

## **A Study of Human Rights Violation by Police in India**

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### **Abstract**

In India, an attempt has been made since 1999 to gather information on details of cases where human rights were violated due to Police excesses such as 'Illegal Detentions', 'Fake Encounters', 'Extortion', 'Torture', etc. by National Crime Record Bureau, New Delhi and National Human Rights Commission, New Delhi, Under Home Ministry, Government of India. The details are presented by NCRB's Crime in India Report 2008, that as per the report 253 cases of Human Rights Violation by Police were reported throughout the country during 2008. Only 14 Policemen were charge-sheeted and only 08 of them were convicted for these Human Rights Violations during the year. Chhattisgarh has reported the maximum 233 cases (92.1% of such cases). 59 out of 253 cases were reported under crime head 'Torture'. 39 and 33 cases were reported under the head of 'Extortion' and 'Failure in taking action' respectively. 25 cases reported under the head of 'False implication'. On the other hand, also Asian Centre for Human Rights (ACHR) in its latest report Torture in India 2009 states that in the last eight years (from April 2001 to March 2009), an estimated 1,184 persons were killed in police custody in India. Most of the victims were killed as a result of torture within the first 48 hours after being taken into custody. The official data available with (TwoCircles.net) says every second police encounter that takes place in the country is fake. Colonial-era police laws enable state and local politicians to interfere routinely in police operations, sometimes directing police officers to drop investigations against people with political connections, including known criminals, and to harass or file false charges against political opponents. These practices corrode public confidence.

### **Introduction**

The universal declaration of human rights was unanimously adopted and proclaimed by the U.N. General Assembly on December 10, 1948. This universal declaration came into force in the legal form on 3<sup>rd</sup> January 1976 known as international covenant on civil and

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political rights. The international covenant on civil and political rights came into force on 23<sup>rd</sup> March 1976. India was one of the signatories of the universal declaration of human rights and acceded to the two international covenants by depositing the instrument of accession on 10<sup>th</sup> April 1979. On 25<sup>th</sup> June 1993, the Vienna declaration and programme of action adopted by the world conference on Human Rights declared that 'Human Rights and Fundamental freedom are birth right of all human beings' (Agarwal 2006).

Despite state prohibitions against torture and custodial misconduct by the police, torture is widespread in police custody, which is a major reason behind deaths in custody (AHRC Report 2004). The police often torture innocent people until a 'confession' is obtained to save influential and wealthy offenders (ALRC 2004). G.P.Joshi, the programme coordinator of the Indian branch of the Commonwealth Human Rights Initiative in New Delhi comments that the main issue at hand concerning police violence is a lack of accountability of the police.

In 2006, the Supreme Court of India in a judgment in the case of *Prakash Singh vs. Union of India*, ordered central and state governments with seven directives to begin the process of police reform. The main objectives of this set of directives were twofold, providing tenure to and streamlining the appointment/transfer processes of policemen, and increasing the accountability of the police (Pranjape 2008).

The official data available with TwoCircles.net says every second police encounter that takes place in the country is fake. Since October 1993, 2560 cases of police encounters have been brought into the notice of National Human Rights Commission (NHRC). Of them, according to the NHRC, 1224 cases have been found fake encounters. It means that roughly every second police encounter is fake in the country. The information has been accessed by eminent RTI activist Afroz Alam Sahil after several attempts. Sahil recently came into limelight for securing the autopsy report of Batla House encounter victims (*Every second police encounter in India is fake* Submitted by Mumtaz Alam Falahi, TwoCircles.net, on 25 March 2010 – 1:48pm).

### **Objective of the Study**

- To know the torture and violation of human rights by police in India.
- To understand the main causes behind such barbaric incidents by police.
- To know the existing laws at the national and international level to curb and control such incidents.
- To know whether the existing laws are effective in preventing such violations by police.

