

TORTURE



Asian Centre For Human Rights



TORTURE IN INDIA 2010

ASIAN CENTRE FOR HUMAN RIGHTS

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I. Focus of 2010: UPA government must hold wider public debate on the Prevention of Torture Bill, 2010 for the sake of ‘aam aadmi’

“At a conference of Chief Justices and Chief Ministers some time back, I had pointed out that the Indian legal and judicial system, in some sense, reflects a great contradiction. Our democracy and our legal and judicial system have strengths that are admired the world over. We have a free press, a truly independent judiciary and independent institutions like the Election Commission and the Comptroller and Auditor General which underpin our democratic framework. The quality of our lawyers is reflected in the innovative legal doctrine and precepts that they have helped establish. However, all these strengths are somewhat diminished by the arrears and backlog of cases at every level of our judicial system”. – Honourable Prime Minister Dr Manmohan Singh addressing the National Convention on “Law, Justice and the Common Man organized by the Congress Party on 27th March 2010.”¹

Since 2000, according to the statistics submitted to the parliament by the Ministry of Home Affairs, prison custody deaths have increased by 54.02% by 2008, while police custody deaths during the same period have increased by 19.88% . In fact, under the United Progressive Alliance (UPA) rule from 2004-2005 to 2007-2008, prison custody deaths have increased by 70.72% while police custody deaths during the same period have increased by 12.60%.

Deaths in judicial custody between 2000 and 2008:²

Year	No. of deaths	% of increase
2000-2001	910	
2001-2002	1,140	25.25%
2002-2003	1,157	27.14%
2003-2004	1,300	42.86%
2004-2005	1,357	49.12%
2005-2006	1,591	74.84%
2006-2007	1,477	62.31%
2007-2008	1,789	96.59%
Overall		54.92%

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1. Speech of Hon’ble Prime Minister Dr. Manmohan Singh at National Convention on “Law, Justice and the Common Man” 27th March 2010, available at <http://www.congress.org.in/national-convention-pm-speech.htm>
 2. See Annual Reports of NHRC (2001-02 to 2006-07) available at <http://www.nhrc.nic.in/>

Deaths in police custody between 2000 and 2009:³

Year	No. of deaths	% of increase
2000-2001	127	
2001-2002	165	29.92%
2002-2003	183	44.09%
2003-2004	162	27.56%
2004-2005	136	7.09%
2005-2006	139	9.45%
2006-2007	119	-6.30%
2007-2008	187	47.24%
2008-2009	127	00
Overall		19.88%

In her address at the inaugural session of the "National Convention on Law, Justice and the Common Man" organised by the Congress Party, UPA Chairperson Mrs Sonia Gandhi rightly referred to "*a wave of unprecedented legislative reforms that was directed at empowering and improving the lot of the common man, aam aadmi*".

Among others, Mrs Gandhi referred to '*aam aadmi*'s the right to information (RTI Act) and the right to work (National Rural Employment Guarantee Act). She stated that under the UPA-I, the government also brought the Domestic Violence Act, the Commission for Protection of Child Rights Act, 2005 and the 'Unorganised Workers' Social Security Act 2008. Under UPA-II, she referred to the right to elementary education for the children and legislation for 50% reservation for women in local bodies the panchayats. She referred to passing of the Women's Reservation Bill in the Rajya Sabha, the debate over legislation that will give citizens the right to a safe and healthy environment through the agency of a National Green Tribunal. Most importantly, UPA promised the passage of a Right to Food Security law to address chronic starvation and malnutrition. She added that the Grām Nyayalay Act is yet another milestone legislation that is aimed at providing inexpensive justice to people in rural areas at their doorsteps.⁴

These legislative changes are welcome. However, the UPA government continued the long failure of Indian administration to address the issue of torture and other human rights violations by the law enforcement personnel. Speaking at the inaugural session of a seminar on "Custodial Justice" organized by the National

3. See Annual Reports of NHRC (2001-02 to 2006-07) available at <http://www.nhrc.nic.in/> and the Statement of Mr Ajay Maken, Minister of State in the Ministry of Home Affairs, Unstarred Question No. 1890 answered on 1.12.2009 in the Lok Sabha

4. Speech of Hon'ble Congress President Sonia Gandhi at National Convention on "Law, Justice and the Common Man" 27th March 2010, available at <http://www.congress.org.in/national-convention-pm-speech.htm>

Human Rights Commission on 30 March 2006, then 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 2006 Mr Patil stated: "*There is no proposal for a separate legislation to provide compensation to victims of custodial violence*".⁵

On 8 April 2010, the Cabinet approved the decision to introduce the Prevention of Torture Bill, 2010 before the parliament and ratify the UN Convention Against Torture. The Prevention of Torture Bill, 2010 is being treated as a secret document. Its earlier draft, Prevention of Torture Bill, 2008, contained only three operative paragraphs relating to (1) definition of torture, (2) punishment for torture, and (3) limitations for cognizance of offences. The Prevention of Torture Bill, 2008 was highly flawed and ACHR had submitted specific recommendations to the Government of India after holding a National Conference in New Delhi in June 2009.

In its responses before the parliament, the Ministry of Home Affairs repeatedly stated, "Police and 'Public Order' are State subjects under the Constitution of India. It is for the State Governments to take appropriate action in every crime."

However, the Central government has failed to take action in the Union Territories that it governs directly. Further, in the decade 1999-2009, the Congress-National Congress Party ruled Maharashtra had the highest number of deaths (246 cases) in police custody followed by Uttar Pradesh (165 cases), Gujarat (139 cases), West Bengal (112 cases), Andhra Pradesh (99 cases), Tamil Nadu (93 cases), Assam (91 cases), Punjab (71 cases), Karnataka (69 cases), Madhya Pradesh (66 cases), Haryana (45 cases), Bihar (43 cases), Delhi (42 cases), Kerala (41 cases), Rajasthan (38 cases), Jharkhand (31 cases), Orissa (27 cases), Chhattisgarh (23 cases), Meghalaya (17 cases), Uttarakhand (16 cases), Arunachal Pradesh (15 cases), Tripura (9 cases), Goa (5 cases), Himachal Pradesh, Jammu & Kashmir and Chandigarh (4 cases each), Pondicherry (3 cases) and Mizoram, Sikkim, Dadra & Nagar Haveli, and Andaman & Nicobar Islands (1 each).

The Central government has refused to implement the Law Commission of India's recommendations in its 152nd Report on 'Custodial Crimes' to amend the Indian Evidence Act, 1872 (insertion of Section 114B) to provide that in cases of custodial death, the burden of proof lies with the police. The Home Minister of India has argued 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*".⁶

Both the Central government and the State governments consistently refuse to provide sanction for prosecution as required under Section 197 of the Criminal Procedure Code. In December 2009, the Bombay High Court asked the Maharashtra

5. Torture in India 2008: A State of Denial by Asian Centre for Human Rights, June 2009

6. LOK SABHA UNSTARRED QUESTION NO 2717 ANSWERED ON 18.03.2008

government to explain why it had rejected the state Criminal Investigation Department (CID)'s plea to prosecute 10 officers of Mumbai Police in the Khwaja Yunus murder case. The state government had sanctioned the prosecution of four minor officers but let off 10 senior officials despite the CID establishing their roles in the custodial death of Yunus in January 2003.⁷

It is clear that the Supreme Court's guidelines in the case of *D.K.Basu Vs State of West Bengal* have failed to reduce the custodial deaths in India. The writ petitions pending before the Supreme Court of India seeking enforcement of the *D K Basu Guidelines* made little headway.

Most of the State governments have not been implementing Section 176 of Criminal Procedure Code, amended in 2005, which provides "that in case of death or disappearance of a person or rape of woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty-four hours of death". In most cases, the State governments have been ordering magisterial (executive) inquiries, instead of judicial inquiries.

Torture is the most naked assault on human dignity. In India as elsewhere, it is the *aam aadmi* who suffers the most.

While the decision to introduce the Prevention of Torture Bill, 2010 is welcome, unless Government of India takes lessons learnt from the failure of the Supreme Court judgement (D K Basu Judgement) and amendment of the Criminal Procedure Code and addresses the shortcomings, torture and custodial death will continue to rise. The Asian Centre for Human Rights recommends to the government of India to take the following measures to stamp out torture in India:

- Hold public discussion on the Prevention of Torture Bill, 2010 with all stakeholders including the civil society groups and enact the same in 2010 itself;
- Amend the recommendations of the Law Commission of India to make consequential amendments to the Indian Evidence Act, 1872 (insertion of Section 114B) to provide that in case of custodial death the onus of proving of innocence is fixed on the police; and
- Repeal Section 197 of the CrPC to uphold the supremacy of the judiciary.

7. Why were cops in Yunus case let off? HC, The Times of India, 9 December 2009

2. Torture in Police Custody

I. Patterns and Practices of Torture in Police Custody

Torture in police custody remains a widespread and systematic practice in India.

ACHR's research into patterns of torture in police custody since 2008 (ACHR's 2008 and 2009 Annual Reports on Torture) suggests that victims suffer high risks of torture in the first twenty four hours following detention.

There are no safeguards to ensure that a person taken into custody will have their detention recorded, have prompt access to a lawyer or impartial medical examination upon their arrival at the place of detention, or at the time of his release. The lack of any effective system of independent monitoring of all places of detention facilitates torture.

A. Custodial deaths

On 1 December 2009, Minister of State in the Ministry of Home Affairs, Mr Ajay Maken stated in the Lok Sabha (Lower House of Indian Parliament) that 127 cases of deaths in police custody were registered by the National Human Rights Commission (NHRC) in 2008-2009 against 188 cases in 2007-2008 and 119 cases in 2006-2007.⁸ Of the 127 police custody deaths registered by the NHRC in 2008-2009, the highest number of cases were reported from Uttar Pradesh (24 cases) followed by Maharashtra (23), Andhra Pradesh and Gujarat (12 cases each), Assam (7 cases), Tamil Nadu and Haryana (6 cases each), Bihar and Madhya Pradesh (5 cases each), Punjab, Rajasthan & West Bengal (4 cases each), Jharkhand, Karnataka, Arunachal Pradesh, Orissa and Kerala (2 cases each), and 1 case reported from Meghalaya, Tripura, Chandigarh, Chhattisgarh and Dadar & Nagar Haveli.⁹ According to Mr Ajay Maken's statement, not a single case of deaths in police custody was registered by NHRC during 2008-2009 from: Manipur, Jammu & Kashmir, Andaman & Nicobar, Daman & Diu, Delhi, Goa, Himachal Pradesh, Lakshadweep, Mizoram, Nagaland, Sikkim and Uttarakhand.¹⁰

The contradictions in official figures on custodial deaths are evident when data from the NHRC is compared with the records of National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, government of India. On 7 July 2009, Minister of State in the Ministry of Home Affairs, Mr Ajay Maken stated in the Lok Sabha that the NCRB recorded only 2 cases of custodial death in India in

8. Unstarred Question No. 1890, Answered in the Lok Sabha on 01.12.2009

9. Unstarred Question No. 1890, Answered in the Lok Sabha on 01.12.2009, See Annexure to the reply at <http://164.100.47.132/Annexure/lsq15/3/au1890.htm>

10. Unstarred Question No. 1890, Answered in the Lok Sabha on 01.12.2009, See Annexure to the reply at <http://164.100.47.132/Annexure/lsq15/3/au1890.htm>

2009 (up to 28.6.2009), 7 cases in 2008, 118 cases in 2007 and 89 cases in 2006. He stated that the data on custodial deaths of children below 14 years of age is not maintained separately.¹¹

The dramatic differences between the two institutions are cause for concern.

