires were attached to his feet and shocks were applied. The torture lasted for about two hours. On 30 July 2007 he was released.¹⁰⁴

Rape and counter insurgency:

Rape is a widely reported violation during anti-insurgency operations. On 19 August 2007, a 17-year-old girl was allegedly raped by Mr Ajay Kumar of 27th Rashtriya Rifles at Daskal village in Jammu district of Jammu and Kashmir. The accused was arrested by the police on 21 August 2007.¹⁰⁵

Very few cases of rape and torture lead to action by the authorities. On the morning of 20 August 2007, 11 tribal women were allegedly gang raped by the Greyhound policemen during anti-Naxalite operations at Vakapalli village under Nurmati panchayat in Visakhapatnam district of Andhra Pradesh. According to the victims, 21 Greyhound policemen entered the village around 0600 hours and

102. Thousands protest against young man's killing, The Hindu, 18 November 2007

103. Encounter sparks mob fury in Diphu, The Telegraph, India, 23 August 2007

104. Complaint of ACHR to NHRC dated 10 September 2007

105. Jawan in rape net, The Telegraph, 22 August 2007

raided their houses on suspicion of association with Naxalites. While some of the women were raped in their homes, others were raped in the fields.¹⁰⁶ Ten of the victims were between 20-30 years and one was 45 years old. The police allegedly tried to hush up the incident. They failed to conduct an identification parade of the suspects, although the victims have claimed that they could identify the rapists. On 30 August 2007, the National Human Rights Commission took suo motu cognizance of the incident and sent notice to the Senior Superintendent of Police, Vishakhapatnam district and the Director General of Police, Andhra Pradesh to submit a factual report within four weeks.¹⁰⁷ But to date, no action has been taken to identify and prosecute the rapists.

On the night of 27 August 2007, a 42-year-old Karbi tribal woman was raped by a soldier of the Bihar regiment at Mansingh Bey village under Hauraghat Police Station under Karbi Anglong district of Asom. A group from the regiment went to the Mansingh Bey village during a counter -insurgency operation. Two soldier entered Longsing Bey's house. They tied Longsing Bey's hands, blindfolded him and made him sit on the veranda at gunpoint. Later, one of the soldiers allegedly raped Longsing Bey's sister.¹⁰⁸

Counter insurgency and torture of children:

In insurgency affected areas, children are subjected to torture. On the night of 27 June 2007, personnel of the 22nd Maratha Light Infantry allegedly tortured three minor girls - (name withheld), 17, daughter of Md Abdul Chessam, her 15-year-old sister (name withheld) and 13-year-old (name withheld) while arresting one Md Manao, 38, son of late Talibula from their house at Sekmajjin Makha Phoubakchao in Imphal of Manipur. The three minor girls demanded an arrest memo (warrant) and this apparently led to the torture. One of the victims had to be admitted to Regional Institute of Medical Sciences (RIMS), Imphal. The Asian Centre for Human Rights took up the case with the NHRC of India (Case No. 18/14/4/07-08/UC). In their replies to ACHR's complaint, both the Director General of Police, Manipur and the Ministry of Defence denied the allegation.

The DGP of Manipur stated:

"It is however, quite possible that in the milieu that took place when the personnel of 22 Maratha retrieved themselves, the three minor girls might have sustained some minor injuries for which they took medical treatment and have since been discharged."

106. Eleven Girijan women allege gang-rape by policemen, The Hindu, 21 August 2007

107. NHRC sends notice to SSP, Vishakhapatnam and DGP, Andhra Pradesh on the alleged rape of 11 tribal women, Press Release of The National Human Rights Commission of India dated 30 August 2007

108. Rape slur on Bihar jawan, The Telegraph, 30 August 2007

In its reply to the NHRC, ACHR has submitted the medical certificates issued by RIMS which states that Sonia's leg was fractured as a result of assault.

On 27 June 2007, a 15-year-old daughter of Mihilal (name withheld), resident of Jarwatola village was allegedly gang raped by three police personnel of Nawadih Police Station including the Officer In Charge (OC) Mr Pramod Kumar during a anti-Naxal operation at Jarwatola village in Bokaro district of Jharkhand. Prior to the rape, the police personnel had stripped naked and then beat up her father Mihilal when he denied having any knowledge of the Maoists.¹⁰⁹

On the night of 11 December 2007, a minor tribal daughter of Mr Rajaram Debbarma of Gopal Nagar village in West Tripura was allegedly raped by Sub-Inspector Nandan Baidya (30) while in custody. She was raped at Bislamganj police station in West Tripura. On 9 December 2007, the victim had eloped with a non-tribal youth identified as Subrata Deb. A police team led by Sub-Inspector Nandan Baidya took them into custody after the girl's father Mr Rajaram Debbarma, a farmer, reported the events as abduction. However, Sub-Inspector Nandan Baidya released them after allegedly taking a bribe of Rs 5,000. On 11 December 2007, both the minor tribal girl and her boy friend Subrata Deb were again taken into custody by Sub Inspector Nandan Baidya. At around 02.30 hours Sub Inspector Baidya sent away woman constable Munna Roy from the police station and then allegedly raped the victim. The victim was released in the morning. Sub Inspector Baidya issued threats to the victim to not to disclose the incident to anybody. Sub Inspector Baidya has been suspended and arrested.¹¹⁰

109. Complaint filed by Asian Indigenous and Tribal Peoples Network (AITPN) with National Human Rights Commission on 13 July 2007

110. Tripura cop arrested for rape - Sub-inspector assaults tribal girl in custody, The Telegraph, 17 December 2007

5. Torture by armed opposition groups (AOGs)

Under Article 1(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the involvement of "a public official or other person acting in an official capacity " is a central facet of the definition of torture.

The Committee Against Torture in its General Comment No.2 (2007) of 24 January 2008 stated:

"18. The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission".

In other words, the State is obligated to protect citizens from the abuses of AOGs. In this context the State is failing; the failure to hold perpetrators of abuses accountable for their actions whether committed by State, Naxalites or other armed opposition group continues to be one of the main human rights issues to be addressed in any meaningful manner.

As with the state, others, including the AOGs, who have been responsible for acts of violence and abuses, including the police, members of armed opposition groups, have generally enjoyed impunity for their actions.

Armed Opposition Groups' Obligations:

The humanitarian law which applies during internal armed conflict gives rise to certain obligations for armed opposition groups. The minimum protection offered by Common Article 3 to the four Geneva Conventions of 1949 contains obligations for "each Party to the conflict".

Common Article 3 to the Geneva Conventions expressly forbids violations against:

"(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all

circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."

It expressly forbids the use of illegal detention, torture and ill treatment under:

"a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;(b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment;"

These obligations do not depend on government acceptance of an internal conflict as noted by Clapham:

"On the other hand, as already noted, the government may be less willing to acknowledge the situation as one of armed conflict, preferring instead to portray it as a fight against criminals and terrorists. To be clear, the application of the obligations does not depend on any acceptance by the government that the threshold for the applicability of humanitarian law has been reached."¹¹¹

AOGs in India have been responsible for torture and violations of other humanitarian laws. Massacres by AOGs often draw national attention. Many of the abuses are committed in relation to parallel structures, the "people's courts" and "law enforcement" activities. These included abuses of the right to life (killing and deaths of abducted individuals), liberty and security (abductions), and physical integrity (ill treatment and torture).

I. Naxalites' use of torture

Documentation of Naxal abuse is particularly challenging. They operate outside the formal state in often very remote areas of India. Even with this reporting obstacle it is clear that the Naxals or Maoists have an appalling human rights record. Their targets include: members of anti-Maoist Salwa Judum militia, alleged police informers, 'class enemies' among the impoverished Adivasis, indigenous peoples, indeed anyone expressing dissent. The Naxalites have increasingly organized para-state institutions notably *Jana Adalats*, Peoples Court, to impose so-called 'people's' justice.

Police informers:

On night of 7th January 2007, Naxalites allegedly killed a villager identified as Mr Alam Sannu, (son of Bhuja) of Koitpal under Bijapur police district of Chhattisgarh, after forcing him from his home. He was interrogated in front of other villagers about the *Salwa Judum*¹¹² campaign and the

111. Human rights obligations of non-state actors in conflict situations, Andrew Clapham, International Review of the Red Cross, Volume 88, number 863, September 2006

112. Maoist Salwa Judum, a militia sponsored by the Chhattisgarh state government

movements/operational strategies of the police. Later, the Maoists slit his throat with a knife in front of a crowd.¹¹³

On 3 June 2007, Mr Kesmudi Venkatesh, a shop keeper, was tortured to death by five suspected Maoist cadres, apparently on suspicion of being a police informant. He was killed in his village of Gandagatta under Sringeri Police Station in Chikmagalur district of Karnataka.¹¹⁴

On 1 July 2007, two people - Mr Shambhu Shah (35) and Mr Meghu Ram (60) - were beaten to death by the Maoists at Sisahani village under Pakri Dayal police station of East Champaran district of Bihar. Both were tried with another person, Mrs. Laxmi Shah, in a *Jan Adalat* (People's Court). The *Jan Adalat* found them guilty of spying for the police. The three were then beaten up with batons by the Maoists. While Mr Shambhu Shah and Mr Meghu Ram died. Ms Laxmi Shah sustained heavy injury and was taken to Motihari Sadar Hospital.¹¹⁵

During the night of 28th February 2007, Maoists reportedly beat two villagers to death. The victims were identified as Mr Sarharam of Chindbhata village and Mr Kogeram of Temrupani village. Their deaths followed *Jan Adalat* at a forest near Temrupani village under Durgakondal police station in Kanker district of Chhattisgarh. The charges against the two were that they helped the police to arrest Maoist leader Karan Uikey. After the *Jan Adalat* found them guilty, the victims were beaten to death in front of the villagers.¹¹⁶

On the night of 28 March 2007, two villagers identified as Mr Teklal Mahto and Mr Bhola Mahto were reportedly beaten to death by the Maoists following their trial in a *Jana Adalat* held at Sohrai forest in Giridih district of Jharkhand. The deceased were among nine villagers whom the Maoists abducted from Badgawah and charged them with collecting levies while posing as Maoists. The *Jan Adalat* found four villagers guilty and released the rest. The status of the two other victims is unknown.¹¹⁷

During the night of 16 February 2007, Maoists allegedly beat to death Mr Suklu Korsa in Ghumra village under Bijapur police district of Chhattisgarh. Mr Korsa's brothers, Somlu Korsa and Panduram were also beaten and sustained serious injury. All were beaten on suspicion of supporting the Salwa Judum.¹¹⁸

On the night of 28 February 2007, two persons identified as Mr Sarharam of Chindbhata and Mr Kogeram of Temrupani were allegedly tortured to death after a *Jan Adalat* found them guilty of acting against the interests of the Maoists.

113. Maoists kill villager, The Hitavada, 9 January 2007

114. Naxalites torture shopkeeper to death, The Hindu, 4 June 2007

115. Two 'informers' clubbed to death by Maoists, The Indian Express, 3 July 2007

116. Ultras beat two villagers to death, The Hitavada, 3 March 2007

117. Maoists kill two, The Telegraph, 30 March 2007

118. Naxal beating claims one, The Hitavada, 18 February 2007

They were tortured and killed at Temrupani village under Durgakondal police station in Kanker district of Chhattisgarh.¹¹⁹

On 1 April 2007, Maoists killed two farmers identified as Mr Amit (26) and Mr Hungaram (50) of Bhansi village. They were killed for selling land to the Essar Steel Company in Dantewada district of Chhattisgarh. The Maoists allegedly tortured them and then slit their throats.¹²⁰

II. Torture by AOGs in the North East

Various ethnic groups in the North East have taken up arms demanding rights and autonomy. Many of them have been banned by the government of India under the Unlawful Activities (Prevention) Act of 1967. These include United Liberation Front of Asom (ULFA) and National Democratic Front of Bodoland (NDFB) in Asom; People's Liberation Army (PLA), United National Liberation Front (UNLF), People's Revolutionary party of Kangleipak (PREPAK), Kangleipak Communist Party (KCP), Kanglei Yaol Kanba Lup (KYKL), Manipur People's Liberation Front (MPLF), Revolutionary People's Front (RPF) in Manipur; All Tripura Tiger Force (ATTF) and National Liberation Front of Tripura (NLFT) in Tripura; Hynniewtre National Liberation Council (HNLC) and Achik National Volunteer Council (ANVC) in Meghalaya.¹²¹ They have been involved in serious human rights abuses including extrajudicial killings, kidnappings, torture and extortion, among others.

On 12 February 2007, a presiding officer for elections to the Manipur Assembly identified as Dr L Hemochandra (50) was abducted by members of an AOG in Imphal West district of Manipur. He was released after being deliberately mutilated with a bullet wound to the leg for allegedly distributing money to people on behalf of a Congress candidate.¹²²

Dr. S Iboton Singh, principal of the Central Academy School, Mantripukhri and a teacher identified as Md Janabuddin were kidnapped and deliberately mutilated by a bullet wound in the the leg on 6 April 2007 at Canchipur by suspected KYKL cadres. They were accused of running a 'National Open School' which had been banned by KYKL. The victims were beaten and displayed extensive bruising.¹²³

Former Joint Director of Board of Secondary Education Manipur, Mr Ph Nandakumar Sharma was shot in the knee by alleged members of the KYKL on 28 August 2007. He was charged with corruption. Sharma had earlier been

119. Ultras beat two villagers to death, *The Hitavada*, 3 March 2007

120. Naxals kill 2 farmers for giving land to Essar Steel, *The Indian Express*, 2 April 2007

121. Ministry of Home Affairs, Government of India available at http://www.mha.nic.in/banned_org.htm

122. Polling officer shot at in Manipur, *The Assam Tribune*, 14 February 2007

123. Principal, teacher shot in the legs, *The Kanglaonline*, 7 April 2007

suspended by the State Government for his involvement in the illegal appointment of government school teachers.¹²⁴

Mr Soubam Dhanabir, Executive Engineer of Irrigation and Flood Control Department of Manipur, was deliberately mutilated by bullet wounds to both legs by alleged members of an armed opposition group on 21 December 2007. The assailants entered his residence at Thangmeiband Sinam Leikai in Imphal West district of Manipur.¹²⁵ The reasons for his punishment are unknown.

On 13 July 2007, suspected cadres of the National Liberation Front of Tripura (NLFT) abducted senior CPM leader Mr Manya Kumar Tripura from Naisaram Roajapara area in Tripura state and subjected him to torture and later killed him. His body was found on 14 July 2007 with multiple visible injuries.¹²⁶

Suspected members of the All Tripura Tiger Force abducted three members of a Village Committee, identified as Mr Ranjan Debbarma, Mr Falendra Debbarma and Mr Amalya Debbarma, from a work-site near Dinakobra School in Khowai sub division of West Tripura district on 2 July 2007. Following intensive security operations to rescue the victims, they were released in the night of 2 July 2007. They were later admitted to the hospital as a result of their treatment while in captivity.¹²⁷

124. Manipur militants shoot education official in knee for corruption, *The Indian Express*, 29 August 2007

125. Manipur engineer shot in legs by ultras, *The Assam Tribune*, 22 December 2007

126. Tripura CPM leaders killed, *The Telegraph*, 16 July 2007

127. Three abducted persons return, *The Tripurainfo*, 4 July 2007

6. Torture in judicial custody

i. Torture in prison custody

The use of torture in Indian penal institutions is routine. For example, Asia's largest prison and India's prison reform showcase, Delhi's Tihar Jail was the subject of media concern in 2007 over the evidence of the use torture against inmates.

The use of torture is a matter of documented fact. In June 2007 alone, at least nine prisoners died in the Tihar jail. Post mortem reports confirmed at least three of the deaths were a result of ill treatment that may amount to torture.¹²⁸

Similarly miserable conditions in Indian jails are not a matter of assertion. On 18 June 2007, the Delhi High Court criticised the Tihar Jail officials over the "extremely harsh" conditions of the Jail.

The treatment of suspects held on suspicion of acts of terrorism is an issue of particular concern. On 30 May 2007, the *Asian Age* revealed that it had received numerous letters from Tihar Jail inmates, especially those from Jammu and Kashmir, alleging "terrible atrocities". According to the inmates' letters, the excesses included "methodical torture", as well physical and psychological abuse enforced labour.¹²⁹

However, as with torture in other domains, and despite clear medical evidence, the authorities appear unable to accept the current reality. India's Home Minister Shivraj Patil in a reply before the Rajya Sabha on 12 March 2008 stated that "The reasons generally attributed to these deaths are illness/natural death, escaping from custody, suicides, attacks by other criminals, riots, due to accidents and during treatment or hospitalisation".¹³⁰

A penal system in urgent need of reform:

Under the 7th Schedule of the Constitution of India, prisons, reformatories, borstal and other detention facilities come under the jurisdiction of the States. Prisons in different states vary in their organization, rules and models. The Prisons Act of 1894 and various Jail Manuals govern prisons. Like the police Act the rules are inappropriate and archaic, written by an administration that cared little for the value of Indian life.

Very limited reform

Given the evidence of very poor living conditions and the high levels of human rights abuse, unsurprisingly, there have been repeated calls for reform. However,

128. Delhi Police officials under scanner over death of inmates in Tihar, *The Pioneer*, 28 June 2007

129. Inmates accuse Tihar officials, Delhi agencies of 'atrocities', *The Asian Age*, 30 May 2007

130. UNSTARRED QUESTION NO 1281 ANSWERED ON 12.03.2008

as with most other countries, political will for reform of penal institutions is limited.

The All India Committee on Jail Reforms [1980-83], more popularly known as the Mulla Committee, drafted a model prison bill on the lines of standards recommended by the United Standard Minimum Rules for Treatment of Prisoners. The National Human Rights Commission of India has proposed two model prison bills for consideration by state governments.

Delhi, Jammu & Kashmir and Rajasthan have enacted new legislation. The Ministry of Home Affairs, responsible for administration of prisons in India, circulated a draft bill of 1998 to all the state governments for consideration.