### **Scope of the Study**

The study helps to determine the role and responsibilities of the police and the judicial against the innocent citizen of India, who become the victims in their hands by violating human rights in the form of unnecessary torture, barbaric third degree methods and fake encounter killing etc., which results in custodial deaths. Media is projected some of the cases as police are also now accepting SUPARI to kill the targets, motivated by senior police officers or politicians with vested interest. It clearly shows the hand in glove with the dirty politicians. For that it right away needs to make aware the general public and to sensitize our Criminal Justice System to find out some concrete solutions against the existing problems of Human rights violation by our police.

### **Methods and Materials**

The present study is based on both primary and secondary data like crime reports, NGO's reports, journals, books and internet surveys etc.

### **Human Rights Commissions and its Limitation**

The human rights commissions established under the Protection of Human Rights Act of 1993 provide another means of holding the police accountable in cases of misconduct. The most important of these commissions is the NHRC, which was established on Oct. 12, 1993.

The NHRC undoubtedly has some achievements to its credit in terms of its efforts to make the police accountable for their actions. However, the commission's work has suffered due to certain infirmities and deficiencies in the law governing its operations. The commission, for example, is supposed to be completely independent, but there are certain provisions in the law, which underscore the dependence of the commission on the government for some of its requirements, such as manpower and finances.

More importantly, the law does not authorize the commission to inquire into complaints of human rights violations committed by members of the armed forces. "Armed forces," as defined in the Protection of Human Rights Act, mean not only the army, navy and air force but also some central armed police organizations, like the Border Security Force (BSF) (Vadackumchery 1994). The law obviously weakens the NHRC's effectiveness in providing redress to the public in cases where violations have been committed by members of these forces, which are often deployed on law and order duty in disturbed areas. All that the commission can do in these cases under the Protection of Human Rights Act is to call for reports from the central government and make recommendations to the government. There have even been cases where the central government has denied the NHRC the records it sought (Saxena et al, 1994).

Furthermore, under the Protection of Human Rights Act, the commission has no power to enforce its decisions. According to this law, where the inquiry conducted by the commission discloses a violation of human rights, it can only advise the government to take action against the guilty persons or grant relief to the victim. If any state government refuses to accept its advice, there is no provision in the law which empowers the commission to force the government to implement its recommendations, although it can, of course, approach the higher courts and seek directions (Paranjape 2008).

In many respects, the human rights commissions have acted as a check. The problem though is that an institution like the NHRC in a country of India's size becomes too remote from the scene to be effective in many cases. A large number of police atrocities are committed in small towns and villages of India where people are not aware of the commission's existence or its procedures (Srivastava 2007). Moreover, most state governments have yet to set up their own commissions. Presently, only 14 out of 28 states have established human rights commissions. Even where these bodies have been established, all of them are not functioning properly. In its report for 1999-2000 and again in 2002-2003, the NHRC expressed its disappointment with the slow pace with which state governments were acting to constitute human rights commissions at the state level (Agarwal 2007). "India is modernizing rapidly, but the police continue to use their old methods: abuse and threats," said Brad Adams (2009), Asia director at Human Rights Watch. "It's time for the government to stop talking about reform and fix the system."

It also noted that not all human rights commissions that had been established were being adequately supported with financial and manpower resources. The commission has referred to the "unhappiness" expressed by certain state human rights commissions "over the difficulties they are experiencing in terms of lack of support, both financial and otherwise." The Jammu and Kashmir Commission in its latest annual report has alleged that efforts are being undertaken to make it redundant and dilute its position, "which, if allowed, will terribly tell upon the reputation of the state." The details are presented by NCRB's Crime in India Report 2007, that as per the report 64 cases of Human Rights Violation by Police were reported throughout the country during 2007. 37 Policemen were charge-sheeted and none of them was convicted for these Human Rights Violations during the year. Uttar Pradesh has reported the maximum 22 cases (34.4% of such cases) followed by Gujarat 21 (32.8%). 11 cases each out of 64 cases were reported for crime head 'Illegal Detention/Arrests' and 'Atrocities on SCs/STs' (Crime in India Report 2007).