Individual cases of custodial deaths through torture:

On the night of 5 January 2009, Lalu Prasad Biswas (44 years) allegedly died as a result of torture in police custody at New Market police station in Kolkata, West Bengal. Mr Biswas was arrested on the charge of allegedly running an illicit liquor shop. The police claimed that he was drunk at the time of arrest and therefore was sent to the Calcutta Medical College Hospital for a medical check up. The police could not properly explain as to how he died at the hospital. Mr Biswas's relatives alleged that he died as a result of torture in police custody.¹²

On 8 January 2009, Harsajyoti Handique, Vice President of Sivsagar district unit of All Assam Tai Ahom Students' Union (AATASU), was allegedly tortured to death in police custody at Tengapukhuri outpost under Charaideo sub-division in Sivsagar district of Assam. Mr Handique was arrested along with two others namely Jayanta Handique and Pankaj Borgohain on the basis of a complaint filed by one Bubul Baruah, proprietor of a hotel at Tengapukhuri, over a clash with the hotel staff. The victim allegedly died as a result of torture by the police.¹³

On 14 January 2009, one Arun (26 years, resident of Pottery Town), died in police custody at the Fraser Town police station in Bangalore, Karnataka. The victim was arrested along with his neighbour Vijay after they had allegedly been involved in a fight at about 5.30 pm on 14 January 2009 in Pottery Town. While being taken to the Frazer Town police station, the victim was allegedly beaten up by the police. The police claimed that Arun suddenly collapsed in the police station and was taken to the Santosh Hospital in Frazer at about 9.30 pm. But according to the Santosh Hospital sources, Arun was brought to the hospital only at around 10.30 pm and declared dead at the hospital. The relatives of Arun alleged that he was tortured in police custody.¹⁴

On 14 January 2009, a tribal identified as Kalu Thanwaria Medha (40 years) was allegedly tortured by death by two police constables at Raipuria in Jhabua district of Madhya Pradesh. The villagers claimed that Kalu Thanwaria Medha

11. Unstarred Question No. 482, Answered in the Lok Sabha on 07.07.2009

12. ACHR's complaint to NHRC, 12 January 2009, ACHR's Reference No: WB/18/2009

13. ACHR's complaint to NHRC, 14 January 2009, ACHR's Reference No.: AS/18/2009

14. ACHR's complaint to NHRC, 19 January 2009, ACHR's Reference No: KT/09/2009 and NHRC Case No. 587/10/1/08-09-AD

was innocent. In protest, villagers attacked the local police station and demanded justice.¹⁵

On 1 February 2009, one Krishnamurthy of Rowthanmedu in Thuvakudi died in police custody at Tiruverumbur under Tiruppur district in Tamil Nadu. Earlier in January 2009, he was released from jail after serving a prison term but on 31 January 2009, the police picked him up on an alleged involvement in theft. The police claimed that Krishnamurthy complained of chest pain after dinner and died in hospital. But the hospital authorities stated that he was ““brought dead”” to the Government Hospital at Tiruchi by the police. The the family of the victim have alleged that his death was a result of torture in police custody.¹⁶

On 12 February 2009, Yesupogu Ram Murthy (40 years) died as a result of alleged torture at Bitragunta police station in Kavali under Nellore district of Andhra Pradesh. The police claimed that he collapsed during interrogation and was taken to Bitragunta hospital from where he was transferred to Kavali government hospital. The doctors at Kavali government hospital declared him “brought dead”. While the police claimed that the victim was arrested in the afternoon of 12 February 2009 the family alleged that he was picked up on the night of 11 February 2009 and tortured.¹⁷

On 14 February 2009, Dhananjaya, son of Thimme Gowda of Srirangapatna, was declared “brought dead” at hospital in Mandya district in Karnataka. He was allegedly tortured at K R Pet Rural police station in Mandya district. But the police claimed that the victim collapsed during interrogation and was taken to hospital where he was declared “brought dead”. The police allegedly transferred the corpse to another hospital in Mysore and kept the corpse in the hospital’s mortuary.¹⁸

On 21 February 2009, Adapa Naresh (25 years) of Venkatapuram gram panchayat (village council) died at the Rajahmundry Central Jail in East Godavari district of Andhra Pradesh. The family alleged that he was tortured at the Three-Town police station before he being sent to judicial custody.¹⁹

On 7 March 2009, Amol Raghunath Kuchekar (26 years, resident of Surbhi colony in Warje), died as a result of alleged torture in the police custody at Warje Malwadi police station in Pune in Maharashtra. Mr Kuchekar was arrested on the night

15. ACHR’s complaint to NHRC, 15 January 2009, ACHR’s Reference No. MP/18/2009; and NHRC Case No. 1864/12/23/08-09/UC

16. ACHR’s complaint to NHRC, 4 February 2009, ACHR’s Reference No: TN/05/2009; and NHRC Case No. 2349/22/36/08-09-AD

17. ACHR’s complaint to NHRC, 16 February 2009, ACHR’s Reference No: AP/18/2009

18. Lock-up death: CoD in search for missing policemen, The Times of India, 12 May 2009

19. ACHR’s complaint to NHRC, 2 March 2009, ACHR’s Reference No: AP/19/2009

of 6 March 2009.²⁰ The medical records obtained by the Criminal Investigation Department revealed that the policemen had beaten Kuchekar with blunt objects like sticks and belts. The medical reports reportedly confirmed that Kuchekar's death was as a result of torture.²¹

On 13 March 2009, Palani alias Kutti Palani (38 years, son of Ranganathan of Kotturpuram), died as a result of alleged torture at Kotturpuram police station in Chennai, Tamil Nadu. The victim was picked up in connection with a petty case at about 10 pm on 12 March 2009. The police allegedly tortured him and released him at about 11 pm on that day. Immediately after release he had to be rushed to hospital where the doctors declared him "brought dead". According to the police the victim was a habitual drinker and died as a result of cardiac arrest. However, the residents of the area alleged that the victim died as a result of torture during interrogation in police custody.²²

On 22 March 2009, K. Venkateswarlu (45 years, resident of Pathikonda village), died as a result of alleged torture in police custody at Bowenpally police station in Kurnool district of Andhra Pradesh. He was detained in connection with a murder case. The police claimed that Venkateswarlu was suffering from asthma and cardiac problems and that he was immediately rushed to the nearby hospital after complaining of chest pain. The police reportedly again brought him back to the police station from the hospital. But the victim had to be rushed to the same hospital for the second time but he died.²³

On 23 March 2009, Bane Singh, a Dalit, died as a result of alleged torture in police custody at Boda Police Post at Harlai village in Rajgarh district of Madhya Pradesh. According to the residents of Harlai village, the mother of the victim had registered a complaint at the Boda Police Post on 12 March 2009 about the victim for getting into fights after drinking. Pursuant to the complaint, four policemen including Boda Police Post In-charge Vijay Singh went to the village looking for the victim. The police allegedly beat up the victim before the public at the time of arrest and also tortured him in custody at Boda Police Post. When the victim's condition deteriorated, the police took him to the Bombay Hospital in Indore. But, he died during treatment.²⁴

On 21 April 2009, Radheshyam Khateek, resident of Regar Mohalla in Jhotwara, died as a result of alleged torture at Jhotwara police station in Jaipur, Rajasthan. The victim was arrested on the charge of selling illicit liquor on 17 April 2009 and sent to judicial custody at the Jaipur Central Jail. The the family of the victim

20. ACHR's complaint to NHRC, 8 April 2009, ACHR's Reference No: MH/07/2009

21. Custodial death case: PSI, other cops booked, The Times of India, 4 April 2009

22. ACHR's complaint to NHRC, 22 May 2009, ACHR's Reference No.: TN/06/2009

23. ACHR's complaint to NHRC, 24 March 2009, ACHR's Reference No: AP/20/2009

24. ACHR's complaint to NHRC, 31 March 2009, ACHR's Reference No: MP/19/2009

have alleged that he was tortured in police custody which caused his death on 21 April 2009 in hospital.²⁵

On 8 May 2009, Hiradhar Pujari (60 years), a tribal, died at Nabarangpur Hospital in Orissa as a result of alleged torture in illegal custody. According to the victim's brother, Narasingh Pujari, the police picked up the victim on the morning of 6 May 2009 in connection with a family dispute. He was kept in illegal detention for one day at Kodinga Police Station and tortured. However, the police claimed that the victim was arrested only on 7 May 2009 and that he had complained of chest pain while being taken to the court on 8 May 2009. The victim was taken to Nabarangpur Hospital where he died.²⁶

On 18 May 2009, Manzoor Ahmad Beig (45 years), son of Abdul Majeed Beigh of Aloochoibagh in Srinagar, died as a result of alleged torture during interrogation by the Special Operations Group (SOG) of the Kashmir Police in Srinagar, Jammu & Kashmir. The SOG personnel picked up Mr Beig along with three others for questioning in connection with a fraud investigation.²⁷

On 4 June 2009, Paramjit Singh alias Kala (42 years) died in hospital as a result of alleged torture while in police custody in Sangrur district of Punjab. Mr Singh was taken to the police station for interrogation in connection with a murder investigation.²⁸

On 16 June 2009, Janardhan Kale (26 years, a resident of Mahi-Jalgaon at Karjat taluka in Ahmednagar district in Maharashtra), died while in Baramati City Police custody in Maharashtra. He was taken into custody on 14 June 2009 in connection with theft cases that took place on May 18th. However, the police claimed that Janardhan Kale confessed to his crime and was taken to Mahi-Jalgaon for investigation. He allegedly escaped from police custody and died in an accident on the Ahmednagar-Solapur highway. Concerns over the the police version of events arose when it was discovered that the police had registered the victim's name in the station diary when he was taken to Ahmednagar district for further questioning. After the death, the police registered the death as accidental death at the Baramati city police station instead of the concerned police station in Ahmednagar district. The State Criminal Investigation Department (CID), Pune, have launched an investigation into the incident.²⁹

On 22 June 2009, R. Aruma Raja died as a result of alleged torture at Modakurichi police station in Erode district of Tamil Nadu. Mr Raja was picked up by the police