In the absence of system wide reform, there have been limited attempts at partial reforms. Sub-Section 25 of Section 59 of the Prisons Act 1894 provides for rules regarding the appointment and visits by official and non official visitors to improve the prison conditions and look after the welfare of prisoners. The Ex-officio Visitors consist of the District Collector, District and Sessions Judge, Chief Judicial Magistrate, Director of Health Services, Director of Industries, Director of Agriculture, Executive Engineer, District Education and District Health Officer.

Non-Official Visitors are notified in the State Government Gazette and they consist of members of the Legislative Assembly, social workers and those interested in correctional work: psychiatrists, psychologists etc.

Under the Human Rights Protection Act of 1993 (amended in 2006), the NHRC has the power to "*visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government*".

In addition, the Courts - both High Courts and the Supreme Court - have had to intervene when reports of violations of the rights of the prisoners have come to light in the media. For example, on 7 November 2007, the Delhi High Court directed officials in the capital's Tihar Jail to install complaints/suggestion boxes in various cells to enable prisoners to express concerns as they were unable to approach the courts and other authorities. The NHRC could then collect the complaints and petitions for appropriate action.¹³¹

If these attempts at reform have not improved the conditions of prisoners in India's penal system we should not be surprised. Piecemeal reform of the Indian penal system is unlikely to change an archaic, abusive and resource starved system.

131. Tihar directed to keep complaint boxes in cells, The Tribune, 8 November 2007

The very high levels of abuse in Indian jails points to the need for wholesale reform.

Taken individually many of these cases are media reports that reflect the claims of the local prison authorities against allegations of torture often made by the families of people who have died in Prison. But these claims and counter claims should be read in the context of the environment: the existence of a well documented institutional practice of torture; an institutional practice itself an inherited practice as well as a legal and institutional legacy designed to discriminate and punish.

In presenting these cases ACHR does not suggest that all these claims are necessarily valid, rather that the cases are cause for concern for the authorities. The central concern of ACHR is that the State is not fulfilling its obligation to appropriately address these concerns. Under international law the burden is on the State to provide the means, laws and mechanism to protect all citizens, even those deprived of liberty, from abuse either by the state or other body or individual. Where these protections fail and there is cause for concern, the state should equally initiate impartial investigation, establish the facts based on the available evidence and, should there be sufficient evidence, proceed to trial.

Again, the issue of eradicating the use of torture in Indian jails turns on the issue of impunity. As the cases demonstrate, there are mechanisms that can be implemented. In a few of the cases presented below the authorities have launched inquiries. But these cases are the exception rather than the rule. The number which proceed for prosecution are even more limited.

The failure to provide adequate protection mechanisms, the failure to investigate and the failure to prosecute allows the perpetrators of abuse to perpetuate abuses in the knowledge that they are, effectively above the law. And as long as the real extent of abuse in penal institutions remains a matter of conjecture the chances of reform are poor. And the systems that allow torture to take place are maintained.

In 2007 there were repeated allegations of torture throughout the penal system. ACHR provides a selection of the reports of deaths where there were allegations of alleged torture.

On 13 February 2007, undertrial prisoner Mr Naqibullah Ali (30), an Afghan national, reportedly died in circumstances of concern inside Tihar Jail in Delhi. The interim post-mortem report revealed that the deceased's body had injuries over the neck, lips, legs, and back of head.¹³²

On 16 March 2007, the media reported that undertrial prisoner Mr Sarat Biswal had been tortured to death in the Jharpara special jail in Orissa. The

132. Court orders probe, *The Statesman*, 31 March 2007

jail authorities claimed that he had committed suicide. However, journalists saw the body which was covered with blood. The jail authorities did not allow media personnel to record the deceased's wounds.¹³³

On 1 April 2007, an undertrial prisoner Mr K. Chandrabalan (30) of Sirkazhi allegedly died after a beating inflicted by a warder at Cuddalore Central Prison in Tamil Nadu. The jail authorities claimed that he fell ill and was immediately taken to the Cuddalore Headquarters Government Hospital where he later died. But, prisoners alleged that Chandrabalan's death was a result of the beating.¹³⁴

On 15 April 2007, an undertrial detainee identified as Ajit, resident of Raj Nagar, allegedly committed suicide by hanging himself from a ventilator grill inside a jail at Jind in Haryana.¹³⁵

On 17 April 2007, under-trial prisoner Mr Makhan Singh Kushwah died under unclear circumstances at Jaura Sub Jail in Morena district of Madhya Pradesh. According to the Jailor of Jaura Sub Jail, Poonam Singh Baredia, the deceased suffered from an epileptic fit and died in transit to hospital. The deceased's family claimed that he was tortured to death.¹³⁶

On 5 June 2007, Mr Anil Boraik died in judicial custody in Golaghat jail of Assam. He was arrested on suspicion of theft on 12 May 2007. He was sent to judicial custody on 14 May 2007. His mother Swagmoni Boraik alleges that the deceased was tortured in police custody. She alleged that the Officer-in-Charge of Khoontai police outpost, Mr Narendra Nath Gogoi, demanded Rs 20,000 from her in return for her son's release. Mr Anil Boraik was then subjected to further ill-treatment and denied medical treatment in Golaghat jail.¹³⁷

On 12 June 2007, Mr Gurdev Singh (35), a prisoner died under unknown circumstances while lodged at Ferozepur jail in Punjab. The jail authorities stated that Gurdev Singh's medical condition was a concern and had vomited twice. When his condition deteriorated, he was transferred to the local hospital at 21.45 hours and declared dead at 21.55 hours. However, Prabjit Kaur, wife of the deceased, stated that she had met her husband in the Court on the same day and reported that he showed no visible signs of ill health.¹³⁸

133. Undertrial dies in jail, *The Pioneer*, 16 March 2007

134. Prisoner's death sparks tension, *The Hindu*, 1 April 2007

135. Undertrial commits suicide, *The Tribune*, 17 April 2007

136. Irked over prisoner's death villagers stage roadblock, *The Pioneer*, 18 April 2007

137. Complaint of Asian Centre for Human Rights to the National Human Rights Commission of India dated 12 June 2007

138. Undertrial dies in Ferozepur jail, *The Times of India*, 14 June 2007

On 1 July 2007, Thippeswamy, an under-trial prisoner, was allegedly tortured to death at Chitradurga district jail in Karnataka. The jail authorities offered two conflicting versions of the death. First, they claimed that the deceased had died of heart attack. Later they claimed that Thippeswamy was attacked by members of a gang in the jail and died as a result of the attack.¹³⁹

On 29 July 2007, an under-trial prisoner identified as Mr Gollu Kanna Rao (40) died at Government General Hospital in Vijayawada in Andhra Pradesh. He was arrested on 26 July 2007 in a theft case and was remanded to judicial custody at the district prison in Gandhi Nagar, Andhra Pradesh.¹⁴⁰

On 31 July 2007, an undertrial prisoner Mr Abedali Molla (21) was allegedly found hanged in Diamond Harbour Correctional Home in South 24 Pargana district of West Bengal. He was arrested following a complaint by Mrs Taslima Khatun of Alipara village in Kulpi in South 24 Parganas district alleging that Abedali had promised to marry her and they had cohabited. According to Abedali's cousin, Abdul Rahaman, Taslima Khatun's family hired people in the detention facility to murder Abedali. Abedali's brother was present when the dead body was taken to Medical College & Hospital Morgue (Kolkata Morgue) on 2 August 2007. He saw a blistering on the left side of upper back and legs. According to advocates Muktikam Das and Pronil Roy, in the Correctional Home a criminal gang extort from families of remand prisoners for money. If they fail to pay, then the prisoners are subjected to physical and psychological ill-treatment that amounts to torture. The victims are denied proper sustenance and access to their family. The law firm alleges that Abedali died as a result of torture in jail. They allege that the victim was first killed. His body was later placed in a manner designed to suggest suicide.¹⁴¹

On 21 August 2007, a 36-year-old convict identified as Mr Balram Sharma allegedly committed "suicide" inside his prison cell at the Raipur Central Prison in Chhattisgarh. The deceased's hands were bound and his body covered with a blanket. The Raipur facility did not to explain how the deceased managed to tie his own hands, cover himself in a blanket and then commit "suicide" inside a prison cell where other prisoners were also detained.¹⁴²

On 28 August 2007, an under-trial prisoner identified as Mr Muktikanta Muduli (40) of Simulipatna was tortured to death in Balasore Jail in Orissa. He was allegedly tied to the railings in the jail and tortured by four jail officials.¹⁴³

139. Mystery surrounds undertrial's death in Chitradurga jail, *The Hindu*, 2 July 2007

140. Prisoner dies in hospital, *The Hindu*, 30 July 2007

141. Communications sent by MASUM, Kolkata

142. Raipur: convict on death row found dead, *The Indian Express*, 22 August 2007

143. UTP dies in jail, *The Pragativadi*, 31 August 2007

On the night of 2 September 2007, a convict identified only as Mr Virender (22) from Kabarchha village, died at barrack No. 1 in Jind Prison in Haryana. The jail authorities claimed that he committed suicide by hanging himself in the bathroom. However, the deceased's family alleges that he was hanged and the prison authorities conspired to present his death as a suicide. The district administration has ordered a magisterial probe.¹⁴⁴

On 10 September 2007, an under-trial prisoner identified as Mr Nagina Singh died in Gaya Central jail in Bihar. The jail officials claimed that he had committed "suicide" by jumping from the stairs, which lead to the second floor of the three-storied central jail. The jail inmates allege that a jail official pushed him following an altercation. The jail authorities allegedly tried to hush up the matter and security guards prevented journalists from taking photographs of the deceased at Magadh Medical College where the body was taken for autopsy. The district magistrate of Gaya, Jitendra Srivastava ordered two separate inquiries - one by an executive magistrate and the other by a judicial magistrate into the case.¹⁴⁵

On 13 September 2007, an under-trial prisoner identified as Mr Rabinarayan Bhoi died under circumstances of concern in the Allipingal jail in Jagatsinghpur district of Orissa. Rabinarayan Bhoi was arrested on 6 June 2007 on murder charges. The Superintendent of Allipingal jail, Bijaya Kumar Paikray claimed that the deceased suddenly complained of ill health on 12 September 2007. When his condition deteriorated, he was taken to hospital but died en route.¹⁴⁶

On 20 September 2007, Mr Ajoy Bagdi (son of Pankhi Bagdi), a resident of Bichhur village under Barua police station in Murshidabad district of West Bengal was arrested by the police and detained in the lock up of Nowda Police Station. He was charged under the Arms Act and produced before Court of Chief Judicial Magistrate, Kandi on 21 September 2007. He was remanded to police detention for seven days. In police custody he was allegedly tortured. He was later sent to Berhampore Central Correctional Home. On 22 November 2007, Mr Ajoy Bagdi allegedly hanged himself from a tree inside the jail.¹⁴⁷

On 17 October 2007, Mr Badri Kumar Vashya of Tatahai road, Mukeri Bazar in Mirzapur district of Uttar Pradesh succumbed to injuries apparently sustained during torture while detained in Mirzapur jail. Mr Badri Kumar Vashya and his son Dharmendra were arrested by the police and sent to jail in Varanasi on charges of involvement in the death of Dharmendra's wife.

144. Jail inmate commits suicide - Family alleges he was hanged, The Tribune, 4 September 2007

145. Cloud over jail 'suicide'- Gaya district magistrate seeks two inquiries into the case, The Telegraph, India, 11 September 2007

146. Undertrial dies in jail, The Statesman, 14 September 2007

147. Communications sent by MASUM, Kolkata

According to Mahendra Kumar Umar Vashya, son of the deceased, both Badri Kumar Vashya and Dharmendra were tortured by the jail staff for a bribe. As Badri Kumar Vashya suffered from diabetes and was transferred to Mirzapur prison. There he was apparently denied appropriate medical treatment and died.¹⁴⁸

On 1 November 2007, the Punjab and Haryana High Court directed the police to register a case against the custodial death of Kewal Singh in Central Jail, Ferozepore in Punjab on 20 April 2007. The court acted on the post mortem report which identified 13 injuries on the deceased's body.¹⁴⁹

On 2 November 2007, Mr Adol Basumata, son of Nagen Basumata, died in Alipurduar jail in Jalpaiguri district of West Bengal. The deceased, a student, was arrested on charges of assaulting a forest official. He was remanded in judicial custody. His father Nagen alleged that he was beaten to death while in custody.¹⁵⁰

On 14 December 2007, an undertrial prisoner identified as Mr Ashok Ghosh (66), (son of Kalidas Ghosh), of 20/A at Garcha First Lake, under police station Gariahat in Kolkata, West Bengal was allegedly tortured to death at the Alipur Correctional Home. The police claimed that he died of an illness. However, the inquest report revealed injuries on the deceased's body, consistent with allegations of torture.¹⁵¹

On 17 December 2007, an under-trial prisoner identified as Mr Krishna Naik (30) allegedly died of torture in the K.R. Nagar Sub-Jail in Mysore, Karnataka. On 10 December 2007, the deceased was arrested for charges under the Forest Act of 1927 and Forest Conservation Act of 1980 and detained at K.R. Nagar Sub-Jail. The jail authorities claimed that the deceased had complained of stomach pain on the morning of 17 December 2007. He was taken to K.R. Nagar Hospital. Later he was transferred to Krishnarajendra Hospital in Mysore where he later died. On 18 December 2007, hundreds of people from Saragur and the surrounding villages protested outside the Office of the Deputy Commissioner in Mysore, seeking action against the officials responsible for the death of Krishna Naik. The District Commissioner assured them that a magisterial inquiry would be ordered into the incident.¹⁵²

148. Information provided by People's Vigilance Committee on Human Rights (PVCHR)

149. High Court - Registration of case in custodial death ordered, *The Tribune*, 2 November 2007

150. Undertrial dies, family cries foul, *The Telegraph*, 3 November 2007

151. Information received from MASUM, Kolkata

152. Prisoner's death to be probed, *The Hindu*, 19 December 2007

II. Prison administrations in India

Prison conditions are very poor across India. According to the statistics of the National Human Rights Commission, there were a total of 3,32,112 (international: 332,112) prisoners against the total capacity of 2,38,855 (238,855) prisoners in the 1315 jails in India as on 31 December 2004. Out of total prisoners, 2,32,731 (232,731) inmates were awaiting trial. This equates to 70% of the total prisoners. This included 12,276 women and 1,570 children. The highest overcrowding rate was reported from Jharkhand with 195.2% overcapacity Delhi with 149.7%, Chhattisgarh with 94.5% and Gujarat with 91.5 % sanctioned capacity.¹⁵³

Jail conditions do not conform to international standards and most lack basic amenities such as adequate food, drinking water, sanitation, and health services. In its 2007-2008 Annual Report, the Ministry of Home Affairs accepted that "the deterioration of the condition of prisons, prisoners, and prison staff because of inadequate allocations for the maintenance and upkeep of prisons from the States'. They noted the need to increase the capacity in jails to accommodate those awaiting trial and for convicted prisoners as well as the need to improve sanitation in prisons and provide adequate housing to prison personnel.

For instance, the showpiece of India's prisons, Tihar Jail continues to suffer from significant overcrowding: there are 12,300 prisoners against sanctioned capacity of 6,200 prisoners in the Tihar Jail.¹⁵⁴ Of these, more than 83% of Tihar Jail's population comprises of undertrial prisoners.¹⁵⁵ On 18 June 2007, the Delhi High Court ordered the immediate release of 600 inmates on bail to make space in Tihar Jail following a number of custodial deaths.¹⁵⁶

The Orissa High Court also made similar interventions. Orissa's seventy jails have a total capacity of 9,125 prisoners. However, as of August 2007, there were more than 15,500 prisoners.¹⁵⁷ Conditions are very poor. Health provision and conditions are a particular concern. Nutrition is another concern. In August 2007, Orissa High Court issued a ruling designed to reduce overcrowding, including the release of undertrial prisoners on bail, in cases where the chargesheet has not been filed within the time limit; release on bail of inmates who had spent over a year in custody against charges punishable by less than seven years; release of prisoners, who had been granted bail, but had not been released because of inability to pay a surety bond or cash deposit.¹⁵⁸

In Andhra Pradesh, the conditions of all 10 sub-jails in Anantapur district were

153. Available at "Prison Population Statistics" at NHRC website, <http://www.nhrc.nic.in>

154. Inmate count falling in Tihar, *The Times of India*, 18 November 2007

155. 121 Tihar inmates bargain for freedom, *The Times of India*, 19 July 2007

156. To decongest Tihar Jail, High Court says release 600 inmates immediately, *The Indian Express*, 19 June 2007

157. Prisoners fall prey to neglect, *The Telegraph*, 19 June 2007

158. Court cure for packed jails, *The Telegraph*, 24 August 2007

of concern as a result of overcrowding and the failure of the authorities to provide basic facilities.¹⁵⁹

Of Asom's 27 jails, the conditions in the Hailakandi District Jail were reported to be the worst. As many as 139 prisoners, 77 of them serving life terms, were held into a semi-permanent structure meant to accommodate only 55 convicts. This jail was supposed to be shifted to a 20-bigha plot 17 years ago.¹⁶⁰

In Bihar, there were more than 42,000 people lodged in various jails against a capacity of about 20,000 as in April 2007.¹⁶¹

In Punjab, there were over 16,000 prisoners as of early May 2007 against sanctioned capacity of 11,000 prisoners in 26 jails.¹⁶²

The same was the cases with the jails in Uttar Pradesh. According to the findings of an inquiry conducted by the police and administration, 3,112 prisoners were lodged against a sanctioned capacity of 670 in the Dasna jail in Ghaziabad district as of mid-April 2007. The report also revealed that there were no watchtower, no metal detectors, no public address system, no wireless sets, no generator, no helmets or tear gas and a jail superintendent. Even the walls were below the official norms and standards.¹⁶³

In West Bengal, the jails which have been renamed as 'Correctional Home' showed no improvement. It made little difference. The Krishnagar District Correctional Home remained overcrowded and lacked basic services including sanitation. There were 1,072 prisoners as against the sanctioned 498 prisoners in the Correctional Home as of July 2007. Most of the inmates were undertrials.¹⁶⁴ While the Jalpaiguri District Correctional Home had 846 under trial prisoners against sanctioned capacity for 551 inmates as of 21 May 2007.¹⁶⁵

In Himachal Pradesh, 50 prisoners were shifted from Nahan Model Central Jail to Kanda jail in Shimla due to overcrowding in September 2007. Yet, 360 inmates continued to be lodged at the Nahan Model Central Jail against the sanctioned capacity of 198 inmates as on 12 September 2007.¹⁶⁶

159. Lack of amenities hits jails, The Deccan Chronicle, 11 August 2007

160. Prisons present study in contrast - Tale of Twin Jails: One serene, the other shoddy, The Telegraph, 1 February 2007

161. Bihar jails crammed, Nitish plans amnesty for elderly and petty, The Indian Express, 27 April 2007

162. Bring transparency in police force: PSHRC, The Tribune, 3 May 2007

163. No watchtower, wireless sets at Ghaziabad jail, says report, Available at: <http://cities.expressindia.com/fullstory.php?newsid=232464>

164. Undertrials languish in virtual hell-hole, The Statesman, 31 July 2007

165. Rights official visits jails, tea estates, The Statesman, 22 May 2007

166. Respite for Nahan jail inmates, 50 shifted to Shimla, complex to get new wing for 110 inmates by end 2008, The Tribune, 12 September 2007, available at: <http://www.tribuneindia.com/2007/20070912/himplus1.htm>

In the Shillong jail of Meghalaya, 291 prisoners were lodged as against its sanctioned capacity of 150 as of March 2007.¹⁶⁷

Budgetary allocations are insufficient to realize these goals. Between 1987 to 2002, Central government provided Rs.131.72 crore¹⁶⁸ to improve prison conditions.