It will take time, amendments to the law and sincere and efficient attempts by the commissions to live up to their charter as well as tremendous pressure from the public to make the human rights commissions in India sufficiently strong, independent and vibrant to ensure the accountability of state institutions and to protect citizens against violations of their rights.

## Result and Discussion

### *Complaints received and reported against Police Personnel*

Information on number of complaints/ allegations received against police personnel; number of enquiries instituted such as Departmental, Magisterial and judicial; number of complaints / cases found false / unsubstantiated; number of cases registered during the year; and number of cases either reported for regular departmental actions or sent for trials/ charge-sheeted in table 1.

**Table 1**

#### **Complaints, Inquiries and cases registered against police personnel during 2004-2008.**

Year	No of Complaints Received/ Alleged during the year	No of Inquiry Instituted			Complaints/ Cases declared false/ unsub- stantial	No of case		
		Depart- mental	Magisterial	Judicial		No of Cases registered during the year	Reported for regular Departmental action	Sent for trials/ charge sheeted
2004	51,060	15,633	573	383	29,332	3,362	4,715	1,191
2005	61,560	18,940	713	288	34,590	9,965	5,459	9,047
2006	62,822	15,510	423	295	34,657	13,546	2,503	7,936
2007	51,767	13,957	119	278	28,412	7,908	3,129	941
2008	48,939	17,215	99	204	59,577	5,445	4,596	1,132

**Sources:** Crime in India Report 2008.NCRB New-Delhi

A total of 48,939 complaints were reported in the country against police personnel during the year 2008. Inquiries were instituted in as many as 17,518 cases. Out of these, Departmental inquiries were initiated in 17,215 cases. Magisterial inquiries in 99 cases and judicial inquiries in 204 cases. Thus, suitable inquiries were instituted in 35.8% complaints. The total number of cases that were either not substantiated or not found true was 29,577 which amounted to 60.4% of the total complaints reported. A decrease of 5.5% was noticed in reported complaints against police personnel has compared to previous year ( from 51,767 in 2007 to 48, 939 in 2008). Madhya Pradesh accounted for 37.4% ( 18,315 case out of 48,939 cases) of such complaints. Delhi ( 6,031 Cases) and Uttar Pradesh (6,015 Cases) with 12.3% of the complaints each were the next in order, followed by Maharashtra with 8.0% (3,928 cases), Punjab with 7.6% (3,714 cases) and Kerala with 6.3% (3,096 cases).

*Involvement of Police Personnel and Action taken*

1,245 Police Personnel were sent for trial after investigation and framing of charges during 2008. Cases were either withdrawn or disposed off otherwise in respect of 125 police personnel. Trials were completed in respect of 128 police personnel out of which 95 were acquitted and only 33 were convicted. The relevant details for the last five years are presented in table 2.

**Table 2**  
**Number of Police Personnel Undertrial, Convicted & Acquitted during 2004-2008.**

Sl No	Year	No of Police Personnel sent for trial	No of Police Personnel whose Cases withdrawn or otherwise disposed off	No of Police Personnel in whose case trial was completed	No of Police Personnel	
					Convicted	Acquitted
1.	2004	1,517	486	426	55	371
2.	2005	1,668	373	225	97	128
3.	2006	3,062	133	94	24	70
4.	2007	1,273	199	149	43	106
5.	2208	1,245	125	128	33	95

**Sources:** Crime in India Report 2008.NCRB New-Delhi

*Departmental action taken against Police Personnel*

The magnitude of Departmental Action taken by the Stats/ Union Territories against the erring Police Personnel indicated the tight disciplinary control being exercised by the concerned authorities. Disciplinary actions were initiated against 22,124 Police Personnel in 17, 215 cases, which attracted departmental inquiry. The cases were either withdrawn or otherwise disposed off in respect of 3, 219 Policemen. Departmental enquiries were completed against 9,757 personnel, on the bases of which 879 Police Personnel were either dismissed or removed from the service. The highest dismissals / removals were reported from Jammu & Kashmir (219) accounting for 24.9% followed by Punjab (10.95%), and Uttar Pradesh (10.8%). Minor Punishments were given to 14,653 police personnel and major punishments were awarded to 4,541 police personnel during this period.