25. ACHR's complaint to NHRC, 24 April 2009, ACHR's Reference No: RJ/07/2009

26. ACHR's complaint to NHRC, 1 June 2009, ACHR Reference No: OR/08/2009

27. ACHR's complaint to NHRC, 22 May 2009, ACHR's Reference No.: JK/17/2009

28. Mob goes violent, as dhaba owner dies in custody, *The Tribune*, 5 June 2009

29. CID launches probe into custodial death, *The Times of India*, 23 June 2009

for interrogation in connection with a murder investigation. The police claimed that Mr Raja complained of chest pain just before he being produced before the court and was taken to the government hospital, Erode where the doctors declared him dead on arrival. But the victim's relatives alleged that he died as a result of police torture.³⁰

On 25 June 2009, Sushil Verma (28 years) was allegedly tortured to death at the Bara Banki police station under Bara Banki district of Uttar Pradesh. On 24 June 2009, a complaint was held by one Shiv Baran Singh with Jahangirabad police station stating that he had been robbed by three persons. The victim was brought to the police station to identify some suspects related to the case of robbery. The police claimed that Mr Verma suddenly collapsed in the police station and was rushed to a hospital where he died around noon. However, the victim's relatives alleged that he died as a result of torture while in police custody.³¹

On 27 June 2009, Paramjit Singh (33 years) died in police custody at Solan town in Solan district of Himachal Pradesh. The residents of Solan alleged that Mr Singh died as a result of police torture.³²

On 1 July 2009, one Raja (32 years) died in police custody in Chandigarh. Raja was handed over to the Chandigarh Police by a Delhi Police Special Team on 29 June 2009 in connection with a robbery in Chandigarh. The Chandigarh Police claimed that he jumped from the window on the third storey of the District Court in Chandigarh in an attempt to escape from police custody and died. However, the victim's relatives alleged that he was killed by the police.³³

On 3 July 2009, Mohd Seraj died as a result of alleged torture at the Pathiha police station in East Champaran district of Bihar. The victim along with four others was taken to the police station for questioning by a police team in connection with a looting investigation. The police claimed that the victim complained of abdominal pain and died on the way to hospital. However, the post mortem report revealed that he died of "shock and haemorrhage" and there were injury marks on his body including on the head, strongly suggesting ill treatment.³⁴

On the night of 7 July 2009, one Rajbal, a Dalit, (son of Ratiram of Shikar village) was allegedly tortured to death at the Chappar Police Station in Muzaffarnagar district of Uttar Pradesh. Rajbal was brought to the Chappar Police Station along with his brother in connection with a land dispute. Mayaram, the victim's brother, who allegedly witnessed the torture, stated that Mr Rajbal was beaten with sticks

30. ACHR's complaint to NHRC, 30 June 2009, ACHR's Reference No: TN/07/2009

31. ACHR's complaint to NHRC, 30 June 2009, ACHR's Reference No: UP/36/2009

32. ACHR's complaint to NHRC, 30 June 2009, ACHR's Reference No: HP/01/2009

33. ACHR's complaint to NHRC, 8 July 2009, ACHR's Reference No: CG/03/2009

34. ACHR's complaint to NHRC, 8 July 2009, ACHR's Reference No: BH/12/2009

until he fell unconscious. After sometime when Rajbal regained consciousness, he asked for water but he was instead again beaten with sticks. His condition deteriorated. He lost consciousness again at about 10 pm. The police put Rajbal and Mayaram into the police jeep and took them to the district hospital, Muzaffarnagar. The police then left the hospital. Rajbal was declared “brought dead” by the doctors of the hospital. However, the police claimed that the victim died of heart attack.³⁵

On 11 July 2009, 26-year-old Manjunath, an autorickshaw driver, died at the R.T. Nagar police station in Bangalore, Karnataka. Manjunath and his brother Bhuvanesh were picked up for interrogation in connection with an assault. Bhuvanesh alleged that Sub-Inspector Siddalingappa tortured Manjunath in the police station during interrogation and Manjunath died on the way to hospital. The victim’s brother’s statement was corroborated with medical evidence. The medical reports reportedly revealed multiple injuries and blood clots on Manjunath’s right leg, left hand and fingers.³⁶

On 17 July 2009, Noora Rathwa, a member of the Border Security Force (BSF), died of alleged torture at the Kwant police station in Vododara district of Gujarat. On 16 July 2009, Mr Rathwa went to the police station to lodge a complaint about the elopement of his daughter. Assistant Sub-Inspector (ASI) Chandu Rathwa allegedly refused to register the complaint. Mr Rathwa responded angrily to the refusal and he allegedly tried to assault the ASI and was subsequently arrested. He was allegedly tortured in police custody that resulted in death. The Magisterial inquest reportedly found injury marks on the body of the victim.³⁷

On the night of 26 July 2009, Jung Bahadur Singh (48 years) died as a result of torture at the Hanspuram police outpost under Naubasta police station in Kanpur in Uttar Pradesh. Mr. Singh was brought to the police outpost by Pappu Singh, Sub-Inspector and In-charge of the outpost with other police personnel following a complaint held against him. The police took him to a nursing home after his condition deteriorated, but the doctors declared him dead on arrival. The police claimed that Mr Singh died as a result of a heart attack. The post-mortem examination conducted on the victim’s body reportedly confirmed that the death was caused as a result of injuries sustained and not as a result of heart attack.³⁸

On the night of 2 August 2009, Salim alias Danna (a labourer and resident of Prehladpur village under Bhojipura police station) died as a result of alleged torture at the Bhojipura Police Station in Bareilly district of Uttar Pradesh. Salim

35. ACHR’s complaint to NHRC, 8 July 2009, ACHR’s Reference No: UP/38/2009

36. Brother claims Assistant Sub Inspector had assaulted and tortured the victim – 87 of youth alleged, The Deccan Herald, 2009

37. ACHR’s complaint to NHRC, 20 July 2009, ACHR’s Reference No: GJ/08/2009

38. ACHR’s complaint to NHRC, 28 July 2009, ACHR’s Reference No: UP/39/2009

and three others were returning home after work from a brick-kiln in a vehicle at about 11 pm when the police, led by Station House Officer of Bhojipura Police Station, Rahul Shukla, stopped the vehicle. The police arrested the four on charges of involvement in robbery. They were taken to Bhojipura police station where the four were allegedly subjected to torture. Saleem reportedly fell unconscious and was declared dead on arrival in hospital.³⁹

On 4 August 2009, Satish Kumar, a resident of Delhi, died as a result of alleged torture during interrogation in the custody of Haryana Police at Bahadurgarh in Jhajjar district of Haryana. Mr Kumar with some friends had gone to Himachal Pradesh for a trip. According to victim's friends, four police officials - Assistant Sub Inspector, Ramesh Kumar, Head Constables, Ashwani Kumar and Teen Singh, and Constable Karanvir of Haryana Police arrived drunk at their hotel in Bilaspur and put them in a vehicle (Qualis) at gun-point on the morning of 4 August 2009. The police officials told them that they were being taken to Jhajjar, Haryana for interrogation in a theft case. They were allegedly tortured on the way. The police stopped on the way for refreshments and it was at this point in the journey that Satish Kumar apparently had a heart attack as a result of abuse. He was taken to a hospital where he was declared "brought dead".⁴⁰

On 4 August 2009, Janardhan (32 years) died as a result of alleged torture in police custody at Lal Bahadur Nagar in Hyderabad, Andhra Pradesh. The victim was picked up by the police along with another person on suspicion of theft and misuse of ATM cards on 3 August 2009. The police claimed that on 4 August 2009, the police took the victims back to their homes where stolen items and money were recovered. Returning to the police station Janardhan reportedly complained of chest pain near Uppal bus stop. The police then claimed that Janardhan reportedly asked for tea. He apparently began sweating profusely and fell unconscious after drinking the tea. He was taken to Gandhi Hospital and died while being treated. The family alleged that Janardhan died as a result of police torture.⁴¹

On 6 August 2009, Mehraj-u-Din Sheik (son of Mohammad Subhan of Sheikh Colony Kanidawar, Nowhatta in Srinagar in Jammu and Kashmir) died in police custody as a result of alleged torture. According to the police, a complaint was received that Mehraj-u-Din Sheik and his friend Qadir were drunk and causing trouble on the evening of 6 August 2009. The police went to the locality and allegedly found both of them drunk. According to the police they were taken to nearby Rainawari hospital for medical examination. Qadir responded to the treatment, but the Mehraj-u-Din Sheik's condition worsened. Subsequently he was transferred to Soura Medical Institute where he died. The family alleged Mehraj-u-Din Sheik died after being tortured in police custody.⁴²

39. ACHR's complaint to NHRC, 4 August 2009, ACHR's Reference No: UP/40/2009

40. ACHR's complaint to NHRC, 6 August 2009, ACHR's Reference No: HR/14/2009

41. ACHR's complaint to NHRC, 6 August 2009, ACHR's Reference No: AP/21/2009

42. ACHR's complaint to NHRC, 10 August 2009, ACHR's Reference: JK/21/2009

On 15 August 2009, Yogesh Chaudhury (28 years) was found dead in the lock-up of Laghnaj police station in Mehsana district of Gujarat. The police claimed that Mr Yogesh was arrested with his friend Satyendra Chaudhary in connection with theft on 14 August 2009. However, the the family of Mr Chaudhary alleged that both of them were arrested on 12 August 2009 and they were subjected to torture during illegal detention, which resulted in the death of Mr Yogesh.⁴³

On 15 August 2009, Mahadev Singh (35 years) died as a result of alleged torture in police custody in Barhanal area of Mainpuri district in Uttar Pradesh. Mr Singh was arrested by Sub-Inspector Yashpal Singh on charges of possessing a ‘country-made’ pistol on 14 August 2009. He was allegedly tortured in custody before being sent to jail. He complained of severe chest pain whereupon the jail authorities sent him to Mainpuri district hospital where he was declared dead on arrival.⁴⁴

On 16 August 2009, Shivaiah was allegedly tortured to death in the custody of Excise Police at Katterpalli village in Chittoor district of Andhra Pradesh. Shivaiah was picked up by the Excise Police on charges of selling illicit liquor in Katterpalli village in Chittoor district. The Excise Police claimed that Shivaiah then jumped from their vehicle to escape custody. They claim he sustained head injuries and died on the way to hospital. However, the residents of Katterpalli village alleged that Shivaiah was tortured to death while in Excise Police custody.⁴⁵

On 18 August 2009, N. Ramesh (35 years, resident of Venkatesapuram in Kottivakkam) died as a result of alleged torture during interrogation at Neelankarai police station in Kancheepuram district of Tamil Nadu. Mr Ramesh was picked up from his residence after his wife called the police and complained of assault. Mr Ramesh’s relatives alleged that a police patrol team, headed by Sub-Inspector Gunasekhar arrived at the house and started beating him so hard with a cane that it broke. Later he was taken to Neelankarai police station where he was again tortured. He was released but collapsed on the steps of the police station. He was declared “brought dead” in hospital.⁴⁶

On 21 August 2009, Karnail Singh (45 years), resident of Hazarsingh Wala village in Mamdot, died as a result of alleged torture in police custody, at the Guruharsahai Police Station, in Ferozepur district of Punjab. Mr Singh was picked by a police team from his residence following a complaint over a **monetary dispute**. The police claimed that Karnail Singh was unwell and died as a result of nervousness. However, Sheelo Rani, the victim’s sister, alleged that her brother was tortured to death by the police.⁴⁷