According to 2007-2008 Annual Report of the Ministry of Home Affairs, to modernize prisons (scheduled to be implemented over a period of five years 2002-07 in 27 States), the Central government allocated Rs.1800 crore or about US\$ 45 million (1 USD= Rs 40) to be share 75:25 between the Central and State Governments. The scheme has been extended by a further period of two years without additional funds to enable the State Governments to complete their activities by 31 March 2009.

Against a target of 168 new jails, the State Governments have completed the construction of 56 jails and 60 jails are expected to be completed by 31 March 2008. It appears that funds are in the majority committed to building new penal institutions.

167. Govt to file affidavit on State prisoners, Home Secy summoned, The Shillong Times, 29 March 2007

168. 1 crore = 10 million

7. Torture by other public officials and non-state actors

I. Torture by other public officials

In India, in addition to law enforcement and security personnel a large number of other officials possess powers of arrest and detention.

On the night of 23 January 2007, 30-year-old Mr Hrangchhingpuia, resident of Hourang village in Lunglei district of southern Mizoram, was arrested by the excise officials for allegedly selling local made liquor. The victim died in custody. Excise officials claimed that he hanged himself in the lock up.¹⁶⁹

Forest Department Officials, for example are regularly responsible for the use of torture. On 17 June 2007, Jeevan Munda (35), a labourer from Katkamsandi block in Hazaribagh district of Jharkhand was killed while in the custody of Forest Department officials inside the Hazaribagh Wildlife Sanctuary in Jharkhand. The victim was summoned by the Forest Department of the Wildlife Sanctuary who wanted to know how he got the wood for a new chowki (wooden cot). The driver of the Forest Department jeep No. JH02G/1958 identified as Loknath Mahto, one of the accused, reportedly confessed that Mr Munda was taken to Rajderwa forest area of the wildlife sanctuary and beaten to death by Forest Officials, Durga Oraon and Devlal Mahto. His body was found later in a field with multiple injuries all over his body.¹⁷⁰

II. Torture by other non-State actors

Under Article 1(1) of the Convention Against, "torture" "means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The involvement, instigation of or consent or acquiescence of a public official is mandatory to define torture.

At the Article 1(2) states that definition of the Convention Against Torture the involvement of "a public official or other person acting in an official capacity" mandatory for definition of torture is "without prejudice to any international instrument or national legislation which does or may contain provisions of wider application".

169. Youth dies in lock-up, The Shillong Times, 25 January 2007

170. Man cuts tree to make cot, beaten to death, The Deccan Chronicle, 19 June 2007

A. Torture by upper castes

The government of India has enacted laws which have widened the definition of torture. The use of torture and other cruel, inhuman or degrading treatment or punishment have been explicitly recognized by the government in a number of legislation concerning "atrocities" against the Scheduled Castes (Dalits) and Scheduled Tribes under the Prevention of Atrocities Act, 1989, the Dowry Prohibition Act, the Protection Of Women From Domestic Violence Act, 2005 etc.

In particular, Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 which defines "atrocities" is relevant.

Atrocities are defined as:

"whoever, not being a member of a Scheduled Caste or a Scheduled Tribe",

Among others:

"(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance; (ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood; (iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity; (iv) compels or entices a member of a Scheduled Castes or a Scheduled Tribes to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; (v) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; (vi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty; (vii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed; (viii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used; (ix) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any Section thereof have a right to use or access to; and (x) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence".

Many of the elements of abuses above are also included in the Article 1 of the Convention Against Torture.

Nonetheless, despite legal protection, lower castes continue to be particularly vulnerable to violation because of the failure to implement these laws.

The 2005 Annual Report of the National Crime Records Bureau reported a total of 26,127 cases - 8,497 cases under the Protection of Civil Rights Act and 291 cases under the SC/ST (Prevention of Atrocities) Act of 1989 - against the Scheduled Castes. Although the average charge-sheeting rate for the crimes against the SCs was 94.1 per cent, the average conviction rate was only 29.8%. A total of 46,936 persons (82.4%) out of 57,804 persons arrested for crimes committed against Scheduled Castes were charge-sheeted but only 28.3% were convicted consisting of 12,691 persons out of 44,842 persons against whom trials were completed.¹⁷¹

On 4 August 2007, a Dalit identified as Mr Ram Kagan (25)(son of Ram Kishor) of Pani village under Meza police station in Allahabad district of Uttar Pradesh was beaten up while in custody in the local police station by Sub Inspector Arun Kumar Pathak. He was arrested following a complaint lodged by another villager purportedly in an attempt to take over the victim's land. Often the upper castes file frivolous cases or use the law enforcement personnel to grab lands from Dalits. According to the information the Sub Inspector allegedly placed bricks on the victim's back and hit his backside with a stick. After torture, the victim was kept in the police station overnight and then released.¹⁷²

On 27 August 2007, Mr Raja Ram, (son of Visheshwar Prasad) of Gatowa village under Sarai Inayat police station in Allahabad district of Uttar Pradesh, was beaten up by Sub Inspector Surendra Pratap, constable Ashok Kumar and another constable of Sarai Inayat police station. During the assault the victim's leg bones were apparently fractured.¹⁷³

On 31 August 2007, women and children of the Dalit caste, including Ms Gyanti Devi and her infant daughter Sarita were tortured by upper castes at Siwalapar village on the outskirts of Patna in Bihar. According to the report, members of the upper caste villagers beat up some Dalit children for playing inside the premises of a Hindu temple. When Ms Gyanti Devi objected, Mr Ramavtar Yadav and his three sons barged into Gyanti Devi's house and attacked her. Gyanti Devi was cooking at the time with her six-month-old daughter Sarita in her lap. Mr Ramavtar Yadav apparently poured the hot 'daal' over Ms Gyanti Devi's back some of which splashed the child. Both suffered serious injury. Mr Ramavtar Yadav and his three sons subsequently beat up three other Dalit women

171. 2005 Report of National Crime Records Bureau, Ministry of Home Affairs, available at <http://ncrb.nic.in/crime2005/cii-2005/CHAP7.pdf>

172. Information provided by People's Vigilance Committee on Human Rights (PVCHR)

173. Ibid

identified as Gauri, Kamla and Usha.¹⁷⁴

On 19 August 2007, a Class IV student identified as Navin Kumar Paswan (9), (son of Shivji Paswan), a Dalit, was so badly beaten up by his teachers that he lost the use of an eye in a government school at Aujapauchha village in Purnea district of Bihar. The little boy's apparently requested more food during a mid-day meal. He was beaten up by the headmaster of the school, Mr Rajendra Jaiswal and class teacher Mr Shekhar Bharti.¹⁷⁵

On 25 September 2007, a Dalit labourer identified as Mr Lalsingh Jatav was subjected to torture and other forms of degrading treatment by two upper caste persons - Mr Kadamsingh Kushwaha and Mr Ball Singh - for refusing to work in their fields at Murdav village in Morena district of Madhya Pradesh. According to the report the victim was sick and refused to plough the fields of the accused. But the accused got angry and started abusing Mt Jatav. They then tied him to a tractor and dragged him along the village street. During the events Mr Jatav sustained serious injuries. Instead of taking action against the accused, the police registered a complaint against Mr Lalsingh Jatav and other Dalits who had tried to stop the attackers.¹⁷⁶

On 11 November 2007, a Dalit named Kailash (surname unknown) was tortured and burnt alive by the upper castes for chasing away animals that had strayed onto his land. The animals belonged to a member of the upper caste community. The events took place at Kharoda village in Dhar district of Madhya Pradesh.¹⁷⁷

On 12 November 2007, a Dalit identified as Mr Guddu Jatav, a rickshaw puller was allegedly tortured and then buried alive by three upper caste men identified as Brij Lal, Mukesh and Dharam Pal at Rahimpur-Karimpur village in Bilhaur area in Kanpur of Uttar Pradesh. The local police allegedly refused to register a complaint filed by the deceased's uncle Mr Ram Chander. Mr Ram Chander alleged that the police tore up the complaint and instead registered a case of assault although it was a clear case of murder.¹⁷⁸

B. Use of torture by recovery agents of the Banks

As Indian economy booms, banks have been using recovery agents to recover bad debt. These agents use harassment, as well as psychological, mental and physical torture.

174. ACHR complaint No. BH/07/2007

175. ACHR complaint No BH/05/2007

176. ACHR complaint No. MP/07/2007

177. ACHR complaint No. MP/08/2007

178. ACHR complaint No.UP/05/2007

On 23 June 2007, one Yadaiah (42), resident of Yapral in Rangareddy district in Andhra Pradesh, was allegedly tortured to death in the custody of Elite Financial Services, a loan-recovery firm with a recovery contract with the ICICI Bank after he failed to repay a loan of Rs 15,000.¹⁷⁹

The above murder took place despite a Supreme Court judgement of 26 February 2007 in the case of Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Ors. The Supreme Court observed:

*"The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics".*¹⁸⁰

The Court did not fix criminal responsibility on the banks. And until it does so similar incidents will continue to re-occur.

C. Use of torture by Panchayats

The Village Councils, both traditional ones and the ones established under the Panchayati Raj Act, use torture as part of their 'traditional' justice delivery system.

On 31 January 2007, 19-year-old Gudiya and her physically challenged boyfriend, Mr Mahesh Singh, were chopped to pieces after a panchayat sentenced them to death in Agra in Uttar Pradesh. They had eloped and were from the same gotra (clan). Marriage among the same gotra is forbidden.¹⁸¹

On 19 May 2007, a Dalit woman identified as Ms Kari Devi (45) was tortured to death by former village headman, Mr Saroj Singh and his relatives at Dhansir village in Gaya district of Bihar. Mr Saroj Singh suspected that Ms Kari Devi had stolen his cow.¹⁸²

D. Use of torture by some civil society organisations

Even some of the so called mass based civil society organisations have employed torture to combat social problems. On 8 May 2007, Lalbiakliana was allegedly tortured to death by activists of Young Mizo Association (YMA), an NGO in Mizoram that has 'declared war' on drug and alcohol use. The deceased was detained by the YMA's Supply Reduction Service (SRS) activists on 8 May 2007 for allegedly possessing ganja (marijuana). His body was later found in the office

179. AP loan-recovery firm blamed for death, The Indian Express, 25 June 200

180. Judgement of the Supreme Court of India on 26 February Criminal Appeal No. 267 of 2007 (Arising out of SLP (Crl.) No. 15 of 2007)

181. Village elders chop lovers, The Telegraph, 2 February 2007

182. Dalit woman beaten to death, The Deccan Herald, 21 May 2007

of the SRS under Bawngkawn police station in Aizawl. The autopsy report of the deceased found the cause of death to have been caused by shock due to the multiple injuries inflicted.¹⁸³ The YMA has been consistently accused of torturing suspected drug peddlers.

183. Torture exposed through RTI Act, The Assam Tribune, 18 June 2007

8. Judicial interventions against torture

"Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter." - Supreme Court of India, State of M.P. v. Shyam Sunder Trivedi and Ors. 1995 (4) SCC 262)

The Indian judiciary despite powerful rulings on torture and other human rights violations is restricted by a number of factors.

Judicial delay:

There are at least 28.6 million cases pending before the courts in India.¹⁸⁴ According to Chief Justice of India K.G. Balakrishnan India needs at least 5,000 more courts¹⁸⁵, 1,539 more judges in the High Courts and 18,479 more judges in subordinate courts to clear the backlog of cases within one year.

Presently, India has only 10.5 judges per million people.¹⁸⁶ In addition, vacancies are seldom filled on time. There were four vacancies in the Supreme Court of India (out of sanctioned strength of 26 judges, there were only 22 judges) as of 10 July 2007, 142 vacancies in the 21 High Courts of the country (there were 583 judges against the sanctioned strength of 725 judges) as on 1 July 2007 and 2,768 vacancies in the district and subordinate courts (there were 11,951 judges against the sanctioned strength of 14,719 judges) as on 31 March 2007.¹⁸⁷

As the cases cited in this chapter show, it can take decades for the Courts to rule.

Impunity: Executive as the supra-judicial authority

In terms of mounting prosecution, the Court is hampered by the immunities offered to law enforcement personnel under various laws such as sections 45 and 197 of the Indian Criminal Procedure Code, Section 6 of the Armed Forces Special Powers Act (see the relevant section on the police).

The government of India justifies these provisions as a means to protect the armed forces from frivolous or vexatious penal as well as civil actions that may

184. The Monthly Statement Of Pending Cases For The Month Of October, 2007, Supreme Court of India, available at http://www.supremecourtindia.nic.in/new_s/pendingstat.htm

185. More courts required to clear pending cases: CJI, The Tribune, 5 November 2007

186. CJI blames govt for backlog, The Hindustan Times, 8 April 2007

187. Source: Court News, April - June 2007, Supreme Court of India, available at http://www.supremecourtindia.nic.in/Apr_Jun_2007.pdf

arise from the acts committed in the discharge of official duty. Torture is a grave crime. The cases provided in this report and other human rights reports and supported by the view of the Courts and the NHRC, demonstrate that this protection while well intended, provides state officials with 'cover' to abuse their positions, break Indian law and abuse the rights of India's citizens.

Through these provisions of the Criminal Procedure Code as well as other National Security Laws, the Executive is in effect undermining the Judiciary. It is the role of the Judiciary to rule on whether allegations are vexatious, abusive or frivolous or whether acts which have been done are part (or indeed not part) of discharging an official duty. It is not for the Executive to act as supra-judicial body through a "*procedure established by law*".

No law for compensation:

There is no law for compensation. India's ratification of the International Covenant on Civil and Political Rights expressed a reservation to Article 9 on the grounds that "*under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State*". Though the courts have regularly awarded compensation, there is no coherence to the awards, the amount of compensation depending on individual judges.

Nonetheless, Courts across India continue to award compensation and prosecute the guilty law enforcement personnel. Increasingly, the courts have been directing the State to recover compensation from guilty personnel.

I. Judgements awarding compensation

Judgement 1: Custodial death of Kewal Singh

The Punjab and Haryana High Court took *suo motu* action based on report of *The Times of India* on 22 April 2007 about the custodial death of Mr Kewal Singh on 20 April 2007.

The deceased Kewal Singh alias Gola (son of Buta Singh) of Bukkanwala village in Ferozepur district of Punjab was facing trial in case FIR No. 27 dated 5 April 2007 registered at Police Station Sadar, Moga under Sections 382, 506, 148, 149 Indian Penal Code (IPC). He was also arrested on FIR No. 34 dated 12.4.2007 registered at Police Station Sadar, Moga under Sections 307, 324, 323, 382, 341 and 506 IPC read with Section 34 IPC.

He was first arrested by the police on 14 April 2007. He was produced in the Court on 15 April 2007 and was remanded to police custody. On 16 April 2007, he was again produced before the *Illaq*a (area) Magistrate and he was remanded to judicial custody. In judicial custody he was detained in Sub Jail, Moga. On 20 April 2007 he was transferred to the Central Jail, Ferozepur on

administrative grounds. In the evening of 20 April 2007, Kewal Singh died in custody.

He was allegedly beaten with sticks and iron rods by Head Warden Major Singh, Warden Baldev Singh and Chakkar Havaladar Shinder Singh. The post mortem report revealed 13 injuries on his body. Jail officials claim that the Kewal was taken from his cell to take a bath. Kewal became violent and ran towards the prison wards where he began jumping from one wall to another. In the process he injured his hand. His condition deteriorated and he was declared dead on arrival at the Civil Hospital, Ferozepur.

The inquiry by the Additional Sessions Judge stated:

"But as per post-mortem report at page 93 there are 13 injuries mark on the body of Kewal Singh. The nature of injuries raises many questions. Even if his hand had got injured due to glass on the wall, there is no explanation for the injuries on the body of Sh.Kewal Singh specially head, back and lower part of back. It appears that excessive force was used and he was given a severe beating by the jail staff. The Superintendent of Jail both Moga and Ferozepur have not shown any justification for shifting the prisoner Kewal Singh. The Superintendent, Central Jail, Ferozepur, did not even bother to get the medical examination of Sh.Kewal Singh done before admitting him in the Ferozepur Jail".

On 15 February 2008, the Division Bench of Chief Justice Vijender Jain and Justice Kanwaljit Singh of the Punjab and Haryana High Court (***Court on its own Motion Vs. State of Punjab***) directed the State Government of Punjab to pay compensation of Rs 10 lakh to the next of kin. The Court observed that:

"The instrumentalities of State, and the jail authorities, who are responsible to provide adequate facilities for the persons cannot deprive a person of his life. Nothing can be more serious than custodial death of an inmate in a jail. The whole concept of human rights, life and liberty will be put to naught if this Court does not come down heavily on the State and its officers for taking out the life of an under-trial without the authority of law."