**Table 3**  
**Departmental Action and Punishment awarded to Police Personnel during 2004-2008.**

Sl No	Year	Number of Personnel					
		Against whom Disciplinary Action Initiated	Whose cases withdrawn or otherwise Disposed off	In whose cases proceedings were completed	Dismissed/ Removed from service	Minor Punishment awarded	Major Punishment awarded
1.	2004	19,269	5,482	7,247	752	5,557	14,666
2.	2005	22,503	4,447	10,939	856	5,151	15,854
3.	2006	21,810	5,107	9,081	1,020	6,783	10,423
4.	2007	19,187	2,329	8,595	665	4,650	15,275
5.	2208	22,124	3,219	9,757	879	4,541	14,653

**Sources:** Crime in India Report 2008.NCRB New-Delhi.

The comparative rate of complaints per 100 Policemen has been computed for each State/Union Territory on the bases of actual police strength (Civil + Armed) which is presented in table 4.

**Table 4**  
**Number of Complaints received against per 100 Policemen**

SI No	States/Union-Territory	No. of Complaints Received against Police Personnel	Actual Police Strength (Civil+Armed)	No. of Complaints Against Per 100 Police Personnel	No. of Police Personnel per one lakh population
1	Andhra Pradesh	722	81,264	0.9	99
2	Arunachal Pradesh	137	7,277	1.9	604
3	Assam	7	51,729	0.0	172
4	Bihar	36	60,091	0.1	64
5	Chhattisgarh	1,516	34,361	4.4	145
6	Goa	64	4,627	1.4	281
7	Gujarat	786	58,166	1.4	103
8	Haryana	1,140	42,568	2.7	178
9	Himachal Pradesh	284	13,046	2.2	199
10	Jammu & Kashmir	417	63,768	0.7	510
11	Jharkhand	23	51,828	0.0	172
12	Karnataka	499	75,337	0.7	131
13	Kerala	3,096	41,055	7.5	120
14	Madhya Pradesh*	18,315	76,826	23.8	110
15	Maharashtra	3,928	1,66,366	2.4	155
16	Manipur	1	16,158	0.0	613
17	Meghalaya	6	10,266	0.1	403
18	Mizoram	0	9,880	0.0	1,004
19	Nagaland	7	10,443	0.1	476
20	Orissa	64	40,376	0.2	101
21	Punjab	3,714	67,255	5.5	252
22	Rajasthan	1,263	72,771	1.7	112
23	Sikkim	0	3,601	0.0	604
24	Tamil Nadu	139	86,732	0.2	135
25	Tripura	52	22,543	0.2	640
26	Uttar Pradesh	6,015	1,38,445	4.3	72
27	Uttarakhand	377	14,805	2.5	155
28	West Bengal	46	78,718	0.1	89
<b>Total</b>		<b>42,654</b>	<b>14,03,302</b>	<b>3.0</b>	<b>124</b>
29	A & N Islands	15	2,763	0.5	666
30	Chandigarh	234	4,063	5.8	379
31	D & N Haveli	0	213	0.0	80
32	Daman & Diu	0	220	0.0	116
33	Delhi	6,031	60,444	10.0	350
34	Lakshdweep	0	308	0.0	446
35	Puducherry	5	2,282	0.2	211
<b>Total (UTS)</b>		<b>6,285</b>	<b>70,293</b>	<b>8.9</b>	<b>346</b>
<b>Toatl ( All India)</b>		<b>48,939</b>	<b>14,73,595</b>	<b>3.3</b>	<b>128</b>

Sources: Crime in India Report 2008.NCRB New-Delhi

Highest number of complaint per 100 Policemen was reported from the Madhya Pradesh (23.8%) followed by Delhi (10.0%), Kerala (7.5%), Chandigarh (5.8%) against the national average of 3.3% during the year 2008.