43. Probe ordered in Mehsana custodial death case, The Indian Express, 19 August 2009

44. ACHR’s complaint to NHRC, 19 August 2009, ACHR’s Reference No: UP/43/2009

45. ACHR’s complaint to NHRC, 18 August 2009, ACHR’s Reference No: AP/22/2009

46. ACHR’s complaint to NHRC, 19 August 2009, ACHR’s Reference No: TN/08/2009

47. ACHR’s complaint to NHRC, 25 August 2009, ACHR’s Reference: o: PN/15/2009

On 25 August 2009, R Rajan alias Shanmugasundaram (38 years), son of Ramalingam of West Saidapet, died as a result of alleged torture at Adyar Police Station in Chennai, Tamil Nadu. Mr Ranjan was taken into custody in connection with a murder investigation on 24 August 2009. He died within 10 hours of his arrest.⁴⁸

On the night of 5 September 2009, Kamal Saikia alias Papu (27 years) died as a result of alleged torture in the custody at Dergaon Police Station in Golaghat district of Assam. Mr Saikia was under investigation for murder and was allegedly involved in an encounter with the army on 28 May 2009. He surrendered to the police at the Kamargaon Police Station on 4 September 2009. The next day he was transferred to Dergaon Police Station and given a medical. Doctors at the Dergaon Community Health Centre (CHC) stated that he was treated for minor injuries. The police claimed that Kamal Saikia suddenly fell ill while returning to the police station. He died on the way to the hospital. The fact that the victim was in police custody for two days from 4-5 September 2009, in two different police stations, and the doctors treated him for minor injuries established a *prima facie* case of torture and custodial death against the police.⁴⁹

On the night of 9 September 2009, Nand Lal Pasi, a 45-year-old Dalit and resident of Rajapur in Allahabad, was allegedly tortured to death at the Makdoompur police outpost in Kaushambi district of Uttar Pradesh. Mr Pasi, along with his brother-in-law, was on way home in a motorbike when the police stopped them. The police asked for the registration papers of the motorbike and demanded a bribe. When Mr Pasi refused, both were taken to the Makdoompur police outpost and tortured. Mr Pasi was beaten with a stick and hit with rifle butts and collapsed. Mr Pasi was denied medical attention and was dumped near a factory and later died.⁵⁰

On 30 September 2009, Din Mohammad (45 years, son of Allah Banda of Loni) died as a result of alleged torture at Pushta Police Post in Ghaziabad district of Uttar Pradesh. Mr Mohammad was picked up for questioning following a complaint. The police claimed that Mr Mohammed died following a heart attack during interrogation. However, the victim's father Allah Banda alleged that Din Mohammad was tortured to death as there were injury marks on his body.⁵¹

On 11 October 2009, Ram Kumar Pal died as a result of alleged torture at the Semra Police Outpost under Sursa Police Station in Hardoi district of Uttar Pradesh. Mr Pal was picked up by G P Tiwari, In-Charge of the police outpost, on the evening of 10 October 2009. Mr Pal was taken to a private Nursing Home when his condition deteriorated. He later died.⁵²

48. ACHR's complaint to NHRC, 28 August 2009, ACHR's Reference No: TN/09/2009

49. ACHR's complaint to NHRC, 7 September 2009, ACHR's Reference No: AS/30/2009

50. ACHR's complaint to NHRC, 11 September 2009, ACHR's Reference No: UP/45/2009

51. ACHR's complaint to NHRC, 1 October 2009, ACHR's Reference No: UP/46/2009

52. ACHR's complaint to NHRC, 13 October 2009, ACHR's Reference No: UP/47/2009

On 11 September 2009, Altaf Kadir Sheik (22 years) died as a result of alleged torture by the police at the Ghotkopar Police Station in Mumbai, Maharashtra. Mr Sheik was picked up from his residence by four police personnel in connection with burglary cases. Police claimed that they found Mr Sheik slumped on a bench at the station within hours of having been brought to the station. The police took him to the hospital where he was declared dead on arrival. The police attributed the death to a drug overdose. The family alleged that Altaf Kadir Sheik died as a result of torture.⁵³

On 24 October 2009, Hira Lal (35 years) died as a result of alleged torture in a police lockup in Panchkula district of Haryana. Mr Lal was detained for drunkenness during a religious festival. The victim's relatives alleged that Hira Lal was tortured at the police lockup and died as a result of the injuries.⁵⁴

On 27 October 2009, Potti Venkatesh, (35 years, son of Mr Sattaiah of Maqdumpnagar of Jagadgirigutta) died as a result of alleged torture at Jeedimetla police station in Hyderabad, Andhra Pradesh. Mr Venkatesh, who worked as an electrician, was picked up from his residence on 25 October 2009 at about 4.30 pm for questioning in connection with a robbery investigation. Mr Venkatesh was interrogated for six hours and allegedly subjected to torture. The police claimed that Mr Venkatesh suddenly collapsed at around 10.30 pm on 25 October 2009. They took him to a private hospital at Jeedimetla where he died. The victim's father alleged that his son died as a result of torture.⁵⁵

On 18 November 2009 at around 10.00 PM, a 45-year-old woman identified as Laxmi Dhaku Dhanawat of Sanjay Gandhi Vasahat in Pashan, Pune in Maharashtra, died in the police van under mysterious circumstances after her arrest by Chatushrungi police for illegally selling country liquor. The police claim that the victim had complained of chest pain and was rushed to the Aundh Chest hospital but was declared dead on arrival. However, her relatives alleged that she died following a beating from the police.⁵⁶

On 24 December 2009, Sakiul Sheikh (24 years, son of Mr Mahisuddin Sheikh) died as a result of alleged torture while in police remand at Kaliachak police station in Malda district of West Bengal. Sakiul Sheikh was arrested after being allegedly caught with counterfeit currency on 13 December 2009. He was produced before the Chief Judicial Magistrate, Malda on 14 December 2009. The Court remanded him to police custody for seven days. On 19 December 2009, he was produced before the court and sent to judicial custody. On 20 December 2009, Mr Sheikh was admitted to the Malda District Hospital and when his condition deteriorated he was transferred to North Bengal Medical College and Hospital (NBMCH),

53. ACHR's complaint to NHRC, 14 September 2009, ACHR's Reference No: MH/08/2009

54. ACHR's complaint to NHRC, 28 October 2009, ACHR's Reference No: HR/16/2009

55. ACHR's complaint to NHRC, 28 October 2009, ACHR's Reference No: AP/23/2009

56. Woman dies in police custody, The Times of India, 20 November 2009

Siliguri on 23 December 2009. He died in hospital on 24 December 2009. The victim's family alleged that the victim was tortured in police custody after his arrest. According to the jail superintendent, Chittaranjan Gharai, the victim was ill when brought into judicial custody on 19 December 2009.⁵⁷

Custodial death through torture: alleged suicide

The police routinely cite "suicide" as a cause of death in custody. According to the NCRB, 31 persons died by committing suicide in police custody in 2007, 24 persons in 2006 and 30 persons in 2005.⁵⁸

In a reply to the Rajya Sabha (Upper House of Indian Parliament) on 12 March 2008, then Home Minister of India, Shivraj Patil cited suicide as one of the primary causes of custodial death.⁵⁹ But 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. Suicide does of course occur. However, an examination of numerous cases over a number of years by ACHR suggests that the causes of deaths are often a cause for concern. There are frequent allegations by the families of the victims of torture; torture that either impacted on the victims actions or resulted in a death that was subsequently covered up. It is well established that the psychological impact of torture can inculcate feelings of deep guilt and depression sufficient to commit suicide.

The explanations of the police are also often inadequate. The police have even claimed that people have committed suicide by using handkerchiefs or by consuming poison while in police custody.

Allegations of 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."*

57. ACHR complaint to NHRC, 29 December 2009, ACHR's Reference No: WB/29/2009

58. NCRB: "Crime In India 2007" – Chapter 13, available at <http://ncrb.nic.in/cii2007/cii-2007/CHAP13.pdf>

59. Unstarred Question No. 1281 answered on 12.03.2008

The principles also state that families of the victim 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 during the autopsy. Suicide does of course occur.

In 2009 Asian Centre for Human Rights (ACHR) documented a number of cases where police alleged suicide by the victim persons in custody. Some of the cases are given below:

Case 1: On the night of 4 February 2009, Mahipal Singh (28 years), arrested as part of murder case investigation, died in police custody at Sikandararaau police station in Hatras district of Uttar Pradesh. The police claimed that Mr Singh committed suicide by hanging himself with a scarf in the lock-up. But the victim's relatives alleged he died as a result of torture in police custody.⁶⁰

Case 2: On 9 April 2009, Pawan Kumar (23 years) died in police custody at Bhirani police station under Hanumangarh district of Rajasthan one day after he was sent to two-day police remand by the court on charges of abduction and rape. The police claimed that Mr Kumar committed suicide by hanging himself from the ceiling of the police station lock-up using a blanket. However, Mr Kumar's relatives alleged that he died as a result of police torture in order to extract a confession.⁶¹

Case 3: On 9 May 2009, Nahar Singh (25 years and resident of Salempur Padhina hamlet of Elahu) died during detention at the Dannahar police station in Mainpuri district of Uttar Pradesh. He was detained in connection with an investigation into elopement. The police claimed that he committed suicide by hanging himself inside the lock-up.⁶²

Case 4: On the night of 20 July 2009, Shambhu Das (23 years, resident of Gopalnagar locality in Chetla) died of alleged torture in the lock-up of Alipore Police Station in Kolkata, West Bengal. Mr Das was arrested on theft charges on 17 July 2009. He was remanded to police custody. The police claimed that Mr Das was a drug addict and committed suicide by hanging himself with a piece of cloth torn from his trousers because he was suffering withdrawal symptoms. However, the victim's relatives alleged that he was tortured to death by the police in the lock-up.⁶³

Case 5: On 30 August 2009, 17-year-old Billoo, a resident Punjab, died at the lock-up of Adhkuwari Police Station in Reasi district of Jammu and Kashmir. The

60. ACHR's complaint to NHRC, 12 February 2009, ACHR's Reference No: UP/24/2009

61. ACHR's complaint to NHRC, 13 April 2009, ACHR's Reference No: RJ/06/2009

62. ACHR's complaint to NHRC, 15 June 2009, ACHR's Reference No: UP/31/2009

63. ACHR's complaint to NHRC, 22 July 2009, ACHR's Reference No: WB/20/2009

victim was picked up for questioning in connection with a theft investigation. The police claimed that Billoo committed suicide by hanging himself in the lock-up of the police station. However, the victim's family alleged that Billoo was tortured to death in police custody.⁶⁴