Judgement 2: Custodial death of Natarajan Chettiar (Writ Appeal No. 1018 of 2006 Rajammal Vs. State of Tamil Nadu)

On 5 February 2007, two-Judge Bench of the Madras High Court admitted the writ appeal petition (Writ Appeal No. 1018 of 2006) filed by Rajammal, the widow of a custodial death victim, for enhancement of compensation. The appellant's husband Natarajan Chettiar died in the custody of Tiruvannamalai Police Station on 11 September 1993. He was arrested in an alleged case of theft in Criminal Complaint No. 417 of 1993 for offences under Sections 457 (*house trespass or house breaking by night in order to commit offence*) and 380 (*theft in dwelling house etc*) of the IPC.

In her Writ of Mandamus petition (W.P. No. 22366 of 1993), his widow, Ms Rajammal pleaded for appropriate action against the perpetrator involved in Natarajan Chettiar's custodial death and compensation of Rs. 5,00,000 (US\$ 12,500). In its order G.O.Ms. No. 741 Public (Law and Order-A) Department dated 8 July 1996, the state government ordered the initiation of a criminal prosecution against the accused police officers, thereby admitting to the custodial death. But the Single Judge directed the state authorities to pay only Rs 3,00,000 (US\$ 7,500) as compensation. Ms Rajammal appealed for greater compensation on the grounds that she had to look after her sons who were aged 23, 20 and 15 years and daughters aged 22, 18 and 17 years at the time of death of her husband.

The two-Judge Bench ruled in her favour stating that it was:

"appropriate to enhance the compensation ordered by the learned single Judge from Rs. 300,000 to Rs. 500,000 as has been prayed for by the petitioner in the writ petition."

Judgement 3: Custodial death of Rajmohan the Government of Tamil Nadu and Ors. Vs. R. Dhanalakshmi (Writ Appeal No. 1169 of 2004 and WAMP No. 2198 of 2004)

In the case of *the Government of Tamil Nadu and Ors. Vs. R. Dhanalakshmi* (Writ Appeal No. 1169 of 2004 and WAMP No. 2198 of 2004) on 11 April 2007 a two-Judge Bench of the Madras High Court held that "*justice would be met*" by awarding compensation of Rs 5,00,000 (US\$ 12,5000) to the family of Mr Rajmohan who had died as a result of torture in police custody. The State government of Tamil Nadu challenged the order of the Single Judge of the Madras High Court 29 October 2003 (W.P. No. 13577 of 1996) which directed the state government of Tamil Nadu to pay Rs 9,00,000 (US\$ 22,500) to the petitioner Ms R. Dhanaakshmi (husband of Rajmohan). The government did not dispute the custodial death and even awarded Rs 100,000 (US\$ 2,500) to the deceased's family from the Chief Minister's Relief Fund as compensation.

Ms R. Dhanaakshmi filed a Writ of Mandamus stating that on 23 March 1995 at about 05.00 hours, her husband Rajmohan was taken into police custody by Mr R. Eswaran, Sub Inspector of Police of Karur Police Station, from his house at Veeramalai Palayam, Kaniyalampatti Post, Chinthamanipatti. He was tortured to death by the Sub Inspector of Police, Karur Police Station. The post-mortem report issued by the Medical Officer, Government Hospital, Karur, revealed that the victim died of Neurogenic shock due to the pain caused by injuries to his chest 10-14 hours prior to autopsy.

The writ petitioner stated that the deceased was about 29 years old when he died. He ran a successful business which earned Rs 6,000 per month after deducting all expenses. The deceased was the only wage earner and had left behind two children and his wife. But the two-Judge bench contended that:

"except mere statement in the affidavit that her husband was a fleet owner, operating a lorry, she has not furnished or enclosed the required materials such as registration certificate of the lorry or lorries, model, make, details regarding payment of income tax, information regarding continuance of lorry business"

The Bench then reduced compensation from Rs 9,00,000 to Rs 5,00,000 stating that this was enough to provide "justice" to the deceased's family.

Judgement 4: Custodial death of Rasiklal Jaiswal (Premilaben R. Jaishwal and Ors. Vs. Respondent: B.M. Jadeja and Ors Spl. Cri. Appln. No. 328 of 1998)

On 3 May 2007, the High Court of Gujarat in the case of *Premilaben R. Jaishwal and Ors. Vs. Respondent: B.M. Jadeja and Ors* (Spl. Cri. Appln. No. 328 of 1998) ordered the state government of Gujarat to provide interim compensation of Rs. 40,000 (US\$ 1,000) each to the petitioners. The court ruled that the compensation should be recovered from the guilty police personnel "*considering the loss, shock and suffering and the delay*". The Court also ordered for an investigation into the case by "*an independent and competent police officer of a higher rank*".

The petition was filed pertaining to the custodial death of the husband of the petitioner Premilaben, Rasiklal Jaiswal, who was detained by the police at around 16.00 on 16 September 1994. The petitioner alleged that Rasiklal Jaiswal was tortured at Makarpura Police Station in Vadodara. The police denied the victim access to medical treatment despite suffering from a number of medical conditions. The post mortem report revealed several ante mortem minor injuries. But an inquiry by Assistant Commissioner of Police, "A" Division, Vadodara City found that the deceased had died of a "heart attack" and exonerated the accused police officials. However, an inquiry by the Sub-Divisional Magistrate under Section 176 of the Criminal Procedure Code in its report (submitted on 4 August 1998) found several disturbing facts.

As the court noted from the report of the Sub-Divisional Magistrate:

"the time of arrest shown at the police station of 00.15 hours on 17-9-1994 was wrong and the arrest appeared to have been effected in the evening of 16-9-1994; that 27 accused persons appeared to have been detained in a small room at the police station; that the deceased was not produced before the Court till the end of normal working hours of the Court, i.e. 18.10 hours, and thereafter at 19.10 hours, the deceased had expired; that instruction of Police Commissioner, Vadodara not to produce before the Magistrate the detainees within 24 hours of their arrest was exactly against the settled position of law and non-production before the Magistrate of the deceased for 19 hours indicated negligence on the part of the police; that the deceased appeared to have been unwell since the time of his arrest; that the allegations of beating of the deceased by the police were substantiated by the ante

mortem injuries found on the body of the deceased; that despite the complaints of the deceased, the police had failed to make any attempt at providing proper medical aid to the deceased; that even the requests of the deceased to call for necessary medicines from his house or call a doctor were not heeded; that the police officers and personnel concerned were required to be proceeded against; that the post mortem examination was also not properly and expeditiously done and there was obvious negligence of the authorities of the medical college in preparation and signing of the post mortem report; that the post mortem report revealed blockage of 70% in the coronary arteries and the final cause of death was cardiac failure as a result of pathology in coronary arteries. It is finally reported by the Sub-Divisional Magistrate that, in the facts of the case, the deceased appeared to have died due to congestion of 27 persons in a small room, the atmosphere of the police station, the apprehension of being beaten by the police and the mental stress caused by non-supply of water and medicines at the proper time which precipitated the heart attack".

The High Court further observed that:

"The departmental enquiry and its conclusion appear to be an eye-wash insofar as the version of the police officers concerned appears to have been accepted in toto without reference to the statements of the eye witnesses who were examined at the magisterial inquiry."

The High Court stated:

"Rarely, in cases of police torture or custodial death is there direct ocular evidence of the complicity of the police personnel who alone could explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops', the foundations of the criminal justice delivery system would be shaken and civilization itself would risk the consequence of barbarism".

The High Court apart from awarding interim compensation further ordered that:

"Since the State Police Complaints Authority required to be constituted under the judgment of the Hon'ble Supreme Court in Prakash Singh v. Union of India (2006) 3 SCC (Cri) 417 : 2006 AIR SCW 5233 is stated to have still not been constituted, the original complaint of the petitioner addressed to the

Police Commissioner shall be registered as an FIR which, he original complaint of the petitioner addressed to the Police Commissioner shall be registered as an FIR which, in the peculiar facts of requirement of investigation against the police officers, one of whom is stated to have been promoted to the rank of Police Inspector, shall be investigated by an independent and competent police officer of a higher rank and report of such investigation shall be submitted to the appropriate Court in accordance with law. It is clarified that the above order to pay compensation is without prejudice to the right of the petitioner to claim further compensation is appropriate civil or criminal proceedings and the conclusions drawn for awarding the interim compensation are restricted to the consideration of violation of fundamental rights and shall not influence the investigation".

Judgement 5: Ill-treatment and torture of Mr K.S. Venkatesh and his sister Ms Rukmini

On 19 April 2007, the Bangalore Division Bench of the Karnataka High Court in the case of S. Srinidhi Vs. State by K.G. Nagar Police Station and Anr (Writ Petition No. 3 of 2007) stated:

"we are of the view that a sum of Rs. 50,000/- would be an adequate amount of compensation payable by the State for the illegal detention/torture on 7-1-2007 by the Police."

The petition relates to illegal detention and torture of Mr K.S. Venkatesh and his sister Ms Rukmini, who were taken into custody by the police of KG. Nagar Police Station in order to force Mr Venkatesh to withdraw a complaint (P.C.R. No. 180 of 2007) he had submitted against Vishweshwara Teertha Swamiji of Pejawara Mutt for an offence punishable under Sections 307 (attempt to murder), 326 (grievous hurt), 340 (wrongful confinement) and 506 (criminal intimidation) read with Section 34 (common intention) of Indian Penal Code, 1860.

They were allegedly illegally detained from 4-6 January 2007. During this detention it is alleged that they were tortured. They were then released, but on 7 January 2007, the Assistant Commissioner of Police re-detained them and in detention assaulted Mr Venkatesh and his sister. On 23 January 2007, the police produced Mr K.S. Venkatesh and Ms Rukmini as directed by the Karnataka High Court and the Court released them.

The Court directed the Registrar Vigilance to hold an enquiry into the allegation of illegal detention from 7 January 2007 and torture from 4 January 2007. While the Registrar Vigilance found that there was no torture or ill-treatment by the respondent/Police to K.S. Venkatesh and Smt. Rukmini from 4-6 January 2007 but found that they were tortured during the second illegal detention.

The Court while noted in its ruling:

"Unfortunately, of late, on account of some officials in the Police Department, the entire Police Department is getting a bad name despite their good work. To arrest this bad name to the Police Department and to see that the guilty are properly punished, we deem it proper to direct the Director General of Police to get hold of the entire records and conduct an independent enquiry to decide the (sic) hold that the person who is with regard to illegal detention/torture in the case on hand. In the event of any finding in terms of this order, the Director General of Police may proceed against such erring official in accordance with law".

Judgment 6: Custodial death of Phomlin Mawlieh (Shri Dino DG Dympep and Anr. Vs. State of Meghalaya and Ors (Civil Rule No. 130(SH) of 1998)

On 2 September 1998, Phomlin Mawlieh (27), a resident of Nangsohma village in West Khasi Hills district of Meghalaya was handed over to the police of Mairang police station in connection with theft. He was illegally detained and tortured before transferal to the District Jail, Shillong on 4 September 1998.

On 10 September 1998, the deceased was admitted to the Civil Hospital, Shillong in a critical condition. He died on 11 September 1998 at the Civil Hospital. The jail authorities claimed that he died of malaria. But the District and Sessions Judge, Shillong, in his inquiry report stated that there had been 'foul play' on the part of the police and jail authority; that the evidence adduced by the respondents was contradictory. He concluded that the cause of death could not be attributed to malaria.

The Guwahati High Court did not *"find any perversity in the findings so recorded by the District & Sessions Judge, Shillong"*. All witnesses for the prosecution supported the view that injuries inflicted during detention caused the death. One of the prosecution witness stated that at the time the victim was taken in police custody, she saw the police personnel beating him with sticks. The wife of the deceased stated that when she bathed her husband, in preparation for his funeral rites, she saw injuries on his face, chest, legs and hands. His shirt was torn and bloodstained.

On 29 June 2007, the Shillong Bench of the Gauhati High Court in the case of *Shri Dino DG Dympep and Anr. Vs. State of Meghalaya and Ors (Civil Rule No. 130(SH) of 1998)* pertaining to death of Phomlin Mawlieh due to torture in police custody, stated that:

"Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one

after the other police witnesses feigned ignorance about the whole matter."

The Court further added that:

"It is true that Section 106 of the Indian Evidence Act cannot be used to shift the onus of proving the evidence from the prosecution to the accused, but when there is satisfactory evidence which fastens or conclusively fixes the liability for the death of the inmates of the house present at the relevant time, in the absence of any other explanation, the only possible inference which can be drawn by this Court will be that all the accused inmates participated in the crime. If any one of them claims to the contrary then under Section 106, the burden of proving that fact would be upon him since that is within his special knowledge".

The deceased at the time of death was 27 years old, employed and survived by his wife and two young children. Yet, the Court ordered the state government to pay only Rs 3,00,000 (US\$ 7,500) which the Court stated "will meet the ends of justice". The Court asked the state government to hold an enquiry into the police personnel involved in the custodial death of the deceased and further stated that:

"the amount of compensation paid to the petitioner No. 2 may be realized by the State-respondents from the police personnel found to be involved in the custodial death of the deceased".

Judgement 7: Torture to death of Benudhar Daimary (2008(1)(GLT338)

Mr Benudhar Daimary was arrested with three other persons by a police team headed by Officer-in-Charge of Rowta Out Post, Sub Inspector Manzoor Ahmed, from Gangumakha village under Udalgari police station in Darang district of Assam on 20 December 2000. On 21 December 2000, the victim's brother and others went to the police post to enquire after his brother. The Officer-in-Charge stated that Benudhar and others had been sent to jail custody. However on 22 December 2000, the police handed over the body of Benudhar Daimary to the family claiming that it was found near the railway track. The autopsy report found 11 injuries on the body of Benudhar Daimary inflicted prior to the death.

The High Court vide order dated 02 February 2001 directed the Superintendent of Police, Darrang, Mangaldoi to appear before the court on 19 February 2001. He was instructed to explain why the police case has not been registered despite the complaint dated 22 December 2000 pertaining to the custodial death of deceased Mr Daimary.

Following the hearing on 19 February the High Court passed an order directing the District and Sessions Judge, Darrang, Mangaldoi to conduct an enquiry. The inquiry found that Benudhar Daimary, died in police custody as a result of physical torture inflicted by the then Officer-in-Charge of Rowta Out Post.

On 19 December 2007, the Guahati High Court, in the case of *Khangra Daimary Vs. State of Assam and Ors.*, ordered the state government of Assam to pay compensation of Rs 3,00,000 (US\$ 7,500) to the wife and child of custodial death victim Benudhar Daimary. The court stated:

"it is open for the State respondents to recover the said amount from the person responsible for the custodial torture and death of Benuddhar Daimary".

Judgement 8: Custodial death of Mr Pancharaju

On 20 December 2007, a two-Judge bench of the Madras High Court dismissed the appeal petition (W.A. No. 1328 of 2001) filed by the State of Tamil Nadu against the order of the Single Judge of the Madras High Court of 8 December 2000 (W.P.No.11231 of 1997) asking the state government to pay Rs.2,00,000 (US\$ 5,000) as compensation to Ms Pulliammal, the writ petitioner for the death of her husband, Mr Pancharaju in the custody of Central Jail, Madurai.

On 9 October 1996, Mr Pancharaju was arrested by the police under Section 4(1)(a) of Tamil Nadu Prohibition Act and Section 328 (poisoning) of the Indian Penal Code. On 9 October 1996, the Court remanded him to judicial custody for 15 days but the victim was illegally detained at the Periyakulam Police Station overnight. During detention the victim was tortured. On 10 October 1996, he was transferred to Central Jail Madurai and almost immediately sent to Rajaji General Hospital, Madurai in a serious condition. On 2 November 1996 at about 12.20 p.m, Ms Pulliammal received a telegram from the jail authorities saying that her husband was being transferred to Government Rajaji General Hospital, Madurai. Another telegram arrived on the same day at 19.00 stating that the victim had died at the hospital. Later, she was informed by Casualty Mortuary Card that her husband had arrived already dead to the hospital at 08.35 on 2 November 1996.

The High Court held that

"It is a fact not in dispute that the deceased Pancharaju was arrested on 09.10.1996 by the police and produced before the Judicial Magistrate, Periakulam for remand in Crime No.547 of 1996 for an alleged prohibition offence and was remanded for 15 days. However, he was taken to the Central Prison, Madurai on 10.10.1996. At the time of admission into the Central Jail itself, he was found unwell and hence, the Prison Medical officer referred him to Government Rajaji General Hospital, Madurai. The referral O.P. chit contains the following particulars noted by the Medical Officer: "Unable to walk" ... "alleged to have been assaulted by police people". The chit for re-admission in the jail hospital contains the following particulars: "Treated as an in-patient in our jail hospital from 19.10.1996 to 30.10.1996." From 10.10.1996 to 19.10.1996 admittedly the deceased Pancharaju was given treatment in Government Rajaji General Hospital, Madurai as an in-patient.

It is also obvious that he had not recovered at the time of his discharge from Government Rajaji General Hospital, Madurai on 19.10.1996. He was discharged with an observation that the patient was "ambulant", meaning capable of being removed. The same is obvious from a copy of the discharge summary available in the typed-set of papers. Even after being removed from the Government Rajaji General Hospital, Madurai to the prison hospital, he was treated there as an in-patient. Whether he was discharged on 30.10.1996 as inpatient of the jail hospital? What type of treatment was given on 31.10.1996 and 01.11.1996? - the appellants/respondents have not explained. No document is available in this regard. One undisputable fact emerging from the above said materials is that prior to 30.10.1996 during which period Pancharaju is alleged to have written letters to his wife and brother's son, he was taking treatment as an in-patient either in Government Rajaji General Hospital, Madurai or in the prison hospital. Therefore, it is quite unnatural and improbable that Pancharaju would have written those letters."