Human Rights Violation by Police

An attempt has been made since 1999 to gather information on details of cases where human rights were violated due to Police excesses such as 'Illegal Detentions', 'Fake Encounters', 'Extortion', 'Torture', etc. by National Crime Record Bureau, New Delhi and National Human Rights Commission, New Delhi, Under Home Ministry, Government of India. The details are presented by NCRB's Crime in India Report 2008, that as per the report 253 cases of Human Rights Violation by Police were reported throughout the country during 2008.

**Table 5**  
**Incidents of Human Rights Violation by Police during 2008**

Sl No	Nature of Human Right Violation	States/ Union Territory	Case Registered	No.of Police Personnel Chargesheeted	No.of Police Personnel Convicted
1	Disappearance of Person	Chhattisgarh	2	0	0
		<b>Total</b>	2	0	0
2	Illegal Detention/ Arrest	Chhattisgarh	10	0	0
		<b>Total</b>	10	0	0
3	Violation Against Terrorists/ Extremist	Assam	1	0	0
		Chhattisgarh	3	0	0
		<b>Total</b>	4	0	0
4	Extortion	Chhattisgarh	38	0	0
		Delhi	1	1	0
		<b>Total</b>	39	1	0
5	Torture	Assam	4	0	0
		Chhattisgarh	53	0	1
		Karnataka	1	0	0

		Uttar Pradesh	1	3	0
		<b>Total</b>	59	3	1
6	False Implication	Chhattisgarh	25	0	0
		<b>Total</b>	25	0	0
7	Failure in taking Action	Chhattisgarh	33	0	3
		<b>Total</b>	33	0	3
8	Indignity to women	Chhattisgarh	3	0	0
		Kerala	2	0	0
		Maharashtra	1	1	0
		<b>Total</b>	6	1	0
9	Atrocities on SC/ST	Chhattisgarh	1	0	0
		<b>Total</b>	1	0	0
10	Others	Chhattisgarh	65	1	4
		Gujarat	6	6	0
		Karnataka	1	0	0
		Maharashtra	2	2	0
		<b>Total</b>	74	9	4
11	Total	Assam	5	0	0
		Chhattisgarh	233	1	8
		Gujarat	6	6	0
		Karnataka	2	0	0
		Kerala	2	0	0
		Maharashtra	3	3	0
		Uttar Pradesh	1	3	0
		Delhi	1	1	0
		<b>States/UTS</b>	253	14	8
	<b>Total</b>				

Sources: Crime in India Report 2008.NCRB New-Delhi

Only 14 Policemen were charge-sheeted and only 08 of them were convicted for these Human Rights Violations during the year. Chhattisgarh has reported the maximum 233 cases (92.1% of such cases). 59 out of 253 cases were reported under crime head 'Torture'. 39 and 33 cases were reported under the head of 'Extortion' and 'Failure in taking action' respectively. 25 cases reported under the head of 'False implication'. Where as the report given by Asian Centre of Human Rights in 2009 is astonishing one and exactly contrary to what National Crime Record Bureau of India reported in 2008.

*Torture in India 2009 by Asian Centre for Human Right*

Asian Centre for Human Right's new report has revealed that more than a thousand people have died in police custody in India over the past eight years. The findings illustrate the government's failure in ensuring compliance with Supreme Court guidelines about torture and extra-judicial killings.

Asian Centre for Human Rights (ACHR) in its latest report *Torture in India 2009* states that in the last eight years (from April 2001 to March 2009), an estimated 1,184 persons were killed in police custody in India. Most of the victims were killed as a result of torture within the first 48 hours after being taken into custody.