Case 6: On 12 September 2009, 56-year-old physically handicapped Noor Hussian (son of Firozdin and resident of Chowdhary Nar) died in police custody at the Rajouri Police Station in Rajouri district of Jammu and Kashmir. Mr Hussain was picked from his house after a court issued a non-bailable warrant against him in connection with a land dispute case. The police claimed that Mr Hussian attempted to commit suicide by consuming some powder-type medicine after telling the police that he was ill. The police rushed him to a hospital where he died. However, the victim's relatives alleged that Noor Hussain died as a result of torture. The police also allegedly offered Rs 15,000 and a job to one of the family member to cover-up the case.⁶⁵

Case 7: On 21 September 2009, a 35-year-old woman identified as Jyoti Rahana died of alleged torture while in Ongole Two-Town Police Station custody in Prakasam district of Andhra Pradesh. Jyoti, accused suspect in a kidnapping investigation, was arrested at Visakhapatnam and taken to the Ongole Police Station. The police claimed that Jyoti was kept in the lock-up of the police station where she committed suicide with her *chunni* (scarf). She was taken to hospital where she was declared dead.⁶⁶ However, the victim's relatives alleged that Jyoti died as a result of police torture.⁶⁷ The Andhra Pradesh State Human Rights Commission took cognizance of the case.⁶⁸

Case 8: On 6 October 2009, Rajneesh Sharma (son of Late Nanak Chand Sharma of Sarwal in Jammu in the state of Jammu and Kashmir) died as a result of alleged torture at Ram Munshi Bagh Police Station in Srinagar in Jammu and Kashmir. The police mistakenly arrested Rajneesh Sharma instead of his brother Pawan Kumar Sharma in connection with the kidnapping case. He was picked up by the police on 30 September 2009 from his house in connection with a kidnapping case and taken to Ram Munshi Bagh Police Station. On 1 October 2009, Rajneesh Sharma was produced before court and remanded to police custody for five days. On 5 October 2009, he was again produced before the court which extended his remand to 9 October 2009.

According to the police, Rajneesh Sharma was found hanging from the grill of the bathroom window in the lock-up of the police station on the morning of 6 October

64. ACHR's complaint to NHRC, 1 September 2009, ACHR's Reference No: JK/22/2009

65. ACHR's complaint to NHRC, 14 September 2009, ACHR's Reference No: JK/22/2009

66. Woman hangs herself in lock-up in Ongole, The Hindu, 22 September 2009

67. Probe ordered into custodial death, six policemen suspended, The Times of India, 22 September 2009

68. SHRC seeks report on lock-up death, The Hindu, 23 September 2009

2009. The police claimed that the victim committed suicide after he cut the jute mat and made a noose out of it. However, the the family of the victim alleged that he was tortured to death in the police station. There were reportedly bruises on the victim's body.⁶⁹

Case 9: On 31 October 2009, Ashutosh Tiwari (21 years, resident of Vilal pada in Nalasopara) died as a result of alleged torture in police custody in Mumbai in Maharashtra. The police claimed that Mr Tiwari committed suicide by cutting his throat with a blade.⁷⁰

Case 10: On 5 December 2009, Pilli Satyanarayana, a Dalit of Kalinganagar in Madhavadhara, died while detained in Parawada police station in Visakhapatnam district of Andhra Pradesh. Mr Satyanarayana was arrested on charges of rash and negligent driving on 4 December 2009. The police claimed that Mr Satyanarayan went to the toilet and committed suicide by hanging himself. However, the police statements were inconsistent. The Sub-Inspector of the Police station claimed that Mr Satyanarayan was found dead in the toilet while other police personnel stated that the victim was found alive and rushed to hospital, but could not be saved.⁷¹

Case 11: On 13 December 2009, Deepak Dinkar Mehta, a suspect in a fraud investigation, died in the custody of the Anti-Extortion Cell (AEC) of the Mumbai Police at DN Nagar in Andheri, Maharashtra. Mr Mehta was arrested by the Immigration Authorities at the Indira Gandhi International Airport in New Delhi. Mr Mehta was later handed over to the Crime Branch of the Mumbai Police. On 13 December 2009, five AEC officials took Mr Mehta to Guru Kripa building at DN Nagar where Mr Mehta's sister lives. The police claimed that Mr Mehta committed suicide by jumping from the six-storey building. According to the Police version of events, while Mr Mehta was being questioned he suddenly got up, pushed a constable aside, went to the terrace and jumped. The victim's nephew, Mr Jigar stated that the police officials did not inform the family that they were coming to the building. The police did not inform the family about the alleged suicide. It was the left to the watchman to inform the family of the death.⁷²

B. Torture to extract confessions

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

69. ACHR's complaint to NHRC, 9 October 2009, ACHR's Reference No: JK/23/2009

70. ACHR's complaint to NHRC, 4 November 2009, ACHR's Reference No: MH/09/2009

71. ACHR's complaint to NHRC, 15 December 2009, ACHR's Reference No: AP/24/2009

72. ACHR's complaint to NHRC, 15 December 2009, ACHR's Reference No: MH/12/2009

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”.

A large number of incidents of torture and custodial death result from attempts to extract a confession relating to theft or other petty offences. Suspects belonging to the lower economic and social strata are particularly vulnerable.

On 4 January 2009, Kancharana Jagadish and Mr Kancharana Mohan Rao, both brothers, were picked up by the police on charges of possessing stolen cell phone handsets. They were taken to V Town Police Station in Visakhapatnam, Andhra Pradesh where they were illegally detained for four days and tortured. The police produced them in Court on 7th January 2009. The victims told the court that they were tortured for four days. The police used candles on their genitals forcing them to confess to the crime which they insisted they did not commit. The court instructed the police to take the victims to hospital for treatment. The doctors found burn injuries on the genitals and legs of both victims.⁷³

On 10 January 2009, Mohammad Wasim Khan was allegedly tortured by police at the lock-up of Shahinayathgunj police station in Hyderabad, Andhra Pradesh. The police claimed that the victim fell from the compound wall during a chase and sustained head injuries. However, victim’s relatives alleged Mr Khan was tortured to extract a confession. The victim had to be admitted to the acute neuro-surgical ward of the Osmania hospital.⁷⁴

On 5 February 2009, six persons identified as Karshan Savalia, Arvind Ramolia, Vaju Vekaria, Dilip Savalia, Girdhar Ramolia and Jitu Savalia were picked up by the police and taken to Kalawad police station in Jamnagar district of Gujarat in connection with a murder investigation. The police claim that they were arrested only on 10 February 2009. They were produced in Court only on 14 February 2009. During their 10-day illegal detention, the victims were allegedly subjected

73. Cops torture 2 youth in custody, The Deccan Chronicle, 9 January 2009

74. ACHR’s complaint to NHRC, 15 January 2009, ACHR’s Reference No: AP/15/2009

to torture by eight police personnel including a Circle Inspector to obtain confessions. The victim suffered injuries to their genitalia and elsewhere.⁷⁵

On 12 March 2009, Dinesh Bhatt (29 years) was picked up by a police team and taken to Najafgarh Police Station in West Delhi. Mr Bhatt alleged that he was tortured by, amongst others, Abhay Singh Yadav, Station House Officer of the police station to force a confession. Mr Bhatt reportedly suffered injuries to his eyes and head.⁷⁶

On 22 May 2009, one Raees was arrested on charges of theft and taken to Naagal police station in Bijnore district of Uttar Pradesh. He was illegally detained for three days and tortured. When Raees was produced before court, the police noted in the general diary that he was medically fit. However, the medical report stated that he had sustained several injuries consistent with torture. The court ordered a case to be filed against six police personnel on charges of torturing Raees.⁷⁷

In May 2009, M. Sreekesh (26 years, resident of Thiruvananthapuram), an employee of a jewellery shop, was illegally detained for 12 days and tortured at Haripad police station in Alappuzha district of Kerala. Mr Sreekesh was detained after he went to the station to report the loss of jewelry. Mr Sreekesh alleged that the police, led by Circle Inspector D. Asokan, questioned him repeatedly about the theft. On 18 May 2009, the police subjected him to a lie detector test (polygraph) at the State Forensic Sciences Laboratory. On the night of 23 May 2009, four plainclothes police personnel stripped him, bound his hands with a wet towel and made him lie on a bench. They beat him on his legs and the soles of his feet with bamboo canes to obtain a confession. The beating continued for two hours, even after the canes splintered. Later, the police used pepper spray on his eyes and genitals. His nipples were poked repeatedly with the tip of a ballpoint pen. The police released Mr Sreekesh only when his health began to seriously deteriorate, during the night of 25th May 2009. The victim's father filed a complaint with the State Human Rights Commission. The doctor who examined Mr Sreekesh stated that there were tie marks near his wrists, straight line cut wounds and bluish contusions near the soles of his feet. The cut wounds were consistent with injuries inflicted using a splintered bamboo cane.⁷⁸

In June 2009, Jitumoni Bora, the officer-in-charge of Nitaipukhuri police outpost in Sivasagar district of Assam allegedly stripped naked two Class X students and rubbed "*Bhut Jolokia*" (also called Naga Jolokia), the world's hottest chilli, on their bodies. A team of policemen picked up the victims, Lakhinda Hazarika and his cousin Kumud Phukan from Duworisiga village under Nitaipukhuri police

75. 8 cops accused of torturing murder suspects to force confession, The Indian Express, 16 February 2009

76. SHO accused of assault, The Times of India, 15 March 2009

77. Man beaten in lock-up, court orders case against six cops, The Indian Express, 4 June 2009

78. Youth alleges custodial torture, The Hindu, 28 May 2009

outpost following a complaint against Lakhinda Hazarika's father Deba Hazarika by another. The victims were tortured in police custody and subsequently remanded in judicial custody on what were clearly trumped up charges of theft of mobile recharge cards.⁷⁹

On 14 September 2009, Jiten Yumnam, a human rights defender, was picked up by a police team at the Imphal Airport, Manipur and arrested on false charges under Section 121/121-A of Indian Penal Code (IPC), Section 16/18/39 of Unlawful Activities (Prevention) Act and under the Official Secret Act. He was arrested for organising a protest against extrajudicial execution of Sanajit on 23 July 2009 (NHRC has already registered the complaint (No. 17/14/4/09-10-FE) filed by ACHR) During interrogation in police custody, Mr Yumnam was tortured and given electric shocks in order to extract a confession. This has been confirmed by medical evidence confirming injuries consistent with his treatment.⁸⁰

On 16 December 2009, four accused in a ten-year-old theft case were reportedly tortured at Athwa police station in Surat city of Gujarat. When they were brought before the court, the four detainees namely Rahim alias Dosa Amad Shaikh (31 years), Bashirkhan alias Kaliyo Iqbalkhan Pathan (28 years), Javid alias Taku Rashidkhan Pathan (28 years), and Shaikh Ashfaq alias Kalu Shafiq Ahmed (28 years) showed injuries to the judge and complained of police brutality while in detention. They had been arrested by Prevention of Crime Branch and handed over to Athwa police station where the case was registered.⁸¹

On 24 December 2009, Shiv Kumar Sharma died as a result of alleged torture at the Gulawati police station in Bulandshahr district of Uttar Pradesh. He was arrested on the evening of 23 December 2009 along with his friend Mukku on charges of extortion. They were taken to Gulawati police station where Shiv Kumar Sharma was allegedly tortured to extract a confession. The victim's father, Suresh Sharma alleged that the police tortured his son through the night and did not provide immediate medical attention after he complained of pain in his lower abdomen and the chest. Shiv Kumar Sharma was taken to the district hospital. He was declared "brought dead" in the district hospital. There were marks of blood clotting on the victim's legs.⁸²

C. Torture not resulting in death

The majority of torture cases do not result in the death of the victim. While the NHRC has directed all the District Magistrates and the Superintendents of Police

79. Chilli torture for teens in Assam, *The Tribune*, 26 June 2009; Also refer to ACHR's complaint to NHRC dated 30 June 2009, ACHR's Reference No. AS/26/2009

80. Letter of Asian Centre for Human Rights to P C Sharma, Member, National Human Rights Commission of India dated 13 October 2009

81. Court orders to book cops in alleged atrocity case, *The Times of India*, 18 December 2009

82. ACHR's complaint to NHRC, 29 December 2009, ACHR's Reference No. UP/28/2009

to report all cases of custodial deaths within 24 hours, no such directive exists to report allegations of torture that does not result in death.