The High Court "discounted" the contention raised by the appellants that there was no custodial violence and that the death was due to natural causes. The Court cited the following facts:

"After getting Pancharaju remanded for 15 days on 09.10.1996, he was not taken to the jail immediately. Throughout the night on 09.10.1996 he was kept in the police station and was taken to the Central Jail, Madurai only on 10.10.1996, that too, to be admitted and sent to the Government Rajaji General Hospital, Madurai for treatment immediately after admission in the prison. Why the accused was kept in the police station for the whole night when the Magistrate had not authorised police custody? There is no answer forthcoming from the appellants. At the same time, the submission made by the learned Counsel for the respondent/writ petitioner in this regard, seems to have substance in it. According to the respondent, the accused (deceased Pancharaju) had been beaten up by the police and he was found with injuries and hence, the officer in-charge of the local sub-jail refused to admit him in the sub-jail when the police took him to the sub-jail and demanded that he be referred to the hospital and then brought to sub-jail with a certificate of Medical Officer. But the police instead of doing it, kept the accused under their custody in the police station for the whole night and in the morning took him straight away to the central prison, Madurai. The said contention of the respondent/writ petitioner seems to be quite probable in the light of the fact that no sooner Pancharaju was admitted in the central prison, Madurai, then he was referred to the Government Rajaji General Hospital, Madurai where he was admitted as inpatient on 10.10.1996 itself. As pointed out supra, the referral O.P. chit itself makes it patent that the accused was not able to walk and he alleged that he had been assaulted by police. The same gives a clear picture that the accused had been assaulted by police and the injuries caused to the internal organs had led to his ultimate death".

The Court also rejected the post-mortem certificate, final opinion of the doctors who conducted autopsy and the report of the Revenue Divisional Officer that the deceased had pulmonary tuberculosis and he died out of the said disease. The Court observed:

"It is true that the medical officers have certified as contended on behalf of the appellants. But the following facts will make the opinion of the doctors and report of the Revenue Divisional Officer questionable. Right from the date of admission in the Central Jail, Pancharaju was given treatment as in-patient. During the said period (10.10.1996 to 30.10.1996), the respondent/writ petitioner was not informed. Only on 02.11.996 the jail authorities chose to send two successive telegrams - one informing the writ petitioner that Pancharaju was being taken to Government Rajaji General Hospital, Madurai as he vomitted blood and the other informing her of the death of her husband. It is obvious that Pancharaju was brought dead to the Government Rajaji General Hospital, Madurai. Despite the fact that writ petitioner had been informed by the telegram on 02.11.1996 itself and that the writ petitioner was present in the hospital on 03.11.1996, Revenue Divisional Officer did not conduct inquest till 05.11.1996. As such, autopsy was conducted only on 06.11.1996 after allowing the dead body to decompose.

While dismissing the appeal petition of the state authorities, the Court stated:

"Further more, it is not disputed that the appellants are liable to pay compensation if at all the death was the result of custodial violence. Therefore, the finding of the learned Single Judge regarding the fixation of liability to pay compensation for the death of Pancharaju due to custodial violence cannot be interfered with".

Judgement 9: Suicide of Pandian as a result of harassment and torture
(Jayalakshmi Vs. The State of Tamil Nadu represented by its Secretary, Public Department and Ors W.A. No. 1130 of 2006 and WP. No. 24160 of 2006)

The petitioner, Jayalakshmi filed the writ petition before the Division Bench against the order of the single Judge dated 01 June 2006 W.P.No.24160 of 2006 who had dismissed the petition pertaining to the death of her brother Pandian.

Pandian, (estimated around 18 years old) is alleged to have committed suicide as a result of torture inflicted by the police. On 1 May 2006 at around 23.00 police personnel came to Pandian's residence at New Merginpuram at Vyasarpadi, Tamilnadu. The police were searching for Pandian in connection with a theft by another person. The police said that Pandian would be released once they had located the other person. The police produced Pandian along with the said Saranraj before the Metropolitan Magistrate on 04.05.2006, who remanded them to judicial custody. On 19 May 2006, Pandian was released on bail on condition

that he should report to Inspector of Police, Vyasarpadi Police Station, every day at 10:00.

Pandian complied with the bail condition but harassment and torture continued. A Sub-Inspector of Police tortured Pandian by inserting *lathi*¹⁸⁸ inside his anus. Other police personnel forced him to have oral sex. The torture continued for about two weeks. Unable to tolerate the ill-treatment Pandian bought kerosene and went to the Police Station on 12 June 2006. He informed the police that if they would not stop he would burn himself. The police laughed at and told him that if he died, no one will be bothered. Pandian poured kerosene and set fire to himself.

When Pandian was still taking treatment, the police at least two times sought to compel him to sign blank confession papers but were prevented by doctors. On 29 June 2006, around 02.00 Pandian succumbed to burn injuries and died in Kilpauk Government Medical College Hospital. His statement recorded by the Metropolitan Magistrate, Pandian stated for the past one month he was harassed by the police, that they had threatened him with false charges and these actions forced his suicide.

Pending appeal, the High Court appointed the Registrar (Vigilance), High Court, to conduct an enquiry. She submitted her report dated 16 February 2007.

As the Court noted, *"The Commissioner appointed by the Court has found that the entries relating to non-appearance of Pandian between 09.06.2006 to 11.06.2006 are unnatural and abnormal comparing the G.D. Entries relating to 09.06.2006, 10.06.2006, 11.06.2006 and 12.06.2006 and therefore, the entries create suspicious circumstances in the commission of suicide by the deceased Pandian.*

(i) The Commissioner found that Dr. Megajabin, the Doctor who first admitted the said Pandian in the hospital gave a copy of the Accident Register marked as Document No. 18 and in the document it is stated that the said deceased has burnt himself by setting fire in P.3 Police Station at 8.30 AM, and in the said document the Commissioner found the word "in" before P.3 police station was struck off and instead, the words, "near P.3 police station and near S.M. Road" were inserted.

The Court was *"prima facie satisfied that excesses have been committed by the respondents"* and arrived at the conclusion that *"the suicide committed by Pandian was only in consequence of the conduct of the accused police personnel"*.

On 10 July 2007, in the case of *Jayalakshmi Vs. The State of Tamil Nadu represented by its Secretary, Public Department and Ors*, the High Court of

188. A weighted bamboo stick

Madras while partly allowing the writ appeal and writ petition (W.A. No. 1130 of 2006 and WP. No. 24160 of 2006) directed the state government of Tamil Nadu to provide a compensation of Rs. 5,00,000 (US\$ 12,500) to the petitioner which the State Government is at liberty "to take appropriate steps to recover the amount directed to be paid to the petitioner" from the accused police officers. The Court also directed the State government and the Commissioner of Police, Chennai to initiate disciplinary action against the accused police personnel.

Judgement 10: Illegal detention and torture of S. Krishnamoorthy and K. Palani (Crl. O.P. No. 8543 of 2006 and M.P. No. 1 of 2006, S. Krishnamoorthy and K. Palani Vs. The State of Tamilnadu and Ors)

Mr S. Krishnamoorthy and K. Palani were subjected to illegal detention and torture. The petitioners were kept in judicial detention for 90 days after they were framed for the murder of a girl named Sujatha who was actually abducted but still alive. On 26 April 1997, the father of the girl, Sevugan (son of Karuppan) lodged a complaint with Pattanam Police Station under Ramanathapuram district stating that his daughter had been abducted. On the basis of the complaint, Karmegam (son of Karuppaiah) was arrested by the police. The police later arrested the petitioners on the basis of the alleged confession by Karmegam without proper investigation. The petitioners were tortured to extract a confession. The case collapsed after the girl re-appeared and stated she did not know the petitioners. They filed a petition before the Madras High Court under Section 482 of the Code of Criminal Procedure.¹⁸⁹

On 20 November 2007, the court ruled that the petitioners - S. Krishnamoorthy and K. Palani were "innocent" and they have been "falsely implicated" in Sessions Case No. 117 of 2002 and ordered the state government of Tamil Nadu to pay Rs. 1,00,000 (US\$ 2,500) to each petitioner as compensation. The Court also ordered:

"to entrust the investigation to an efficient Officer not below the rank of Deputy Superintendent of Police to investigate the violation of Human Rights of the petitioners and others".

"Of-course, it is true that the Police are, no doubt, under a legal duty and have legitimate right to arrest a criminal and to interrogate him during the

189. (a) to declare that the petitioners are innocent persons and they have been falsely implicated in the Sessions Case No. 117 of 2002; (b) to direct the respondents 1 & 2 to register the First Information Report with regard to illegal confinement, torture, violation of human rights and malicious prosecution meted out by the petitioners; (c) to direct the fifth respondent to entrust the investigation to an efficient Officer not below the rank of Deputy Superintendent of Police under the direct supervision of Joint Director, Chennai to investigate the alleged violation of human rights; (d) to direct the first respondent to pay fair and adequate compensation to the petitioners for having been falsely implicated them in Sessions Case No. 117 of 2002; (e) to direct the first respondent to pay reasonable amount to the affected victims; and (f) to pass such other and further reliefs as the Court may deem fit and proper in the circumstances of the present case.

investigation of an offence but the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it”.

The Court further held that:

"in the instant case, as pointed out in many places the Investigating Agency has simply acted only on the basis of confession statements alleged to have been given by the prime accused as well as the first petitioner without probing into the matter properly and thereby the Investigating Agency has done a gargantuan mistake and consequently, the innocent petitioners have faced unnecessary torture, troubles and tribulations, and also prison life for a period of 90 days. Since the Investigating Agency has done a stupendous mistake and due to that the innocent petitioners have faced untold miseries, definitely, the petitioners should adequately be compensated”.

Judgement 11: Illegal detention and torture of Mohd Ayoub Dar [Abdul Rehman Dar Vs. State and Ors. 2007(1)JKJ557]

Mohd Ayoub Dar (son of Shri Ab. Rehman Dar, petitioner) was detained by members of the Rajputana Rifles from his house on the charge of being involved in militant activities on 10 April 1990. The victim was illegally detained for 45 days. He was released from custody after the intervention of the then Governor of the State. The Superintendent of Police City South Srinagar and Superintendent of Police Criminal Investigation Department indicated that Dhar was not involved in subversive/militant activities.

During his illegal detention he was tortured. As a result he suffered psychological damage and rendered unable to work.

However, the State awarded Rs 30,000 from the Chief Minister's Relief Fund. However the court observed that this payment would not be a substitute for requisite compensation to which the petitioner's son was entitled for depriving him of his fundamental rights.

On 27 November 2006, the High Court of Jammu and Kashmir ordered the state government of Jammu and Kashmir to provide compensation of Rs 2,00,000 (US\$ 5,000) to Addul Rehman Dar within a one month for illegal detention.

II. Judgements awarding punishments

A number of law enforcement personnel were sentenced for torture and custodial death. A selection of Judgements delivered in 2007 are given below:

Judgement 1: Sentencing of Mr H. P. Singh, former Station House Officer of Geeta Colony Police Station, New Delhi

On 24 January 2007, Additional Sessions Judge of Karkardooma Courts, Delhi, Sh. Rajender Kumar Shastri (S. C. No. 02/2006, *State Vs. 1. Budh Prakash S/O Damodar Dass, 2. Smt. Sudesh Rani, W/o Budh Prakash, 3. Ashok Kumar Chadha, S/o Budh Prakash, 4. Shammi Chadha, S/o Budh Prakash 5. H. P. Singh, S/o Harbans Singh*) sentenced then Station House Officer (SHO) of Geeta Colony Police Station, New Delhi, Mr H P Singh to seven years rigorous imprisonment.

On 23 January 1990 at about 20.00 Subhash who lived at 8/88, Geeta Colony, Delhi had an altercation with his landlords. He was assaulted by Landlord Budh Prakash and his relatives. Subhash sustained injuries and went to the police to complain.

Instead of registering the complaint of Subhas, Station House Officer, Mr H P Singh who was drunk beat up Subhas. The injuries were sufficient to have Subhas hospitalized at SDN Hospital, Delhi. His condition deteriorated. Subhas was referred to Jay Prakash Narayan Hospital where he died 03.2.1990.

Doctors who conducted the post mortem stated that deceased Subhash died as a result of cervical spine and other spinal injuries consistent with blunt force impact to the neck.

The Vigilance Department of Delhi Police which investigated the case at the instance of the Additional Sessions Judge filed *challan* (final report) found that Mr H P Singh had caused injuries to the victim that had resulted in the death punishable under sections 308(*attempt to commit culpable homicide*)/304(*relating to culpable homicide not amounting to murder*)/34 (*common intention*) of the IPC.

The Judge held that there was no need to seek prior permission from the government for prosecution of Mr H P Singh under section 197 of the CrPC or the Delhi Police Act. The Court held that "*It was no part of the duty of Sh. H P Singh to beat Sh. Subhash and torture him. With any stretch of words, it cannot be said that it was within the purview or scope of the official duties of accused HP Singh to cause spinal fracture on the person of a tenant, who reached the PS, while drunk. There cannot be any nexus between the official duties and the acts of beatings done by the accused H P Singh. An ordinary prudent man would not find that accused HP Singh has acted under the colour of his office and exceeded his duties.*"

The judge also held that in an attempt to save Mr H P Singh was made by police officers to blame the crime on someone else:

"Investigative Office ASI Prakash Chand forged the statement of deceased

and also the statements of witnesses who were relatives of deceased, got an FIR lodged on the basis of such false statement recorded in the name of deceased and implicated accused Budh Prakash etc in an offence which they never committed. It is very unfortunate that a Senior Police officer has used his powers of the office in framing landlords of a tenant who was beaten to death by SHO so that such SHO can be saved".

The Judge sentenced Mr H.P. Singh to rigorous imprisonment for seven years and also issued a fine of Rs. 100,000 (US\$ 2,500) out of which a sum of Rs. 50,000/- (US\$ 1250) be paid to the successors of deceased Subhas. The remaining accused who were found guilty of simple hurt were released on parole. The court also ordered to register a case against IO, Assistant Sub-Inspector (ASI) Prakash Chand.

Judgement 2: Sentencing of Subhash Panhale, Ananda Bhosale and Sunil Jadhav for custodial death of Arun Pandav (The State of Maharashtra Vs. Subhash Gangadhar Panhale and Ors, Criminal Appeal No. 1084 of 1988)

On 22 March 2007, the Bombay High Court in the case of *The State of Maharashtra Vs. Subhash Gangadhar Panhale and Ors* (Criminal Appeal No. 1084 of 1988) against the acquittal of all the accused police officers for the custodial killing of Arun Pandav. The State government of Maharashtra had appealed against their acquittal.

At midnight of 16 December 1985, Mr Arun Pandav was taken to the Shahupuri Police Station at Kolhapur on suspicion that he had helped his brother Chandrakant Pandav to elope. He was subjected to torture to extract the information. He died as a result.

The post mortem was conducted by two medical officers Dr.Vilas Manade [Prosecution Witness (PW) 13] and Dr.Baburao Ghatage (PW 20) who stated the cause of death as "*shock due to hemorrhage due to laceration of liver due to fracture of ribs C multiple injuries*". The doctors found 19 injuries on the deceased's body.

The Trial Court acquitted all accused based on the falsified documents produced by the defence including an arrest warrant that claimed that that the victim was beaten up by his brother's girlfriend's family prior to his arrest. It further claimed he had not been detained by the police. This was counter to the findings of the Criminal Investigation Department after investigating the case found that the accused police officials - Subhash Panhale, Ananda Bhosale and Sunil Jadhav - had tortured Arun but fabricated documents to show their innocence.

The state government of Maharashtra appealed against the acquittal of the accused before the Bombay High Court. After hearing both parties and their witnesses, the Bombay High Court sentenced Subhash Panhale, Ananda Bhosale

and Sunil Jadhav to *"imprisonment for life with fine of Rs. 5,000/- (US\$ 125) in default to suffer rigorous imprisonment for two years"*, to one year rigorous imprisonment with fine of Rs. 1,000/- (US\$ 25) in default to suffer R.I. for three months for illegal confinement, "three years rigorous imprisonment with fine of Rs. 3,000/- (US\$ 75) in default to suffer R.I. for six months" for framing incorrect record and further three years with fine of Rs. 3,000/- in default to suffer R.I. for six months for causing "voluntary hurt".

Judgement 3: Sentencing of Head Constable Rajbir Singh and Constables Ramesh Hooda and Bachchu Singh to seven-year rigorous imprisonment for the custodial death of Mr Indal Singh

On 2 February 2007, Additional Sessions Judge (Delhi) SP Garg sentenced three policemen: Head Constable Rajbir Singh and Constables Ramesh Hooda and Bachchu Singh to seven-years rigorous imprisonment for the custodial death of Mr Indal Singh at Mehrauli police station in South Delhi on 3 January 1996 (Sessions Case No : 17/2003).

On 2 January 1996 at about 23.30 Mehrauli Police Station apprehended Mr Indal Singh in an act of theft. His accomplice managed to escape. Mr Indal Singh was beaten up by locals. A FIR No: 8/96 was registered under section 379 (theft) at Mehrauli Police Station in the early morning of 3 January 1996. The victim was taken for medical examination to the All India Institute of Medical Sciences (AIIMS).

Mr Indal Singh was given a medical examination (vide MLC No. 516/96) on 3/1/96 at 01.17. He was formally arrested by Head Constable Rajbir Singh and put in the lock up of Mehrauli Police Station at 0245 on 3 January 1996. Here he was tortured by the police.

Mr Indal Singh began displaying signs of ill-health (vomiting) in the lock up. He was sent to AIIMS for medical examination and treatment. Mr Indal Singh arrived dead at the Out Patient Department of AIIMS.

The post mortem was conducted by a board of doctors who identified 20 injuries on the body. All the injuries were believed to have been caused before the victim's death. The cause of death was deferred until forensic tests were complete. The forensic and medical reports both concluded that the cause of death was asphyxia that had been caused by choking on vomit which was itself a result of injuries.

The accused police claimed that the injuries were caused when the victim was beaten by locals. The court held that *"Doctors in their post mortem report have categorically opined that immediate cause of death was asphyxia as a result of choking from aspiration of gastric contents consequent upon shock from ante mortem injuries 1 to 20 as mentioned in the post mortem reports(...)*Had the

deceased not subjected with ante mortem injuries 1 to 20 detailed in the post mortem report, there would have no reason for causing shock resulting in choking of an aspiration of gastric contents to cause death of the deceased due to asphyxia".