The highest number of custodial deaths was reported in Maharashtra (192 cases) followed by Uttar Pradesh (128); Gujarat (113); Andhra Pradesh (85); West Bengal (83); Tamil Nadu (76); Assam (74); Karnataka (55); Punjab (41); Madhya Pradesh (38); Bihar and Rajasthan (32 each); Haryana (31); Kerala (30); Jharkhand (29); Delhi (25); Orissa (24); Chhattisgarh (23); Uttarakhand and Meghalaya (16 each); Arunachal Pradesh (11); Jammu and Kashmir and Tripura (9 each); Puducherry and Chandigarh (3 each); Himachal Pradesh (2); while Manipur, Goa, Sikkim, and Dadra & Nagar Haveli recorded one case each.

According to Suhas Chakma, Director of ACHR

These deaths in custody do not however represent the actual number of deaths in police custody in India. A number of cases of custodial death taken up by ACHR with the National Human Rights Commission (NHRC) show that the latter was not informed by the police about these deaths. Its guidelines on reporting custodial deaths within 24 hours continue to be flouted

Further, deaths in the custody of the armed forces and the Indian Army under the control of the Central government are not reported to the NHRC as it does not have jurisdiction to investigate violations committed by the armed forces under Section 19 of the Human Rights Protection Act, 1993 (Saxena, et al, 1994). ACHR itself has filed 50 complaints of extrajudicial killings from 2003 to 2009 from Manipur alone. Many of these alleged extrajudicial killings were indeed deaths in the custody of the Manipur Police Commandos but since the Manipur Police Commandos claim to be conducting operations

jointly with the central armed forces, the deaths in the custody of the Manipur Police Commandos are not reported to the NHRC” he added. The report stated that high number of deaths in custody exposes the abject failure of the 1996 D.K. Basu Judgment that provides the procedures to be followed while making arrests. According to Chakma

Further, one of the key failures of the D.K. Basu guidelines is that its compliance is confined only to cases of arrests made under Sections 41 (when police may arrest without warrant) and 74 (Warrant directed to police officer) of the Code of Criminal Procedure, 1973 (as amended up to date). It does not apply to those who are summoned but not formally arrested

*Data since October 1993 in India revealed to RTI activist Afroz Alam Sahil by NHRC*

The RTI activist Afroz Alam Sahil, a Jamia Millia Islamia (Central University, New Delhi) student filed an application with the NHRC using RTI Act on 24/09/2008, a week after the Batla House encounter. He sought information on three counts: number of police encounter cases reached NHRC so far, number of fake encounters among them and details of these fake encounters. But it took him almost one year and a lot of blood burning to get the information though incomplete. Another interesting point the data reveals is that out of 1224 fake encounters, the NHRC ordered for compensation in only 16 cases.

He got incomplete reply on 20/10/2008. The one-paragraph answer to these questions said: “As per record available with the Commission, so far 2560 cases of police encounter/alleged fake encounter have come up before the NHRC. The Commission has so far granted compensation in sixteen cases of police encounter/alleged fake encounter.” The answer did not provide the number of all fake encounters.

The petitioner *Afroz Alam Sahil* filed another application under RTI Act on 02/03/2009 and asked 7 questions including: Since October 1993, how many cases of fake encounters, communal riots/caste violence, death in police custody, exploitation of women and exploitation of Dalit have come before the commission. In how many of them public servants were found guilty. How many of them were disposed of or found wrong. And the case number of fake encounters in which NHRC has given compensation.

The reply he got from NHRC in October 2009 after taking numerous rounds of the Commission office was revealing. Since October 1993 there were 1224 fake encounters in the country, see in the table 5.

**Table-5**

SI No	Human Rights Violation by Police	No of Incidents
01	Fake encounters	1224
02	Communal riots/caste violence	432
03	Death in police custody	2320
04	Exploitation of women	4502
05	Exploitation of Dalit	17998

*Sources: Data revealed to RTI activist Afroz Alam Sahil by NHRC 2009(TwoCircles.net)*

The NHRC said that out of the above, in 224 cases, the Commission found violation of human rights by public servants. The Commission had disposed of a total of 16784 such cases where no finding/positive recommendation in respect of proven violation of human rights was made. However, this reply contrasted its own reply dated 27/11/2008 as for compensation in fake encounters.