Since police officials are not mandatorily required to report to the NHRC or any body on custodial torture they enjoy virtual impunity as these cases for the most part escape any official monitoring.

No record torture that does not result in custodial death are maintained. During 2009 ACHR has documented several custodial torture cases some of which are given below:

From 12-15 January 2009, Mr Nooruddin (22 years, a vegetable vendor and resident of Kinnigoli) was illegally detained and tortured in the custody of the District Crime Investigation Bureau (DCIB) in Mangalore, Karnataka. Mr Nooruddin was picked up by the DCIB personnel in connection with a murder investigation on 12 January 2009. For the next four days, he was allegedly starved and tortured by DCIB Inspector Venkatesh Prasanna and his subordinates - Dinesh Bekal, Chetan, Kumar and Ashok. The victim alleged that a heavy metal roller was run over his body and he was hung upside down and beaten. On 15 January 2009, the police dumped him near a road in a semi-conscious condition. He reportedly suffered “internal injuries” and “kidney damage”, amongst others.⁸³

On 10 February 2009, Abdul Raheman (a labourer) and his 15-year-old son Master Hussain Ashfak (residents of Ulaibettu) were allegedly tortured in the custody of the Mangalore Rural police in Karnataka. Both Mr Raheman and his son were picked up for questioning in connection with a case. Mr. Raheman alleged that the police pulled his hands and legs out of the cell’s steel bars and hit him with a *lathi* (stick) continuously. Mr Raheman was seriously injured and had to be admitted to hospital.⁸⁴

On 13 February 2009, Azad Kumar Kesarwani (garment trader) was allegedly tortured at the Crime Branch Office at Bhiwandi in Thane district of Maharashtra. Mr Kesarwani went to the Crime Branch office having been summoned by the police. However, Mr Kesarwani alleged that the police took Rs 32,000 from him. When he protested, the police beat him. One of the officials hit him so hard on the ear that he sustained internal injuries. The officials threatened to frame him for theft if he told anyone about the incident.. Medical evidence confirmed injury consistent with his allegations.⁸⁵

On 6 March 2009, one Venkatesh (35 years, resident of Yennur village near Cheemangala in Shidlaghatta taluk) was tortured after being summoned to the

83. ACHR’s complaint to NHRC, 20 January 2009, ACHR’s Reference No: KT/10/2009

84. ACHR’s complaint to NHRC, 12 February 2009, ACHR’s Reference No: KT/11/2009

85. Businessman alleges extortion, assault by Bhiwandi cops, The Indian Express, 27 February 2009

Shidlaghatta Rural police station in Chickaballapur district of Karnataka. Mr Venkatesh was slapped and kicked by Sub-Inspector Mr. Suresh. In a complaint filed with the Karnataka State Human Rights Commission (SHRC), Ms. Rathnamma, wife of the victim, stated that her husband became mentally unstable following torture. Venkatesh was treated for loss of memory, depression and autonomic disturbances at a private hospital.⁸⁶

On the night of 29 March 2009, Mr Khilla was allegedly tied with a pole and tortured by Sub-Inspector Hemant Kumar and two constables, Rajvir Singh and Rampal Singh, from Banpur police station at Kailugawa village in Lalitpur district of Uttar Pradesh. Mr Khilla was tortured after he was late. Preliminary investigations found the police personnel guilty of torturing Mr Khilla.⁸⁷

On 30 July 2009, Ganapati Tikkam, a functionary of Bharatiya Janata Party (BJP) Fishermen Morcha in Karwar taluk of Uttara Kannada district in Karnataka was allegedly beaten up by the police at Chitakula police station. Mr. Tikam had gone to the police station to offer bail security to BS Pai, a lawyer. Mr Pai had been arrested in connection with a demonstration against a thermal power project in Hanakona in Karwar taluk the same day. Tikkam sustained severe injuries as a result of torture and had to be admitted to the district hospital.⁸⁸

During the first week of September 2009, the police reportedly picked up five youths of Patel Faliya in Hathikhana locality of Vadodara city of Gujarat following the recovery of a locally-assembled rocket launcher from the area. The five youths identified as Zahir Shaikh, Usman Shah, Iqbal Nazir Shaikh, Mushtaq Ismail Shaikh and Amin Razzak Shah were kept in illegal detention and were subjected to torture, including beating and applying of electric shocks on their genitalia.⁸⁹

On 28 October 2009, Kalicharan Das, Officer-in-charge of Panbari police out post under Kalaigaon police station in the district of Darrang of Assam arrested Hamidur Rahman, son of Habibur Rahman of village Pub Padokhat. He was arrested for exposing that Mr Das was corrupt and had led a public protest against him. Mr. Das subjected Hamidur Rahman to beatings rendering him unable to walk. Mr. Das allegedly hung Mr Rahman from the ceiling and beat him.⁹⁰

D. Torture resulting from failure to pay bribes

Paying bribe to the police is a part of daily life in India. The arrest of two railway police officials for throwing a pregnant woman Kavita and her three-year-old

86. SHRC orders probe into police brutality, *The Hindu*, 31 July 2009

87. Cops run amok in Lalitpur, 'torture' youth, 'open fire', *The Indian Express*, 31 March 2009

88. Man beaten up in police station, *The Express Buzz*, 4 August 2009

89. Rocket launcher recovery: The family allege torture by police, *The Indian Express*, 5 October 2009

90. Rajapukhuri villagers to approach AHRC against police atrocity, *The Assam Tribune*, 11 November 2009

daughter off a moving train (Kavita was killed on the spot) for refusing to pay a bribe of Rs 100 (£1.26) on 18 June 2009 in Lakhimpur Kheri district of Uttar Pradesh⁹¹ underlines the extent of impunity enjoyed by the police for failure/refusal to pay bribes. According to a recent survey by Trace International, the majority of bribe demands in India (91 per cent) came from government officials and police personnel accounted for 30 per cent of the bribe demands.⁹² In Delhi alone, a total of 75 police personnel deployed in police stations were caught on charges of corruption and bribery in the past three years and all of them have been suspended.⁹³

During 2009 ACHR documented several cases of torture by police personnel for failure/refusal to pay bribes. Some of these cases are given below:

On 11 February 2009, Mr Praveen Ashok Pinto (30 years), a taxi driver, was allegedly tortured by police for allegedly refusing to pay a bribe at Surathkal police station in Mangalore under Dakshina Kannada district of Karnataka. The victim had gone to the police station to get his impounded taxi which had been taken by the police following an accident. Assistant Sub Inspector Suresh and H.C. Gopal, who were on duty at the police station, allegedly demanded Rs. 10,000 from him to release the vehicle. The victim refused to pay and told the police that he would come with a lawyer next day. This annoyed the police and they followed the victim on a two-wheeler and assaulted him near Padmavati Hospital. Then the victim was brought back to the police station and tortured.⁹⁴

On 1 March 2009, Gajraj Singh (son of Dashrath Singh and a poultry farm care-taker) died in police custody under Bithoor police station in Kanpur, Uttar Pradesh. Mr Singh was allegedly picked up by police personnel, including constable Ram Kishore Patel and Home Guard Ram Sanjivan Bajpayee, on the night of 28 February 2009. He reportedly refused to supply them chickens from the poultry farm where he worked. However, the police claimed the victim had died as a result of an accident. The police said they received a call at about 9.21 pm informing them that the victim had met with an accident. However, the police could not locate the victim and the vehicle. The victim's body was found on a street on the morning of 1 March 2009.⁹⁵

91. Indian police 'threw pregnant mother from train for failing to pay bribe', Telegraph, UK, 21 Jun 2009, <http://www.telegraph.co.uk/news/worldnews/asia/india/5595299/Indian-police-threw-pregnant-mother-from-train-for-failing-to-pay-bribe.html>

92. Police demand most bribes: Survey, The Indian Express, 23 January 2009, available at <http://www.indianexpress.com/news/police-demand-most-bribes-survey/414421/0>

93. 75 caught for taking bribe in police stations in Delhi, The Hindustan Times, 25 February 2010, <http://www.hindustantimes.com/75-caught-for-taking-bribe-in-police-stations-in-Delhi/H1-Article1-512676.aspx>

94. ACHR's complaint to NHRC, 16 February 2009, ACHR's Reference No: KT/12/2009

95. ACHR's complaint to NHRC, 2 March 2009, ACHR's Reference No: UP/26/2009

On 17 April 2009, two brothers - Kannan and Anil (sons of Mr Mayappan) were allegedly tortured by a police constable in the lock-up of the Palakkad Town South police station in Kerala. When the victims' parents went to the police station they found Kannan unconscious. The victims' parents requested the police to take them to a hospital. Subsequently, both the victims were taken to the District Hospital and a CT scan centre. However, the police left the victims at their home after the scan instead of returning them to the hospital. Both the victims sustained neck, hands and abdomen injuries as a result of torture and had to be hospitalized. Later, Mr Kannan had to be hospitalized again after he developed further medical problems. He was treated in the District Hospital from 19-24 April 2009.⁹⁶

On 14 June 2009, Santram Sharma (45 years and resident of Chiranjeev Vihar in Ghaziabad) was allegedly tortured to death at the Kaushambi Police Post under Indirapuram police station in Ghaziabad district of Uttar Pradesh. The victim was taken into custody in the evening of 13 June 2009 in connection with a property dispute. The police claimed the victim fell ill and was rushed to a hospital where he died of a heart attack. However, the doctors stated that the victim was "brought dead" in the hospital. The victim's family alleged that he was tortured to death at the police post. The victim's son Jitender alleged that a police officer called him at about midnight of 13 June 2009 and demanded Rs 50,000 for the release of his father. Jitender received another call from the police at about 3 am informing him that his father had been taken to hospital. He then went to the hospital but found that his father was dead. He further stated that the police asked him to sign papers to the effect that Vihar had died from natural causes.⁹⁷