The Judge further noted that:

"defence counsel for the accused persons have failed to state as to what led the deceased to vomit at about 8 am on 3/1/96 when case of the accused persons is that deceased remained alright after he was put up in the lock-up. There is nothing on record to show if condition of the deceased had deteriorated to such an extent during his police custody after he was brought to the Police Station after his medical examination prompting the police officials to rush him to the hospital. He was casually found vomiting at about 8 am by Constable Laxmi Narain and he informed Rajbir Singh who sent the deceased for his medical assistance to the hospital through one Dalip. Even at that time Rajbir Singh did not bother to remove the injured/deceased to a near by hospital to provide him immediate medical help".

The Court held that:

"the prosecution has established beyond reasonable doubt that injuries to the deceased were caused byduring police custody. I am also of the view that the injuries caused to the deceased Indal inflicted by the accused persons numbering 20 on various body parts of the deceased led to his death. The post mortem report is categorical and has opined the cause of death was shock due to the ante mortem injuries inflicted on the deceased. The injuries were inflicted intentionally. Rajbir Singh and Constables Ramesh Hooda and Bachchu Singh can certainly be clothed with the intention that the bodily injuries caused to the deceased were likely to cause his death. The deceased was a young boy aged about 20/25 years. He was not suffering from any ailment/disease to accelerate his death. The injuries proved fatal and caused his death. The prosecution has thus proved on record commission of offence punishable under section 304 (relating to culpable homicide not amounting to murder) of Indian Penal Code. Rajbir Singh and Constables Ramesh Hooda and Bachchu Singh are accordingly held guilty for the commission of the offence punishable u/s 304 part-1 of IPC and convicted accordingly".

"However, considering all the facts and circumstances of the case; the fact that the convicts have remained in JC in this case for about four years; the fact that they are not involved in any other similar offence; the fact that they are not previous convicts; the fact that they have small families to look after; the fact that they are the only earning members of their families; the fact that the case of the prosecution is based upon circumstantial evidence and other prayer of the convicts, the convicts are sentenced to undergo RI for seven years with fine of Rs. 5000/- each and failing to pay the fine to undergo SI for

three months for the commission of the offence punishable U/s 304 (Part I) IPC".

Judgement 4: Sentencing of Govindbhai Shivabhai Jadav for custodial death of Bhupendrabhai Chhotbhai Patel

On 4 April 2007, the High Court of Gujarat dismissed the Criminal Appeal (Criminal Appeal No. 1301 of 1999) in the Case of Govindbhai Shivabhai Jadav Vs. State of Gujarat, which was filed against the judgment and order dated 30th November 1999 passed in Sessions Case No. 172/91 by the Additional Sessions Judge, Kheda at Nadiad.

The Gujarat High Court upheld judgment and order dated 30th November, 1999 passed in Sessions Case No. 172/91 by the Addl. Sessions Judge, Kheda at Nadiad.

The Additional Sessions Judge, found Govindbhai Shivabhai Jadav guilty of an offence punishable under the provisions of Section 304 of the Indian Penal Code relating to culpable homicide not amounting to murder and sentenced him to rigorous imprisonment for 10 years with a fine of Rs.10,000/- (US\$ 250), in default of payment of fine, to undergo rigorous imprisonment for 2 years. Mr Yadav was also convicted of an offence punishable under Section 331 of the IPC relating to 'voluntarily causing hurt to extort confession' and sentenced to rigorous imprisonment for 10 years and fined of Rs. 5,000/- (US\$ 125), in default of payment of fine, to undergo rigorous imprisonment for 1 year. The substantive sentences have been ordered to run concurrently.

The appellant-accused Govindbhai Shivabhai Jadav, was a Senior Police Sub-Inspector at Petlad Rural Police Station. He was accused of torturing to death of one Bhupendrabhai Chhotbhai Patel, an accused held in detention in Petlad Rural Police Station (C.R.-II No. 15/88) on 6 February 1998.

Indiraben Bhupendrabhai Chhotabhai, the widow of the deceased filed a complaint on 3 May 1988 (Inquiry Case No. 72/88). The deceased was allegedly tortured to death while he was in police custody in order to obtain a confession. The second post-mortem report revealed several serious injuries which were anti-mortem in nature. The injuries were not recorded in the first post-mortem report.

The Court observed that:

"Looking to the facts of the case, we are constrained to observe that in the case of custodial death, normally no evidence is available with the prosecution to book the real culprit. Investigating agency and the appellant belong to the same fraternity and normally there would be a tendency to help fellow men and the investigating agency in such situations goes soft towards another member of the fraternity." The Court held that the circumstantial

evidence is sufficient in this case so as to confirm the conviction.

The High Court while upholding the judgment of the Additional Sessions Judge stated that:

"as the deceased was in the police custody of the appellant and when there is not even a whisper from the side of the appellant as to what happened to the deceased, who was taken into police custody there is no reason for this Court to set aside the impugned order passed by the learned Addl. Sessions Judge."

Judgement 5: Sentencing of jail officials in Bikaner, Rajasthan for custodial death of prisoner Lakhvinder Singh on 17 June 1993

On 23 June 2007, a fast track court in Bikaner (Sessions Case No. 12/2007) sentenced four persons, including jail superintendent Om Prakash Chavadia, jailer Ram Kumar Jat and two prisoners to life imprisonment for their involvement in the custodial death of prisoner Lakhvinder Singh on 17 June 1993.¹⁹⁰

After trial, the main accused Om Prakash Chavadia was convicted under Sections 302, 147 and 323 IPC and sentenced to undergo life imprisonment under Section 302 IPC and fined Rs. 2,50,000/- (US\$ 5,625) and in default thereof to further undergo six months imprisonment, under Section 147 IPC sentenced to two years imprisonment and a fine of Rs. 5,000/- (US\$ 125) and in default thereof to further undergo one month's imprisonment and under Section 323 IPC sentenced to one year's imprisonment and fine of Rs. 1,000/- (US\$ 25) and in default thereof to further undergo one month's imprisonment.

The conviction and sentence were challenged by the Om Prakash Chavadia (Division Bench Criminal Appeal No. 548/2007) and requested an: *"order for suspension or stay of his conviction"*.

On 25 March 2008, the High Court of Rajasthan, in the case of *Om Prakash Vs State of Rajasthan* (Criminal Appeal No. 548/2007) dismissed the appeal. The Court stated:

"Unblemished service record and chance of promotion itself cannot be ground for suspension of conviction in all the cases. In K.C. Sareen's case Hon'ble Apex Court held that the court has the duty to look into all aspect including the ramifications of keeping such conviction in abeyance. It is for the person who is seeking relief from court on the ground of special reasons to plead and prove existence of special reasons. We do not find any special reason for suspension of conviction of the petitioner from the facts of the case and if look into ramifications of suspension of conviction of accused we find from the facts that consequence of suspension of conviction may

190. Lifer for jail officers, The Statesman, 30 June 2007

damage the public faith and may increase indiscipline in disciplined service. The petitioner was Dy. Superintendent of Jail and therefore, was in employment in disciplined service of the State and employees of jail service are supposed to maintain the law and order and poor public goes to them for their protection and it can be only when public may have full faith in the officer. The present is not a case where a poor clerk or even officer is facing the conviction on the alleged allegation of committing crime because of some private vengeance and which conviction may not have affect on his duties. The allegations in the present case are of very serious and of heinous nature, which we do not want to narrate here in detail to avoid any observation, which directly or indirectly have any bearing on the merit of the appeal preferred by the petitioner against his conviction, but so far as prayer for suspension of conviction of the petitioner is concerned, we do not find any reason much less than any special reason for suspending the conviction of the petitioner. The Hon'ble Supreme Court in K.C. Sareen's case observed as under:

When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to got into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably....

20. In the K.C. Sareen's case (supra) allegation was of corruption while holding the post and in the present case, allegation is on an officer now holding the post of Superintendent of Jail and the conviction is for committing murder of a accused lodged in jail and allegation is not only murder but brutal murder and after in-human torture. As a convict for charge of corruption is not entitled to hold the post even during challenge to his conviction, the jail officer is normally not entitled to continue on post during his challenge to conviction and until no special reasons are there”.

Order 6: Arrest of Tihar jail officials for torture of a under trial prisoner

On 13 April 2007, three Tihar (Delhi) jail officials - Deputy Superintendent K S Meena, Assistant Superintendent Dhananjay Rawat and Chakkar Chief Mange Ram were taken into custody on the orders of Additional Chief Metropolitan Magistrate (ACMM) Kamini Lau.

The Tihar officials were sent to jail on the complaint of a 51-year-old convict, Christopher James, who was allegedly beaten up and critically injured by the trio

when he tried to expose their extortion-cum-smuggling racket in Jail No. 7. ACMM Lau had took cognisance of offence under IPC sections 323 (*punishment for voluntarily causing hurt*), 384 (*punishment for extortion*) read with section 511 (*attempting to commit offence punishable with imprisonment for life or other imprisonment*).

The pre-charge hearing was held on 27 April 2007.¹⁹¹ James, the complainant who is a detainee of jail number 7 (for unrelated offences) stated in his complaint that the deputy Jail Superintendent and the Assistant Superintendent and some jail convicts were involved in a criminal conspiracy to extortion of money coupons (issued to inmates as wages for labour) and used these to smuggle drugs and tobacco in jail.

He alleged that the accused had extorted Rs 5,000 worth coupons from him. James said that on September 2006 he raised these issues with the senior officials, he was subsequently beaten up and deprived of medical attention for two days, despite being diabetic. The injuries were recorded in the medico-legal certificate E/161905/06 of the Tihar jail dispensary. ACMM Laum ordered a second medical check-up at Ram Manohar Lohia hospital. The medical report confirmed the alleged injuries.¹⁹²

Judgement 7: Sentencing of women police officials for the custodial death of Kona Krishna Kumari

On 17 August 2007, six persons, including a woman Sub Inspector (SI) and three woman constables, were sentenced to life by Mahila Sessions Court Judge V. Appa Rao for the custodial death of Kona Krishna Kumari of Ghantasala in Krishna district in a women's police station on May 5, 1999.

The then SI of the women's police station, Jyothi Rayudu, constables Santoshamma, P.V. Ragini and K. Raghavarani and drivers of the Vijayawada Municipal Corporation Gandikota Venkateswarlu and Ranga Rao were also fined Rs. 9,000.

Krishna Kumari was taken into custody on May 1, 1999 in connection with a crime of kidnapping. She was detained in the women's police station. She was later found hanging from the ventilator of the lock-up on 6 May 1999.

Judgement 8: Sentencing of Deputy Superintendent of Police Rajinder Pal Singh Anand for custodial death of Balbir Singh

On 7 December 2007, Additional Sessions Judge of Sangrur, Punjab sentenced five policemen, including Deputy Superintendent of Police Rajinder Pal Singh Anand, to life imprisonment for the custodial death of a man in 1996. The Judge

191. Tihar officials jailed, The Indian Express, 14 April 2007

192. Tihar officials jailed, The Indian Express, 14 April 2007

awarded a two year sentence to another policeman Jasdev Singh for the custodial death of Balbir Singh, a mason at Shahpur village in Sangrur district.

Balbir was arrested on 28 July 1996 on the complaint of local Gurdwara Tibbi Sahib management committee that he had stolen utensils. DSP Rainer Pal Singh Anand was an inspector at Nabha and held additional charge of Kotwali police station, where the case against Balbir was registered.¹⁹³

Judgement 9: Acquittal due to lack of proper investigation

In the case of *Sadashio Mundaji Bhalerao Vs. State of Maharashtra* (Criminal Appeal Nos. 478, 479 and 480 of 2005), the Supreme Court on 28 November 2006 acquitted all the accused police personnel in the custodial death case of Dilip Khusmya Ghosale in the custody of Arvi police station in Maharashtra.

On 5 November 1987, the police arrested seven persons namely Dilip Khusmya Ghosale, Bastam Devidas Pawar, Comrade Bhimrao Pawar, Chaubharat Ramchandra Ghosale, Partya Khusmya Ghosale, Navbharat Ramachandra Ghosale and Gangacharan Sukhadeo Pawar in a dacoity case. The accused were sent to judicial remand for seven days and detained at Arvi police station. On the night of 5 November 1987, Dilip Khusmya Ghosale was taken from the police lock up to Detection Branch room for interrogation and tortured to death. But in order to cover up the custodial death, the police registered a case stating that Dilip had escaped from the police custody. Later a decomposed body was found lying in Adilabad, Andhra Pradesh which was believed to be that of Dilip Khusmya Ghosale.

The case was handed over to the Central Investigation Department (CID) which after investigation charged 17 police personnel including the in-charge of the Arvi police station and a Deputy Superintendent of Police under Sections 302, 201 read with Section 34 of Indian Penal Code.

The prosecution failed to substantiate the allegation against the accused and on 30 April 1996 the Court acquitted all of them giving them the "benefit of doubt".

The state government appealed before the High Court and the Division Bench of the Bombay High Court (Nagpur Bench) reviewed the whole evidence on record and reversed the acquittal of all the accused persons on 17 January 2005.

The accused police personnel appealed before the Supreme Court (Criminal Appeal Nos. 478, 479 and 480 of 2005) against the order of the Bombay High Court. The Supreme Court upheld the judgement of the Sessions Court which acquitted all the accused for lack of proper evidence.

The Supreme Court stated, "*In fact, the Police should have properly scrutinized*

193. Lifer for 5 cops in custodial death case, The Hindu, 8 December 2007

the evidence and they could have pinpointed the person who was responsible for beating. But unfortunately, the police has not taken enough care to produce material evidence and pinpoint the person who was alleged to have been involved in beating the deceased. It is true that the accused involved are police personnel but we cannot stand to condemn the whole police-station just on the basis of only circumstantial evidence of the deceased last seen in the custody of the police and thereafter he was not reported alive."

Judgement 10: Order for fresh investigation by Central Bureau of Investigation into custodial death

At 1330 on 27 September 2005, Udayakumar of Manakkad village and Suresh Kumar alias Mani were taken into custody by constables Jithakumar and Sreekumar attached to the Fort Police Station, Thiruvananthapuram in a theft case. Udayakumar was found in possession of currency notes. Udayakumar was allegedly tortured by the three accused constables Jithakumar, Sreekumar and Soman using iron rod, G.I. pipe etc. to extract a confession with regard to the possession of currency notes. Later he was taken to the Medical College Hospital and declared dead at 2330 on the same day.

Important prosecution witnesses turned hostile during the trial of the case before the III Additional Sessions Court (Fast Track - III), Thiruvananthapuram in S.C. No. 1542 of 2006. The mother of the deceased Udayakumar, J. Prabhavathiamma filed a writ petition [WP(C) No. 24258 of 2007(K)] before the Kerala High Court seeking a direction for further investigation by the Central Bureau of Investigation as well as a direction to remove from service those police constables who turned hostile to the prosecution during trial and also a direction to the trial court to take action and also a direction to the trial court to take action against them for perjury.

While the Kerala High Court did not express any opinion on the merits of the matter as it is for the trial court to decide the matter after considering the evidence, the Court held that:

"this case is a fit case which C.B.I. should conduct further investigation as police officers are accused in the case and from the available materials, we are of the prima facie opinion that in this case colleagues in the police force are more interested in protecting the accused instead of doing justice or conducting proper investigation according to law. It is true that in all cases where CBI enquiry is ordered it is not necessary to stay the trial which is in progress. But, in the nature of the case, it is necessary that further proceedings of the trial court need be started only after CBI files further report and it is a fit case to allow the writ petition filed by the mother of the deceased by referring the matter to C.B.I. Hence, we direct the C.B.I. to conduct further investigation as expeditiously as possible".

Judgement 11: Lowering of sentences pertaining to custodial death of Navinchandra Dahyalal Dholakia

Mr Navinchandra Dahyalal Dholakia, a resident of Lathi in Amreli district of Gujarat was picked up by Police Sub-Inspector (SI) Dalpatsinh Gambhirsinh of the Surveillance Squad of Naranpura Police Station. He was killed in police remand during interrogation on 10 January 1989.

The initial post mortem conducted at V.S. Hospital, Ahmedabad did not reveal the cause of death. Viscera was sent to the Forensic Science Laboratory (FSL). The investigation was handed over to CID Crime, Gujarat State (as per order of DGP and IGP, Gujarat State, Ahmedabad, wide Order No. G-1/1909/1/Ahmedabad City/89/2175 dated 6.5.1989).

The forensic evidence was sent to the Medical Officer, who performed the post-mortem and the professor of Forensic Medicines of NHL Municipal Medical College, Ahmedabad vide letter F.M.65/89 dated 6 July 1989 stating:

"the cause of the death is due to the hemorrhage as a result of the injuries. The death is caused 24 hours before the post-mortem was made and the dead body was brought to the hospital after 8 hours after he expired. The injuries were caused within one day..... The injuries caused to the deceased were on the head above nose, face, neck, chest, right hand and both elbow/wrist and the legs as well as all over the body and all these injuries were caused with lathi, danda or such solid substance":

The Forensic report (No. F.M. 76/89 dated 25.7.1989) confirmed that death of Navinchandra Dahyalal Dholakia was caused on 11.1.1989 at about 2200 hours and after about 8 hours, when he expired on 11.1.1989 at about 06:00 in the evening the dead body was brought to the V.S. Hospital on 11.1.1989.

Nine accused persons (A-1 to A-9) were charged and tried by the Additional Sessions Judge, Ahmedabad City, in Sessions (Case No. 97 of 1992) for the offences under Sections 302, 201 and 193 of the Indian Penal Code.

At the end of the trial, appellant Dalpatsinh Gambhirsinh, accused No. 1 was found guilty of the offences with which he was charged. The trial Court, vide judgment and order dated 13 January 1998, convicted Dalpatsinh Gambhirsinh, for the offences under Sections 302 (murder), 201 (destruction of evidence) and 193 (voluntary hurt) IPC and sentenced to imprisonment for life and fine of Rs. 5,000/-. The trial Court found the rest not guilty and they were acquitted.

On 31 January 2008, the High Court of Gujarat showing leniency in a case of custodial death, (*Dalpatsinh Gambhirsinh Barad Vs. State of Gujarat*) lowered the sentenced of appellant Dalpatsinh Gambhirsinh Barad (Criminal Appeal No. 203) to RI of three years from life imprisonment and dismissed the Criminal Appeal No. 203 of 1998 filed by State of Gujarat against the acquittal of A-2 to

A-7. The appellant Dalpatsinh Gambhirsinh had challenged the judgment and order of conviction and sentence of a trial court and while the State of Gujarat challenged the judgment and order of acquittal of A-2 to A-7 by the trial court.