While there were 1224 fake encounters the commission ordered compensation in only 7 cases. “In 7 cases of encounter, the Commission has awarded compensation,” says NHRC in the new reply while November 2008 reply said compensation was given in 16 cases.

**Table 6**

**List of seven victims whose family was given compensation**

S.N	File No.	Victim	Action Date
1	621/13/97-98	Smt Asha Arun Gawli	15/06/1998
2	2812/4/97-98	Shri Chhati Singh	01/082007
3	14657/24/97-98	Brij Mohan Parashar	31/05/2002
4	3731/4/2002-03	Amitesh Sharma	17/05/2007
5	1247/12/2002-03	Shri Yogesh	25/08/2008
6	3519/24/2003-04	Papli S/O Mangal	04/03/2008
7	179/1/2003-04	Mohammed Shafi	01/10/2008

*Sources: Data revealed to RTI activist Afroz Alam Sahil by NHRC 2009 (TwoCircles.net)*

It is very clear from the above mentioned data that the information furnishing by the Government Agencies like NCRB and NHRC New Delhi are reluctant to expose the actual data. This is must be due to the pressure of the Governments in power, either it may in the State level or Central level to maintain their reputation in the eyes of national and international communities. Where as on the other hand AHRC and Data revealed to RTI activist Afroz Alam Sahil by NHRC 2009 (TwoCircles.net) are totally gives a very disgusting picture of the human rights violation by the India police on the name of maintaining law and order in the society.

### **Solution of the Problem**

#### *Torture Bill 2008 a shame*

The Prevention of Torture Bill, 2008 being brought by the government of India is a shame. It contains only three operative paragraphs relating to definition of torture, punishment for torture and limitations for cognizance of offences falls. The Bill falls far short of obligations that the states ratifying the Convention Against Torture (CAT) must undertake. It provides “narrow and restrictive definition of torture” with no reference to death as a result of torture. It provides for lenient punishment for torture contrary to the punishments provided under the Indian Penal Code for similar offences. Further, the six months bar for taking cognizance of offences under the proposed Bill is contrary to the Criminal Procedure Code, 1973.

Asian Centre for Human Rights recommended that:

- The Supreme Court should amend the guidelines issued in the D.K. Basu judgment to apply from the moment of summons issued by the police or detention with the police when acting in an official capacity.
- NHRC should distinguish in its statistics between custodial deaths through natural causes and custodial deaths resulting from abuses of human rights.
- Government should send the Prevention of Torture Bill, 2008 to Parliamentary Standing Committee for organizing public hearing to ensure its conformity with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Government should ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and the government of India should extend an invitation to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### Non-governmental Organizations

The activities of non-governmental organizations (NGOs) relating to the police are broadly of two types: (1) those concerned with violations of human rights committed by police officers and (2) those concerned with reforms the police. The former group of activities includes publicizing police atrocities and putting pressure on the government to take action against the police.

Police or government reaction to NGO allegations is usually that of denial. The government is generally reluctant to expose the police's abuse of power as it could be used against the government by the opposition. However, where the documentation of human rights violations is authentic and supported by irrefutable evidence, the government is forced to take action. Documenting human rights violations committed by police personnel though poses a major challenge to NGOs. The task is quite daunting, not only because of the intimidating nature of the work, but also because of a lack of expertise. This lack of expertise makes it difficult for them to advocate successfully for concrete alternative plans for restructuring the police or recommend programmes for action within the existing framework. For example, during the communal violence in Gujarat in 2002, the police did not register the complaints of many of the victims of communal violence who belonged to minority groups. Many of these victims were denied compensation as well as access to criminal justice. While a large number of NGOs were eager to help the victims, they could not do much because of their own ignorance of the law, the police and court procedures.