On the night of 20 June 2009, Arjun Singh (52 years) was allegedly tortured to death at the Chikasi Police Station lock-up in Hamirpur district of Uttar Pradesh. Mr. Singh was picked by a Police Team for questioning in connection with an attempted murder on 19 June 2009. The police claimed that the victim had gone to the toilet of the lock-up and committed suicide by hanging himself from a window of the toilet. However, the victim's son, Dileep Singh alleged that his father was tortured to death for the failure to pay Rs 18,000 as demanded by the police for his release.⁹⁸

On the night of 11 July 2009, Faizuddin Ahmed (74 years) was tortured to death at his residence by Sub-Inspector Reba Kanta Bora and six other police personnel attached to the Dhula Police Station in Darrang district of Assam for failing to pay bribe during a raid. The police had gone to Mr Ahmed's house after a complaint was filed against them at the Dhula police station. The police reportedly demanded a bribe of Rs 10,000 from him. Mr Ahmed agreed to pay Rs. 2,000 only. At this

96. ACHR's complaint to NHRC, 28 April 2009, ACHR's Reference No: KL/03/2009

97. ACHR's complaint to NHRC, 18 June 2009, ACHR's Reference No: UP/34/2009

98. ACHR's complaint to NHRC, 30 June 2009, ACHR's Reference No: UP/35/2009

offer, the police got angry and subjected him to physical torture. He could not bear the torture as a result of his old age and weak body and died on the spot.⁹⁹

II. Custodial torture of women

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. According to National Crime Records Bureau (NCRB), one custodial rape case was reported in India in 2007, two custodial rape cases were reported in 2006, and seven custodial rape cases in 2005.¹⁰⁰ These figures cannot be considered an accurate reflection of the incident of rape in custody.

In 2009 the Asian Centre for Human Rights documented several cases of torture of women by law enforcement agencies.

Rape cases

On the night of 8 February 2009, Ms Reshma (name changed), resident of Keshpura village, was allegedly raped in police custody by Satyendra Sheel, Senior Sub Inspector and Station House Officer (SHO) of Fariha police station in Ferozabad district of Uttar Pradesh. The victim was earlier kidnapped and raped by two persons on 6 February 2009. Following a complaint by her brother, the police arrested the accused persons on 8 February 2009 and rescued the victim. However, the police brought the victim to the police station and asked her to stay back at the police station on the pretext that she will be needed to record her statement. But late at night the SHO of the police station, Senior Sub Inspector Satyendra Sheel called her to his official residence and allegedly raped her.¹⁰¹

On the night of 13 February 2009, a minor girl, daughter of Narayan Singh, was allegedly raped by Sadhu Ram, Station House Officer (SHO) at the Manendergarh Sadar police station in Rohtak district of Haryana. The victim was rescued from her abductors and taken to the police station to record her statement. Instead of recording her statement the accused raped her. The medical examination of the victim reportedly confirmed rape.¹⁰²

On 2 March 2009, a 16-year-old girl (resident of Kachiyana Mohalla in Simaria village) was allegedly gang-raped by three police personnel, including Sub Inspector Narendra Singh Thakur, at Simaria police station in Panna district of Madhya Pradesh. Ironically the victim had gone to the police station to file a

99. ACHR's complaint to NHRC, 14 July 2009, ACHR's Reference No.: AS/28/2009

100. National Crime Records Bureau, "Crime In India 2007", <http://ncrb.nic.in/cii2007/cii-2007/CHAP13.pdf>

101. ACHR's complaint to NHRC, 12 February 2009, ACHR's Reference No: UP/23/2009

102. Teenager charges Haryana SHO with rape, The Times of India, 22 February 2009

complaint of rape. One of the accused policemen, SI Narendra Singh Thakur was arrested and sent to jail.¹⁰³

On 2 June 2009, a 23-year-old woman was allegedly raped by two police constables identified as Phul Chand and Mohd. Asheer posted at the District Jail Pratapgarh in Uttar Pradesh. The accused called the victim on the pretext of arranging a meeting with her husband who was held in the jail. However, when she reached the jail, the accused took the victim to a secluded place and raped her.¹⁰⁴

On the night of 2 June 2009, a 48-year-old Dalit woman (resident of Jambada village) was allegedly gang-raped by four police personnel, including Head Constable Mishra at Amla police station in Betul district of Madhya Pradesh. On 2 June 2009, the victim was arrested in connection with a dowry case. Upon her production before the court she was sent to judicial custody. But the police told the victim that it would be late by the time they reach the jail and prisoners were not allowed to enter the jail after 6 pm. So the police kept her at the Amla police station where she was gang-raped by four police personnel at night. Medical examination reportedly confirmed rape of the victim.¹⁰⁵

In May 2009, Ms Padamavati, working as a labourer in the Police Training Centre in Chittoor district of Andhra Pradesh, was allegedly gang-raped by some police personnel including a Reserve Sub-Inspector in the training centre.¹⁰⁶

Other cases of torture

On 13 January 2009, a Dalit woman, Asha (40 years) was allegedly tortured at the Crime Investigation Agency police station at Balmaki Chowk in Sirsa district of Haryana. The victim was summoned at the police station by Shamsher Singh, In-Charge of a police post in connection with a case of theft. She was taken to the CIA police station where she was allegedly tortured by Shish Ram, Station House Officer, Shamsher Singh, Assistant Sub-Inspector and a woman constable Anita Rani. The victim was released at about 10.30 pm. She had to be admitted to hospital and treated for injuries and trauma suffered during her interrogation.¹⁰⁷

On 8 February 2009, a Dalit woman Ms Baansmati (wife of Shyamlal) died after being tortured by police at Bangai village in Balrampur district of Uttar Pradesh. The police personnel attached to Itwah police station conducted a raid at the village to nab the victim's son on 7 February 2009. As the police failed to find the man, they beat up his mother Ms Baansmati. Later, she succumbed to her injuries.¹⁰⁸

103. Cop sent to jail in gang rape case, *The Tribune*, 26 March 2009

104. ACHR's complaint to NHRC, 6 June 2009, ACHR's Reference No. UP/30/2009

105. ACHR's complaint to NHRC, 6 June 2009, ACHR's Reference No: MP/20/2009

106. Charges of rape being probed, says SP, *The Hindu*, 1 June 2009

107. Torture of Dalit Woman, Demonstration against police, *The Tribune*, 16 January 2009

108. ACHR's complaint to NHRC, 12 February 2009, ACHR's Reference No: UP/25/2009

On 10 July 2009, four tribal women – Ms Thin Khongshlin (72 years), Ms Bansor Pohiti (60), Ms Ruby Ryngksai (29 years) and Ms Lucy Tynsong (18 years), residents of Darang village, were tortured by the Company Commandant Abdesh Kumar Sharma of the 121st Battalion of the Border Security Force (BSF) at Latang BSF camp near Dawki in East Khasi Hills district of Meghalaya. The victims were taken to the camp for interrogation while returning after allegedly crossing the Bangladesh border illegally. The victims were subjected to physical torture by Company Commandant Abdesh Kumar Sharma at camp. They were also forced to confess that they had come over from Bangladesh. The victims had injury marks on their bodies which indicate torture.¹⁰⁹

III. Custodial torture of children

Illegal detention and torture of children in police custody is common in India. There is little implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 which provides that the rights of “juveniles in conflict with law” and the “child in need of care and protection” need to be cared and protected.

a. Custodial torture of alleged “juveniles in conflict with law”

Under Section 63 of the Juvenile Justice Act, every police station is required to designate at least one police officer as “juvenile or the child welfare officer” and every district and city to have a “Special juvenile police unit” to handle the juveniles in conflict with law. But there is little implementation of this provision of the Juvenile Justice Act.

Section 10 (1) of the Juvenile Justice Act states that “As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board [Juvenile Justice Board]”. The Indian law absolutely prohibits any kind of torture of children, even if he/she is a “juvenile in conflict with law” i.e. a child who is alleged to have committed an offence”. But often the police detain the children in custody and torture them.

On 2 February 2009, an eight-year-old Dalit girl was tortured by Chandra Bhan Singh, Station House Officer (SHO) and Shyam Lal, Sub-Inspector of Jaswant Nagar police station in Etawah district of Uttar Pradesh. The girl was accused of theft and handed over to the police. The victim was allegedly beaten, pulled up by her hair and ears. The SHO was suspended and the SI was dismissed from service.¹¹⁰

On 11 June 2009, 14-year-old Suraj Das (son of Mr Sukal Das of North Charilam village) was tortured by the police at the Bishalgarh police station in West district

109. ACHR’s complaint to NHRC, 14 July 2009, ACHR’s Reference No: ML/07/2009

110. Cop sacked for torturing 8-yr-old Dalit girl, The Indian Express, 3 February 2009

of Tripura. The victim was picked up from his house by the police for questioning in connection with a case of theft of bike. The victim was allegedly tortured during interrogation and had to be admitted to the local hospital. The doctors attending him stated that the victim's condition was serious.¹¹¹

From 29 July 2009 to 6 August 2009, a 15-year-old juvenile identified as Rohit, son of Mr Ram Dev, was illegally detained at the Kotwali Police Station in Faizabad district of Uttar Pradesh in connection with a case of theft of a mobile phone. The victim was allegedly subjected to third degree torture including electric shocks to obtain a confession. The police had allegedly asked the minor's father to pay Rs 30,000 foailing which Rohit was continued to be detained and tortured. On the evening of 5 August 2009, the victim fell unconscious as a result of the torture following which he was taken to the Faizabad district hospital and then to Chhatrapati Shahuji Maharaj Medical University (CSMMU), Lucknow.¹¹² Because of torture Rohit lost his eye sight and was vision-less for six months until he got back his vision after treatment at CSMMU. An investigation conducted by the Ayodhya Circle Officer R K Pandey reportedly found the police guilty of torturing Rohit.¹¹³ Following a complaint by the Asian Center for Human Rights, the National Commission for Child Rights (NCPCHR) intervened and it has informed the ACHR that a case has been registered against the accused police personnel and two of them namely Prem Prakash Pandey and Shamim Ahmad have been suspended.¹¹⁴

In August 2009 the National Commission for Protection of Child Rights (NCPCHR) sought a reply from the Manipur government about the illegal detention of 11-year-old Salam Bidiarani for four days in the cell at the Mayang police station in Imphal. The NCPCHR took up the case filed by the Child Welfare Committee Manipur on 21 August 2009 alleging that the girl child was illegally detained for four days in a cell which was used as a cloakroom of the constables without any toilet facility, drinking water and proper food. The relatives of the girl had to bring water, breakfast and meals for her. The girl's only fault was that she was the daughter of Salam Dewan and Memocha who could not be arrested by police and personnel of 12 Maratha Light Infantry on 14 August 2009 after the security forces allegedly found a huge cache of arms and ammunitions in their house allegedly dumped by members of the People's Liberation Army.¹¹⁵

On 21 September 2009, Jaleel B A (16 years, a resident of Begur Road, Bangalore) was picked up by the police and kept in illegal detention at Madivala police