The Court stated that: "*the fact that the incident had taken place prior to 19 years in the year 1989 and A-1 has gone through the ordeal of protracted trial and the appeal in the High Court and also the fact that after conviction A-1 has lost his job, we are of the view that if A-1 is sentenced to suffer R.I. for three years and fine of Rs. 5,000/- i.d., R.I. for further three months, the same would meet the ends of justice.*"

9. NHRC's failure to address torture

The National Human Rights Commission (NHRC) established under the Human Rights Protection Act of 1993 has been mandated to address human rights violations including torture.

In this assessment, ACHR examines the role of the NHRC. Overall, the establishment of NHRC has been very positive. Before the establishment of the NHRC human rights activism was viewed as anti-national and part of Western propaganda to "put pressure on India". The establishment of the NHRC provided legitimacy to human rights activism.

In its work on specific issues, the NHRC's Directives of December 1993 on custodial deaths/rapes - wherein the District Magistrates are required to report cases of custodial deaths/rapes - have led to improved reporting. In these directives the NHRC also sent a clear message to the government with regard to its concern over the deliberate cover up of human rights violations by the authorities.

NHRC's overall record is mixed. With regard to the eradication of torture ACHR has identified a number of very serious failings on the part of the NHRC. The first concern is what appears to be an institutional preference for the award of interim monetary relief despite powers to seek prosecution of the perpetrators of torture. ACHR will examine this preference in terms of international standards.

The second concern is perhaps more serious and relates to the NHRC dismissing cases of torture where a prima facie case exists; and in dismissing the case the NHRC has chosen to deny the complainants' access to key evidence as well as denying the complainant a hearing. Under Section 13 of the Human Rights Protection Act, NHRC has the powers of a civil court for investigation purposes. Hence, NHRC is equivalent to a tribunal and while adjudicating the cases, complainants have the statutory and constitutional right to receive a copy of all the documents made available to the NHRC. The complainant has the constitutional right to a hearing before the NHRC passes a final order. ACHR has documented numerous occasions where the NHRC has denied both rights.

ACHR has been forced to file applications under the Right to Information Act to access information on complaints it has submitted. The information subsequently provided to ACHR under the RTI Act by the NHRC raises very serious concerns as the state responses (previously denied to ACHR) to the NHRC confirm that torture took place. Given that the NHRC dismissed the case, it has in effect denied that torture took place, despite the evidence.

ACHR examines the positive and negative roles of the NHRC below.

NHRC's positive initiatives on custodial deaths:

On 14 December 1993, NHRC issued instructions on "Custodial Deaths/Rapes".¹⁹⁴ The directions state: *"In view of the rising number of incidents and reported attempts to suppress or present a different picture of these incidents with the lapse of time, the Commission has taken a view that a direction should be issued forthwith to the District Magistrates and Superintendents of Police of every district that they should report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Failure to report promptly would give rise to presumption that there was an attempt to suppress the incident"*.

On 10 August 1993, responding to concerns over the poor quality of post mortem inquiries the NHRC further instructed Chief Ministers of States that all post-mortems of custodial deaths would now need to be videoed and sent to the Commission.

The NHRC stated that *"Scrutiny of the reports in respect of all these custodial deaths by the Commission very often shows that the postmortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death"*.

The NHRC moreover underlined its concern over deliberate cover-up, noting: *"a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident. The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death (...)"*

The NHRC went on to record to express its concern over Police pressure on the medical profession: *"The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all postmortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video filming and such occasions should be very limited"*¹⁹⁵.

ACHR's concerns over NHRC's reliance on interim monetary relief and a failure to initiate prosecution:

ACHR remains concerns over NHRC's reliance on interim monetary relief and a failure to initiate prosecution as given below:

194. Vide letter No. 66/SG/NHRC/93

195. Ibid

Case 1: Custodial death of Sanjay Sharma

In regard to the custodial death of Sanjay Sharma alias Ballarah of Hadawali Kunj, Mathura, Uttar Pradesh on 21 March 2001, the NHRC closed the file on the basis of a response from the Superintendent of Police who stated that the perpetrator Sub-Inspector, Deshpal Singh, had been punished with a warning.¹⁹⁶

Case 2: Custodial death of Devinder Singh

On 16 July 1996, Devinder Singh was arrested on criminal charges.¹⁹⁷ He was taken to a Police Station in Gadwar Balia District, Uttar Pradesh. He died in custody on 16 July. On 17 July 1996, his brother was summoned to the police station and he was shown the body of Devinder Singh. Subsequently, on the directions of NHRC, a FIR was registered.¹⁹⁸ It was investigated by the Crime Branch - Criminal Investigation Department (CBCID). Ten police officials were found to be involved. Compensation of Rs 1,00,000 was awarded. However no prosecution of the police officials has been initiated. At the time of the incident, the State of UP was under Presidential Rule and therefore the case was referred to the Union Home Ministry (MHA). The MHA informed the NHRC¹⁹⁹ that the matter had been referred to the Law Ministry for an opinion. On 25 July 2007, the NHRC closed the case stating it: "*expects that a decision regarding grant of sanction shall be taken expeditiously by the Central Government or the State Government whichever is competent and the officials responsible for the death of Devinder Singh shall be brought to book.*"²⁰⁰

NHRC only awards compensation and has failed to recommend criminal prosecution even in prima facie cases of torture. ACHR's analysis suggests that the NHRC appears to have restricted its role to that of awarding immediate monetary compensation to relatives of victims of human rights violations.

In its Annual Report 2004-2005, NHRC states: "*Since its establishment in October 1993, the Commission has directed to interim relief to the extent of Rs. 10,07,12,634/- to be paid in 617 cases. During the year 2004-05, the Commission recommended that interim relief amounting to Rs. 23,27,000/- be paid in 46 cases, including 12 cases of deaths in police/judicial custody.*"

ACHR has examined a number of orders of the NHRC awarding compensation with regard to the deaths in police custody from 1 April 2003 to 31 March 2006. And in a great many cases examined by ACHR once immediate relief is paid, NHRC closes the complaint with the observation: "*Since 'immediate relief' has*

196. File Number: 41373/24/2000-2001-CD

197. FIR No. 78/96 u/s 323/504/506 IPC

198. FIR No. 79/96 u/s 302 IPC

199. Vide letter dated nil May, 2007

200. Case Details of File Number: 36/24(32)/96-LD

been granted to the next of kin of the deceased, no further action by the Commission is called for. The file is closed".²⁰¹ However the absence of recommendation for final compensation or indeed further prosecution is a notable concern.

Concerns over the denial of torture

ACHR's analysis suggests that the NHRC appears to have restricted its role to that of awarding immediate monetary relief to relatives of victims of human rights violations.

ACHR acknowledges that compensation is a vital part of the provision of redress to victims of human rights violations and their relatives. However, based on international standards, adequate and effective reparation for victims should in ACHR's view incorporate the following:

- 1. Restitution:** steps should be taken to restore the victim to the situation they were in before the violation occurred, including restoration of their legal rights, social status, family life, place of residence, property and employment;
- 2. Compensation:** steps should be taken to compensate for any economically assessable damage resulting from violations including physical or mental harm, emotional distress, lost educational opportunities, loss of earnings, legal and/or medical costs;
- 3. Rehabilitation:** steps should be taken to ensure medical and psychological care if necessary as well as legal and social services;
- 4. Satisfaction and guarantees of non-repetition:** steps should be taken to ensure cessation of continuing violations, public disclosure of truth behind violations, official declaration of responsibility and/or apologies, public acknowledgement of violations, as well as judicial or administrative sanctions, and preventive measures including human rights training.

201. The custodial death of Lachi Kaki, son of Tamin Kaki of Garg village of West Siang of Arunachal Pradesh on 28 July 2002 (14/2/2002-2003-CD), Ram Udit Narayan Singh of Begusarai of Bihar on 29 April 1999 (263/4/1999-2000-CD), Suresh Manjhi of Jumai, Bihar on 3 July 1996 (36/4(16)/96-LD), Vijay Kumar S/O, Sh. Moti Ram of Bhawad, Teh- Gohana, Bhiwani, Haryana on 3 May 2002 (249/7/2002-2003-Cd), Chhigga, son of Sheikhdya of Guna, Madhya Pradesh on 16 October 2000 (1800/12/2000-2001-CD), Tara Chand, son of Ramji Pawar of Yavat Mal, Maharashtra on 24 April 2000 (176/13/2000-2001-CD), Rabindra Kumar Sahu of Chandarpur Uasasahi, Puri, Orissa on 2 October 2001 (398/18/2001-2002-CD), Goddam Mohan Reddy, son of Ganga Ram of Mallapur, Vill+Mdl. Karim Nagar, Buldhana, Maharashtra on 5 March 2001 (919/1/2000-2001-CD), Chhatelal, son of Deviram of Pachori Kapura, Morena, Madhya Pradesh on 28 April 2001 (62/12/2001-2002-CD) and Sh. Sankardoss, son of Rajamoni of Chenpagatharisu Tamil Nadu of 24 April 1997 (30/22/97-98-CD) were closed on payments of interim monetary compensation.

The components of redress are outlined in Article 2 of the ICCPR as well as several other international standards. ACHR has particular concern with regard to the fourth requirement. It appears that the NHRC has closed cases where torture has taken place, and in numerous cases where in the process of reaching these conclusions the NHRC has denied the complainants access to the documents as well as failing to hear their complaint.

The following examples make the concern clear.

ACHR filed a complaint on 10.02.05²⁰² pertaining to the torture of six persons.²⁰³ They were illegally detained, tortured by the Assam Rifles personnel and, thereafter, they were forced to sign on 'blank papers', 'No Harassment Certificates' and / or 'No Objection Certificates' certifying that they were not tortured following the issuance of notice by the respondent. NHRC issued notice to the Director General of Police, IGP, Manipur; the Defence Secretary and the Ministry of Defence. The Additional Director General of Police Manipur in his Report²⁰⁴ made an unequivocal confirmation that torture had taken place.²⁰⁵

Despite the finding of the police that torture had taken place, on 21 June 2007, the NHRC closed the case without affording ACHR an opportunity of a hearing. ACHR was denied access to the replies of the State government of Manipur and Ministry of Defence. ACHR was forced to obtain the information after filing application under the Right to Information Act.

202. Case No.41/14/2004-2005-AF

203. Hemin Khongsai of Kangpokpi ward no. 4, Paogoulun Chongloi of Kangpokpi ward no. 9, Manginlun Thangsing of Taphou, Lanminlan Kipgen, Thanminlun Kipgen, and Ngulkhohao Chongloi of Haiyang village in Manipur from 6 to 9 February 2005.

204. "...On further enquiry one woman namely Miss Hengkeng (25) sister of Sl. No. 6 above is stated to have been slapped on the face by the personnel of the 14 AR on the day of arrest of her brother without any reason. All the persons mentioned above stated that they were brutally tortured by hitting with hard punches on their chest. On arrival at the camp of AR they were asked to undress and electric shocks were applied on their fingers, toes and to their private parts. One of them i.e. Ningkhohao Chongloi stated that he is a married man and due to the electric shocks his private part is paralyzed. He is said to have been undergoing computer training at Kangpokpi presently.

The authority of A.R. located at Kangpokpi have also been contacted to ascertain the facts and under what circumstances the above noted persons were picked up or detained and to what extent the allegations of aggrieved persons were correct etc. The post Commander of 14th A.R. Kangpokpi stated that the persons from Sl. No. 1 to 6 were picked-up by them and they were later handed over to NGOs and their respective relatives.

The enquiry made by the concerned OC/Kangpokpi PS reveals that the persons mentioned above were detained/picked-up by the 14th A.R. on different dates and time and also released on different dates and time. In the case of Sl. No. 4 to 5 they were handed over to their respective family members in presence of police representatives due to public pressure while they were in the custody of the A.R. and this was recorded in the General Diary vide G.D. entry No. 181/KPI-PS/05 date 09-02-2005, 0140 hrs of Kangpokpi P.S.

The detention and release of the above mentioned persons does corroborate with the circumstance as stated by both the parties i.e. aggrieved and the 14th Assam Rifles personnel..."

205. Dated 04.08.05 bearing No. 15/603/2005/HR/PHQ/497

In 2007, the Delhi High Court admitted seven writ petitions filed by ACHR challenging the denial of access to the documents submitted by the government and denial of an opportunity of hearing.

Asian Indigenous and Tribal Peoples Network (AITPN) and Kuki Movement for Human Rights filed complaints with the NHRC against the arbitrary arrest and torture of the 91 people by 25th Assam Rifles personnel at Leplen Kuki, Pashong, Gampum, Yangnoi and Gangpikom villages under Senapati district of Manipur State of India and Khuminnom village of Ukhrul district, Manipur from 29 May to 4 June 2002.²⁰⁶

AITPN and Kuki Movement for Human Rights provided the NHRC with the list of 91 persons who were subjected to torture during the events. They provided witness statements. They provided the medical reports of eight victims who were taken to Jawaharlal Nehru Hospital, Imphal. Photographic evidence of the wounds sustained were consistent with the allegations of torture. This evidence was also provided to the NHRC.

On 4 July 2007, the NHRC closed the case. The NHRC suggested that: *"The allegations of harassment are a fallout of the ambush on troops of 25 Assam Rifles".* The NHRC concluded that: *"Consequent to the ambush, during investigation it was revealed that the villagers were aware of the ambush and had provided material support to the militants."*

NHRC failed to show any evidence that the victims *"had provided material support to the militants"*. Yet, NHRC went on to state that: *"Notwithstanding the betrayal of trust by the very villagers, who were being helped by troops of 25 Assam Rifles, an enquiry was conducted by the unit to ascertain the facts regarding the allegations. The enquiry did not find any case of grievous hurt or otherwise. Though the enquiry even did not find any substantive proof of the exaggerated media reports, it is likely that, in surcharged atmosphere due to loss of precious lives, certain highhandedness by troops may have taken place. In this*

206. The attacks took place after the convoy of 25th Assam Rifles, stationed at Sanakeithel, under Senapati district, Manipur state of India was ambushed on 28 May 2002 by Kuki Revolutionary Army (KRA) at Hembel Lok near Leplen Kuki village, two kilometres South of Sanakeithel while returning from Dungshum Village. Eleven personnel of the Assam Rifles died during the ambush. The Assam Rifles responded with a search operation in villages near the attack, including Leplen, Pashong, Gampum, Yangnoi, Gangpikom and Khomunnom. A number of local people were beaten up. Six persons were arrested without arrest warrant. They were taken into custody at the 25th Assam Rifles barracks at Sanakeithel and they were subjected to beating extract information from them about KRA camps and the identity of its cadres. They were released on 4 June 2002 with certificates attesting to their health. However, one of the victims, Mr Lunchon Chongloi was again arrested on 4 June 2002 from New Lambulane, Imphal from the residence of Thangneikhup Hangsing apparently by members of the dressed Assam Rifles personnel dressed in civilian clothes. Again no arrest warrant was provided. On 1 June 2002, village chief of Leplen village, Paolam Haokip, were paraded naked into the village playground. They were then subjected to torture. The women villagers were forced to witness the events and laugh at the nudity of their fellow villagers. On 2 June 2002, the Assam Rifles personnel surrounded Patsong village and Mr Saingram Guite was severely beaten and then dragged for nearly ten kilometers to Tom Molnom village to Yalenveng.

*context the enquiry revealed that the column commander Captain Rohitash Sharma should have been more humane in his dealings with the villagers. The officer has been punished with the award of 'Reproof'. In addition to this, Commanding Officer of 25 Assam Rifles has also been counseled by the DIG B Range, for not exerting due control over his troops.*²⁰⁷

The evidence of the complainants does not appear to have been considered. The complainants were not accorded a hearing and they complainants were denied access to the government's response. Under Section 19 of the Human Rights Protection Act, NHRC cannot investigate human rights violations by the armed forces. It merely transfers the complaints to the concerned authorities for their comments and appropriate actions. However, the fact that NHRC does not provide equal time, equal opportunity and equal access to the documents to the complainants implies that NHRC fails to establish accountability.

The failure to bring to justice those responsible for abuses or to provide redress for the victims prolongs the ordeal of the relatives, who may continue to face harassment and further human rights violations. It sends a worrying message to victims of abuses and their families that undermines the confidence in the rule of law. It sends a message to perpetrators of human rights violations of an expectation of continued impunity. The cases cited in this report raise very serious questions that unless promptly addressed will damage the credibility of the organization and the perception of its independence.

207. Case Details of File Number: 16/14/2002-2003

10. Scrutiny by United Nations Bodies

India continues to be subjected to scrutiny by the United Nations Treaty Bodies and Special Procedures on the question of torture. In May 2007, the United Nations Special Rapporteur on Torture renewed a request to visit the country. The request has been pending since 1993.

In its report (A/HRC/7/3/Add.1) to the 7th session of the UN Human Rights Council, the Special Rapporteur highlighted four emblematic cases of torture taken up with the government of India.

The Special Rapporteur raised the torture of Arun Lal Das, a 30-year-old prisoner held at Purnea Jail, Bihar for an alleged violation of the Drugs and Narcotics Act. In a statement he gave on 17 January 2007 before the first Additional and District Sessions Judge, Arun Lal Das alleged he had been tortured. Arun Lal Das alleged that the jail superintendent and jail constable beat him regularly, burned him with cigarettes and denied him food for periods of up to four days. Arun Lal Das also recounted a specific incident on 7 January 2007, when the jail superintendent and jail constable attempted to sever his penis as punishment for refusing to pay them extortion money. Earlier, jail officials as well as the district administration had denied that Arun had been tortured. However both judges witnessed burn marks on his body, and knife marks and cuts on his penis. The court ordered the establishment of an investigative team to examine the evidence of torture, and also ordered that Arun Lal Das undergo medical examination. The results of these investigations have confirmed that he was tortured in Purnea Jail. In response, the State Government has "suspended" the officers, however, both men are now reported to be working at Bhagalpur Jail. Neither of them has been brought to trial.