One problem faced by NGOs advocating police reforms is the non-availability of information about the government's plans and programmes concerning the police. The police are very reluctant to share information with outsiders, particularly NGOs. There is also an element of distrust between the NGOs and the government that makes it difficult for civil society to influence government policies relating to the police.

### Media

One of the most vigilant watchdogs over the operations of the police in the country is the media. The media in India enjoys a wide measure of freedom and has enormous reach and power. Technological advances witnessed during the last few decades have revolutionized the world of communications and opened frontiers that were hitherto unknown to the media or were beyond its reach. Any violation of human rights occurring anywhere in the country can be known throughout the rest of the country quickly, provided the media reports the abuse that has taken place.

The media has shown great interest in reporting on human rights violations committed by police officers. What occurred in Gujarat during the communal riots in 2002 was known to the rest of India and the world primarily through the efforts of the media. However, the known incidents of police misconduct or abuse of power are far less than those that actually take place, for the media's coverage sometimes are inadequate and selective. Most media organizations in India, as in other parts of the world, are either state- or corporate-owned. The media has taken interest in reporting on issues and areas which are lucrative, not necessarily those that are of public interest. Political news, politicians and celebrities have dominated media coverage. Bias and a lack of sensitive appreciation of the issues involved have affected the quality of coverage, selection of subjects and the content of media reports. The tendency to sensationalize issues and events has often been observed.

On the whole, the mainstream national media has been far better than the regional media in covering human rights violations and holding state agencies accountable. Some newspapers in Gujarat deliberately spread rumours, distorted facts and did their best to promote the hate campaign against the minority Muslim community in 2002. As Human Rights Watch (HRW 2000) pointed out, "While the national Indian press has played an important role in exposing the violence and official neglect or misconduct, sectors of the local press have been accused of inciting the violence." It was difficult to hold the editors and management of the local press accountable for violating criminal laws, in addition to infringing their own code of ethics, because they had the support of the state government.

The government has occasionally tried to pressure or intimidate the media that has exposed corruption or abuse of power by politicians and senior bureaucrats. Recalcitrant journalists have been subjected to raids by income tax and law enforcement authorities and harassed in other ways. For instance, this type of coercion occurred a few years ago to the editor and staff members of Tehelka.com, an internet portal that succeeded in videotaping important politicians, bureaucrats and army officers accepting bribes and fixing arms deals with decoy arms dealers belonging to Tehelka. According to Vir Sanghvi, editor of the Hindustan Times, a national newspaper, in July 2002

The message in all this is quite direct: if anyone ever tries to expose corruption in the way in which Tehelka has done, they will face the full might of the government of India. It worries me that as journalists we are allowing the government to get away with all this.

### **Conclusion**

Providing a sense of security to ordinary citizens and attending to their grievances is dependent on the establishment of a police force which is efficient, honest and professional. The fact that such a police force does not exist in India, as attested by the findings of various commissions and committees, the complaints received by the human rights commissions, the stories reported by the press and the experiences of the common

people on the street. The need for police reform is self-evident and urgent. There are two directions in which police reforms must be pursued simultaneously.

One is to establish statutory institutional arrangements that will ensure that the power of superintendence of state governments over their police forces provides police performance that is in strict accordance with the law. In other words, the police function to establish and maintain the rule of law, not the rule of politics. This break with past and present practices would require insulating them from outside illegitimate control and influence and giving them functional autonomy. Once the police are given functional independence, they must be held accountable for the wrongs they do. The existing mechanisms of accountability must be strengthened and improved. In addition, new mechanisms, working independently to monitor the operations of the police and to inquire into public complaints against the police, must be established. The performance of the police as an institution and the behaviour of police personnel as individuals both need constant monitoring.

The other direction is to do everything possible to strengthen and improve policing under the existing system and structure. In addition to upgrading recruitment, training and leadership standards, the working and living conditions of lower police personnel need vast improvement-an exercise that should start with raising the status of the constabulary.

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