The Special Rapporteur on Torture also raised violence against women on 14 August 2007 pertaining to Ms. Asha Begum, 19-year-old resident of Lakshmipur, Rajpara, Rajsahi district, Bangladesh. On 7 June 2007, at 6.45 p.m., Ms. Asha Begum was taken into custody together with Ms. Champa Khatun by Indian Border Security Force (BSF) officers stationed at I & II Outposts at Kargil village, Murshidabad district of West Bengal State, while they were trying to cross the border from Bangladesh to India. Some hours after being taken into custody, Ms. Asha Begum was raped by a BSF officer. The incident was witnessed by a senior officer of the intelligence branch at the BSF, who was visiting the outpost that day. The officer advised Ms. Asha Begum to visit a doctor and to lodge a complaint at Raninagar Police Station. However, when she attempted to do so, the responsible officers refused to register her case and to have a medical examination conducted. On the next day, when Ms. Asha Begum was taken to Raninagar Police Station, the senior divisional police officer from Domkal, ordered that she be sent to the Beharampur District Hospital for a medical examination. However, the BSF put pressure on the medical officer who examined Ms. Asha Begum, and who later declared that she was not raped. No

forensic laboratory examination was conducted. On 9 June 2007, Ms. Asha Begum and Ms. Champa Khatun had to appear before the additional chief judicial magistrate in Lalbagh for the hearing of the case against them under the relevant provisions of the Foreigners Act of 1946. The court issued an order to detain Ms. Asha Begum and Ms. Champa Khatun in judicial custody. On 21 June 2007, Ms. Asha Begum's court case commenced. During these proceedings, her lawyer informed the Court that she was raped while in detention.

The Special Rapporteur also raised the issue of refugee rights of Sabir Ali, Iqbal Shahi, Ms. Anisa Abdul Jabbar, Muhammad Allauddin Syed, Ms. Zill Gohar, Asad Gohar, Muhammad Ashfaque, Ms. Shaista Gohar, Ayoub Gohar, Muhammad Irshad, Muhammad Sajjad Babar, Ms. Shabana Gohar, Zaheer-uddin Bukhari, Muhammad Faheem Jaffar, Ms. Rozina Faheem, Farooq Azam, Muhammad Khalid, Sarfaraz Hussain, Muhammad Fiaz, Muhammad Furqan Uddin Syed, Muhammad Yasir, Shehzaib Gohar, Ms. Gulnaz, Ms. Samreen Shahzadi, Muhammad Ikhlaq, Ms. Kulsoom Khan, Imran Saeed, Ms. Zakia Imran, Imran Pasha, Muhammad Maqsood, Irshad Ali, Ms. Rakhshanda Asim Syeda, Javaid Iqbal, Ms. Qazmi Begum, Muhammad Muzammil, Shahzad Mukhtar, Muhammad Zafar Iqbal, Mansoor Khan, Ms. Bushra Mansoor, Ms. Misbah Nisa, Ms. Ashraf Nisa, Moin-ud-din Ahmed, Ms. Noreen Shahzadi, Abdul Rashid, Ms. Maqsooda Bibi, Ms. Sana Riaz, Hassan AlGohar, Muhammad Shafi, Ms. Safia Shafi, Tanveer Younus, Asim Ilyas, Tahir Rasheed, Usman Rashid, Abdul Waheed, Ms. Sajida Waheed, Ms. Farah Naz Gohar, Waqas Ahmed Gohar, Ms. Samira Wasim, Muhammad Wasim, Aurangzeb, Ms. Qamar Parveen, Akhtar Ali Ansari, A. G., M. G., and A. G. These 65 persons have Pakistani nationality and are currently detained in Central Jail Tihar, New Delhi. The three last-named persons were born during the past three months in Central Jail Tihar. Currently, a total of ten detainees are under six years of age. The first sixty two people on the list are members of the Mehdi Foundation International (MFI), a multi-faith institution. They claim that in Pakistan MFI members are not allowed to practice their beliefs, that they were tortured there and that blasphemy cases against 250 MFI members have been initiated in Pakistan. In early 2007, they escaped Pakistan to India intending to seek asylum. On 23 April 2007, these people staged a protest demonstration at Jantar Mantar, New Delhi, at which they burnt the Pakistani flag as well as their passports and visa papers. In the absence of valid visas and other travel documents, the 62 persons were arrested by the local police and sent to Central Jail Tihar. Subsequently, their application for bail was denied on the basis that without local addresses it would not be possible to secure their presence during the trial if released on bail. On 22 June 2007, 31 July 2007 and 24 August 2007, three women of the group gave birth in detention, and; another of the detainees is pregnant. Several other detainees suffer from severe depression and their constant screaming and weeping frightens the children who are detained in the same ward. Requests to the jail authorities to provide separate accommodation for the female detainees with children was denied by the additional chief

metropolitan magistrate of New Delhi on 28 May 2007. The people are at risk of imminent forcible return to Pakistan.

In a joint communication with the Working Group on Arbitrary Detention, the Special Rapporteur raised detention and torture of M. M. B., aged 17, detained at Narkeldanga Police Station, Kolkata. He was arrested on 11 September 2007 at Sambhu Babu's factory by policemen from Narkeldanga Police Station, where he was subsequently taken. There he was severely beaten in front of several witnesses. Shortly after, he was transferred to another room and beaten again, this time for a prolonged period. When M.M.B. returned to his cell on the same evening, he was limping. On 12 September 2007 at 7.30 p.m. a relative of M.M.B. met the officer in charge of the case. He took her thumb impression on a blank paper, registered her address and threatened that, if she filed any complaints, M.M.B. would be charged with an offense under the Narcotic Substances Act. M.M.B.'s relative, when leaving the police station, saw him lying on the floor. M.M.B. has not been produced before any magistrate so far.

India's periodic reports were also examined by the UN Committee on the Elimination of Discrimination against Women (CEDAW) and UN Committee on the Elimination of Racial Discrimination (CERD).

The CEDAW Committee requested India to provide information on the steps being taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded".²⁰⁸ However, it failed to make any reference to torture of women in India.

The UN Committee on the Elimination of Racial Discrimination in its Concluding Observations, however, expressed concerns "about reports of arbitrary arrest, torture and extrajudicial killings of members of scheduled castes and scheduled tribes by the police, and about the frequent failure to protect these groups against acts of communal violence".

The CERD Committee also expressed concerns "about the alarming number of allegations of acts of sexual violence against Dalit women primarily by men from dominant castes, in particular rape, and about the sexual exploitation of Dalit and tribal women who are being trafficked and forced into prostitution."²⁰⁹

The CERD Committee urged India "to provide effective protection to members of scheduled castes and scheduled and other tribes against acts of discrimination and violence, introduce mandatory training on the application of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) for police,

208. CEDAW/C/IND/CO/3 of 2 February 2007

209. CERD/C/IND/CO/19 of 5 May 2007

judges and prosecutors and take disciplinary or criminal law measures against police and other law enforcement officers who violate their duty of protection and/or investigation in relation to crimes against scheduled castes and scheduled and other tribes". It also urged India "to effectively prosecute and punish perpetrators of acts of sexual violence and exploitation of Dalit and tribal women, sanction anyone preventing or discouraging victims from reporting such incidents, including police and other law enforcement officers, take preventive measures such as police training and public education campaigns on the criminal nature of such acts, and provide legal, medical and psychological assistance, as well as compensation, to victims. The State party should also consider adopting victim-sensitive rules of evidence similar to that of Section 12 of the Protection of Civil Rights Act (1955) and establishing special court chambers and task forces to address these problems".²¹⁰

210. Ibid

II. The response of the Indian government

About 1500 persons die in custody of the State each year. Only 4 police personnel were convicted in 2004 and 3 in 2005. In 2004, 37 personnel were charge sheeted and 25 personnel were charge-sheeted in 2005 for custodial death & other criminal offences.²¹¹ Impunity for these custodial crimes stands exposed from the accepted number of custodial deaths, compensation granted by the NHRC and courts based on the evidence, and the lack of corresponding prosecution of the guilty law enforcement personnel.

i. Uncertain commitment to a national law outlawing torture

Speaking at the inaugural session of a seminar on "Custodial Justice" organized by the National Human Rights Commission on 30 March 2006, Union Home Minister, Mr Shivraj Patil stated that government of India's has been considering enactment of: "a legislation to provide compensation to victims of custodial violence".

However, replying in Parliament on 16 May 2006²¹², India's Home Minister stated: "There is no proposal for a separate legislation to provide compensation to victims of custodial violence".

The Minister however added: "*The Law Commission in its 154th Report on the Code of Criminal Procedure, 1973 had recommended that in view of the weakness of the existing provisions for compensation to crime victims in the Criminal Law, it is necessary to introduce a new Section 357A in the Code providing for a comprehensive scheme for compensating victims. Implementation of the recommendation made by the Law Commission is subject to the Government taking a final view, introduction and passage of an amendment Bill in Parliament for which no time-frame can be fixed.*"²¹³

The Government of India has reiterated that it is considering amending Section 357 of the Criminal Procedure Code to enhance the scope of compensation to the victims of all crimes (including custodial crimes).²¹⁴

The government of India has also refused to recommend the Law Commission of India recommendation in its 152nd Report on 'Custodial Crimes' to make consequential amendments to Indian Evidence Act, 1872 (insertion of Section 114B) to provide that in case of custodial death the onus of proving of innocence may be fixed on the police. The Home Minister of India took the excuse that the Law Commission "in its 154th Report which is a

211. UNSTARRED QUESTION NO 1145 ANSWERED ON 22.08.2007

212. Replying to the LOK SABHA STARRED QUESTION NO 455 ANSWERED ON 16 May 2006

213. Reply to the LOK SABHA STARRED QUESTION NO 455 ANSWERED ON 16.05.2006

214. RAJYA SABHA UNSTARRED QUESTION NO 2642 ANSWERED ON 10.05.2006 by the MHA

comprehensive review of all its earlier reports including the 152nd Report did not recommend the above said amendment".²¹⁵

The Home Minister of India gave the excuse before the parliament on 18 March 2008 that the Law Commission "in its 154th Report which is a comprehensive review of all its earlier reports including the 152nd Report did not recommend the above said amendment".²¹⁶

ii. Non-cooperation with the United Nations

India refuses to cooperate with the United Nations. In May 2007, the Special Rapporteur on Torture renewed its request pending since 1993 to visit the country.

India has the dubious distinction of holding the record for refusing an invitation to the United Nations Special Rapporteur on Torture, which it has refused since 1993. Pakistan (1997), Nepal (September 2005), China (November 2005) and Sri Lanka (2007) have all invited the Special Rapporteur.

India signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 14 October 1997. The government of India stated "ratification of the Convention is to follow". Ten years have passed since the signing of the Convention. Nepal and Sri Lanka have already ratified the CAT.

In its 2004-2005 Annual Report, the NHRC reported that the Ministry of Home Affairs informed the NHRC that Inter-Ministerial Group consisting of the Ministry of External Affairs, Ministry of Home Affairs and the Ministry of Law and Justice on the question of early ratification of the CAT had been established. To date no recommendation has been made public.

215. Lok Sabha unstarred question No. 2717 answered on 18.03.2008

216. Ibid

12. Recommendations:

Asian Centre for Human Rights makes the following recommendations:

To the government of India:

Enact a legislation to criminalise torture including putting the onus of proving innocence on the State in all cases of crimes in custody and provide compensation to the victims;

Repeal all laws promoting impunity including Sections 45 and 197 of the Criminal Procedure Code and Section 6 of the Armed Forces Special Powers Act, 1958 which make prior permission of the government mandatory for initiating any legal proceedings;

Further amend the Human Rights Protection Act of 1993 in particular Section 19 in order to bring the armed forces under the purview of the NHRC;

Ratify the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol;

Withdraw reservations to Articles 20, 21 and 22 of the CAT and Article 9 of the International Covenant on Civil and Political Rights;

Cooperate with the United Nations and extend invitation to the UN Special Rapporteur on Torture whose request for visit has been pending since 1993;

Prioritise reform of the security forces; and

Prioritise reform of the Penal Code and Prison legislation to bring them in line with international standards.

To the NHRC:

Recognise torture as a crime distinct from custodial death and provide a separate heading for torture under its Annual Report;

Issue directives to all places of detention to provide reports on instances where torture is alleged;

Create a separate Department of Medical Doctors to examine all post mortem reports submitted to the NHRC in all cases of custodial death;

In the absence of resources within the NHRC to carry out systematic custody visits, examine the potential for lay visiting system for places of custody;

Create a separate Prosecution Department which shall take necessary measures for prosecution of the guilty should facts and evidence establish torture;

Review the current process for cases management and make it mandatory to provide equal time, equal opportunity and equal access to the documents of complainants and authorities while adjudicating complaints of torture and other human rights violations; and

While awarding compensation to the victims of torture and other human rights violations, NHRC must develop guidelines in accordance with international standards.

Annex I: Figures of custodial deaths reported to the NHRC from the year 2003-2008

LOK SABHA, UNSTARRED QUESTION NO 135 ANSWERED ON 27.02.2007

STATE	2003-2004			2004-2005			2005-2006		
	PC*	JC*	TOTAL	PC*	JC*	TOTAL	PC*	JC*	TOTAL
ANDHRA PRADESH	10	114	124	13	116	129	11	134	145
ARUNACHAL PRADESH	2	1	3	-	2	2	1	-	1
ASSAM	6	18	24	4	11	15	7	27	34
BIHAR	9	139	148	3	150	153	1	246	247
GOA	-	-	-	-	4	4	1	4	5
GUJARAT	20	37	57	15	54	69	20	52	72
HARYANA	2	49	51	2	49	51	4	58	62
HIMACHAL PRADESH	-	2	2	-	5	5	-	5	5
JAMMU & KASHMIR	-	-	-	-	-	-	1	-	1
KARNATAKA	4	52	56	9	51	60	5	67	72
KERALA	4	51	55	6	51	57	5	44	49
MADHYA PRADESH	3	30	33	2	49	51	4	44	48
MAHARASHTRA	32	148	180	23	138	161	20	115	135
MANIPUR	-	-	-	-	-	-	-	-	-
MEGHALAYA	3	3	6	2	6	8	-	4	4
MIZORAM	-	2	2	-	-	-	-	-	-
NAGALAND	-	-	-	-	-	-	-	-	-
ORISSA	1	52	53	3	39	42	2	42	44
PUNJAB	7	81	88	6	65	71	6	100	106
RAJASTHAN	5	45	50	-	50	50	7	50	57
SIKKIM	-	-	-	-	-	-	-	-	-
TAMILNADU	12	106	118	9	98	107	7	101	108
TRIPURA	-	-	-	1	4	5	1	4	5
UTTAR PRADESH	18	199	217	7	219	226	18	259	277
WEST BENGAL	13	43	56	11	64	75	8	76	84
A&N ISLANDS	-	-	-	-	1	1	-	2	2
CHANDIGARH	-	4	4	1	3	4	-	3	3
D&N HAVELI	-	-	-	-	-	-	-	-	-
DAMAN & DIU	-	-	-	-	-	-	-	-	-
DELHI	3	22	25	5	27	32	3	29	32
LAKSHDWEEP	-	-	-	-	-	-	-	-	-
PONDICHERY	1	-	1	1	-	1	-	1	1
CHHATISGARH	2	42	44	5	26	31	2	52	54
JHARKHAND	3	53	56	5	66	71	4	62	66
UTTARANCHAL	2	7	9	3	9	12	1	10	11
TOTAL CASES	162	1300	1462	136	1357	1493	139	1591	1730

LOK SABHA, UNSTARRED QUESTION NO. 353 FOR 14.8.2007

STATE	2006-2007			2007-2008 (UPTO 08.8.2007)		
	PC*	JC*	TOTAL	PC*	JC*	TOTAL
ANDHRA PRADESH	5	118	123	1	51	52
ARUNACHAL PRADESH	1	1	2	0	0	0
ASSAM	8	17	25	6	5	11
BIHAR	2	193	195	3	76	79
GOA	0	1	1	0	0	0
GUJARAT	7	54	61	6	12	18
HARYANA	2	51	53	4	26	30
HIMACHAL PRADESH	0	3	3	0	0	0
JAMMU & KASHMIR	0	0	0	2	0	2
KARNATAKA	8	56	64	2	20	22
KERALA	3	37	40	2	22	24
MADHYA PRADESH	10	59	69	4	39	43
MAHARASHTRA	21	130	151	12	51	63
MANIPUR	0	0	0	0	0	0
MEGHALAYA	1	1	2	1	0	1
MIZORAM	0	0	0	0	0	0
NAGALAND	0	0	0	0	0	0
ORISSA	2	53	55	4	7	11
PUNJAB	1	87	88	1	29	30
RAJASTHAN	3	54	57	0	19	19
SIKKIM	0	0	0	0	1	1
TAMILNADU	16	103	119	2	24	26
TRIPURA	1	5	6	0	2	2
UTTAR PRADESH	12	241	253	14	113	127
WEST BENGAL	7	69	76	4	28	32
A&N ISLANDS	0	0	0	0	0	0
CHANDIGARH	0	2	2	1	0	1
D&N HAVELI	0	0	0	0	1	1
DAMAN & DIU	0	0	0	0	0	0
DELHI	3	25	28	1	16	17
LAKSHDWEEP	0	0	0	0	0	0
PONDICHERRY	0	1	1	0	2	2
CHHATISGARH	3	50	53	1	18	19
JHARKHAND	2	59	61	0	25	25
UTTARANCHAL	1	7	8	1	7	8
TOTAL CASES	119	1477	1596	72	594	666

*PC: Police Custody

*JC: Judicial Custody



Asian Centre for Human Rights (ACHR) is dedicated to promotion and protection of human rights and fundamental freedoms in the Asian region by:

- providing accurate and timely information and complaints to the national human rights institutions, the united nations bodies and mechanisms as appropriate;
- conducting investigation, research, campaigning and lobbying on country situations or individual cases;
- increasing the capacity of human rights defenders and civil society groups through relevant trainings on the use of national and international human rights procedures;
- providing input into international standard setting processes on human rights;
- providing legal, political and practical advice according to the needs of human rights defenders and civil society groups; and
- by securing the economic, social and cultural rights through rights-based approaches to development.

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