111. ACHR's complaint to NHRC, 18 June 2009, ACHR's Reference No. TR/11/2009

112. ACHR's complaint to NHRC, 10 August 2009, ACHR's Reference No: UP/41/2009

113. After 6 months, tortured youth gets vision back, The Indian Express, 28 December 2009

114. NCPCHR's communication No.UP-12016/8756/09-Complaints/923 dated 5 January 2010 to ACHR

115. Forum seeks reply on illegal arrest of Manipuri girl, The Hindu, 24 September 2009

station in Bangalore, Karnataka, for 10 days before producing him in the Court. Despite pleas that he was a minor and was not connected with any crime, the police detained the minor boy and tortured him. When released he was hardly able to walk.¹¹⁶

In some cases, torture was too severe and resulted in death of the child in custody. On 9 May 2009, 17-year-old Sngewlem Kharsati, son of Smt. Bliss Kharasati of Puriang village in the East Khasi Hills district of Meghalaya, died of torture in the police lock-up of Mawryngkneng Police Outpost in the East Khasi Hills district. Sngewlem Kharsati was picked up by a police team for possessing a sword while returning home after work. The victim was beaten up without any explanation. Later he was taken to Mawryngkneng Police Outpost. The victim was further subjected to torture at the Mawryngkneng Police Outpost by the police including Officer-in-Charge Mr Manbhalang Rymbai. The victim could not bear the torture and died at the police outpost.¹¹⁷ After a Magisterial probe found that the victim minor boy has been beaten to death in custody the State Government of Meghalaya paid a compensation of Rs.200,000 to the parents of the victim. Yet, the guilty policemen namely Sub-inspector M. Rymbai, Head constable B. Mukhim and Constable L. Kharbani have not been prosecuted as they continued to serve in the police department after suspension from service for a short period.¹¹⁸

Minor girls were also raped in custody. On 4 June 2009, two tribal minor girls were allegedly gang-raped by four persons, including three Special Police Officers (SPOs) identified as Sany Debbarma, Uttam Debbarma and Gopal Debbarma, at Mungiakami village of Atharomura foothills in West district of Tripura. Both the victims were studying in Class VI standard. The victims were abducted while returning home after watching TV at their neighbour's house. They were taken to a nearby jungle and raped. The victims were released on the morning of 5 June 2009.¹¹⁹

b. Torture of innocent children

The police also picked up/ detained innocent children who did not have any case against them and tortured them.

On 10 March 2009, a 10-year-old boy, Master Altaf died in police custody as a result of alleged torture at Nakela village in Sitapur district of Uttar Pradesh. On the night of 5 March 2009, the police had raided the victim's house to apprehend his brother who was accused in a case of rape. As the accused was not present at the house, the police subjected the victim to questioning. The victim's relatives

116. 'Juvenile illegally detained, tortured', The Deccan Herald, 25 November 2009

117. ACHR's complaint to NHRC, 11 May 2009, ACHR's Reference No: ML/06/2009

118. Victim's kin cry for justice, The Telegraph, 23 December 2009

119. ACHR's complaint to NHRC, 18 June 2009, ACHR's Reference No. TR/10/2009

alleged that the minor boy was tortured by the police during questioning, which resulted in his death.¹²⁰

On 18 November 2009, two minor boys identified as Master Sandeep Mishra and Master Chhoti Chawwani were allegedly tortured at the lock-up of Damoh police station in Damoh district of Madhya Pradesh. The police picked up Master Sandeep Mishra and Master Chhoti Chawwani in connection with a case of theft although there was no complaint against them. Both of them were hand-cuffed and tortured. The torture allegedly continued until one of the victims collapsed and had to be hospitalized. Two police personnel were suspended in connection with this case.¹²¹

c. Violations of child rights in juvenile institutions

Section 34 of the Juvenile Justice Act provides for establishment of “Children’s Homes” in every district or group of districts “for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.”¹²² The Children’s Homes are either managed by the state government directly or in association with voluntary organizations.

The conditions of the Children’s Homes across the country are pathetic. The children are forced to live in tortuous conditions and are subjected to physical torture by the authorities instead of providing proper care and protection.

On 13 July 2009, a 13-year-old child identified as Lalnunpuia, son of Rinsanga of Chaltlang Lily in Aizawl died as a result of torture by the officials at the Herald for Christ’s Children Home, a government recognized Children’s Home at Lungleng, about 15 kms north of Aizawl in Mizoram. Lalnunpuia was beaten up by the officials of the Children Home on 13 July 2009 for his alleged disobedience and died on the same day in the evening. Initially, the authorities of the Herald for Christ’s Children Home tried to cover up the incident by stating that the victim child had died of bronchitis and heart problem. But the victim’s parents claimed that their son was tortured to death. They made the allegation of torture after they found torture marks on the back, buttocks and the thighs of their child.¹²³

On 30 December 2009, Dr Shanta Sinha, Chairperson of the National Commission for the Protection of Child Rights (NCPCR) described the conditions at Delhi government-run Asha Kiran, the observation home for the mentally challenged in

120. ACHR’s complaint to NHRC, 16 March 2009, ACHR’s Reference No: UP/28/2009

121. ACHR’s complaint with NHRC, 20 November 2009, ACHR’s Reference No. MP/23/2009

122. See the Juvenile Justice (Care and Protection of Children) Act, 2000: <http://nicp.nisd.gov.in/pdf/jjact.pdf>

123. The complaint of ACHR to the NHRC dated 3 August 2009, ACHR’s Reference No. MZ/04/2009

Rohini, Delhi as “appalling” and that “The manner in which adults and children are housed is an out and out violation of human rights.”¹²⁴ At least 12 inmates have died between 2 December and 30 December 2009 at Asha Kiran. Of them two are minors namely Krishna (16 years) and Deepti (12 years). As many as 75 inmates including children died between 2004 and 2008 at Asha Kiran.¹²⁵ The Asha Kiran is highly overcrowded. Against the capacity for 350 inmates the Asha Kiran houses 730 mentally retarded men, women and children. Little care is given to the inmates and there is even no segregation of people who have infectious diseases like tuberculosis.¹²⁶

In Haryana’s only Nari Niketan (Juvenile home for girls) located in Karnal, the inmates were allegedly subjected to frisking, stripping and beating by female caretakers. Inmates alleged that they were stripped and frisked on their return from court appearances and frequently beaten up by the caretakers.¹²⁷

In June 2009, a mentally retarded inmate of the Nari Niketan (shelter home for girls) located at Nari Niketan, Sector 26, Chandigarh was found pregnant. Investigations by the police carried out at the order of the Punjab and Haryana High Court confirmed that the victim was raped by the main accused persons - Bhupinder Singh and Jamuna Kumar at the Nari Niketan with the help of the caretakers of the Nari Niketan. The victim, in her statement to the police, alleged that Kamla, a caretaker in the Nari Niketan used to take her to the bathroom where Bhupinder used to rape her. The sexual exploitation continued even after the victim was transferred from Nari Niketan to “Aashray”, another home for mentally retarded children. The accused used to take her to the bathroom and rape her at the Government Institute for Mentally Retarded Children (GMIRC), the school where she was attending classes in “Aashray”.¹²⁸

IV. Impunity

Law enforcement personnel continue to enjoy virtual impunity from prosecution for human rights violations including custodial torture and extrajudicial killings. Prosecution requires prior permission from the government under Section 197 of the Criminal Procedure Code, 1973 and various Special laws including the Armed Forces Special Powers Act, 1958.

124. Violation of human rights at Asha Kiran: Rights panel, The Times of India, 1 January 2010

125. Rights violation in govt home, The Times of India, 22 June 2009

126. For inmates, few rays of hope at Asha Kiran, The Indian Express, 11 January 2010, <http://www.indianexpress.com/news/for-inmates-few-rays-of-hope-at-asha-kiran/565872/0>

127. Nari Niketan — where inmates are stripped, thrashed, The Tribune, 4 July 2009

128. Nari Niketan Case - Victim was raped in institute also, The Tribune, 4 July 2009

Section 197 of the Criminal Procedure Code, 1973 provides impunity to the public servants against prosecution without prior sanction from the Central government or the concerned state government.

Section 197 of the Criminal Procedure Code 1973 provides that:¹²⁹

“197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of 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 the Union, of the Central Government;

(b) in the case of 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:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a

129. <http://www.mha.nic.in/pdfs/ccp1973.pdf>

State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

Impunity to the Armed Forces

The armed forces enjoy virtual impunity under Section 6 of the Armed Forces Special Powers Act, 1958 which makes it mandatory to seek prior permission of the Central government to initiate any legal proceeding. Section 6 of the AFSPA states,

“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.”

Even the NHRC does not have the power to investigate the armed forces under Section 19 of the Human Rights Protection Act 1993 (as amended in 2006). The Commission, which otherwise has the power of a civil court, can only seek a report from the Central government and after the receipt of the report “it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.”¹³⁰ It is up to the Central government whether or not to accept the recommendations of the NHRC or not.

130. Section 19 of the Human Rights Protection Act 1993 (as amended in 2006)

However, in several judgements the Courts, including the Supreme Court of India, have made it clear that human rights violations, deliberately committed by a public servant/official, cannot be construed as coming under the definition of “official duty” and hence no prior sanction is needed to prosecute him or her.

Yet the state continues to deny permission to prosecute law enforcement officials suspected of having perpetrated human rights violations. In December 2009, the Bombay High Court asked the Maharashtra government to explain why it rejected the state Criminal Investigation Department’s plea to prosecute 10 officers of Mumbai Police in the Khwaja Yunus murder case. The state government had sanctioned the prosecution of four minor officers but let off 10 senior officials although the CID established their roles in the custodial death of Yunus in January 2003.¹³¹

Law enforcement officials also often invoke Section 197 CrPC to escape prosecution for human rights violations. The Courts have however rightly ordered prosecutions, as shown in the following cases.

Case 1: Supreme Court orders prosecution of accused police official in West Bengal¹³²

In January 2009, the Supreme Court stated that no prior permission is required to prosecute accused public servants stating that “*All acts done by a public servant in purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Criminal Procedure Code (CrPC)*”. A bench of the Supreme Court comprising of Justices Altmas Kabir and Markandey Katju set aside the order of the Calcutta High Court that denied permission to prosecute West Bengal Deputy Superintendent of Police Sahabul Hussain by a magisterial court in Behrampore for threatening a Behrampore resident to withdraw his complaint against five people who had attacked him. In its order the Supreme Court said: “It was no part of his duties to threaten the complainant or her husband to withdraw the complaint.”

On 9 September 2005, Samiul Choudhury was attacked by five people. He filed a complaint with the Behrampore police station naming his assailants. West Bengal Deputy Superintendent of Police Sahabul Hussain, on the pretext of investigating the case, repeatedly visited Choudhury’s residence and tried to persuade him to retract his complaint against all the accused persons. He and his subordinate also forced Choudhury to sign blank papers. Choudhury’s wife Parveen Sultana held a complaint against Hussain at the Behrampore magisterial court.

131. Why were cops in Yunus case let off? HC, The Times of India, 9 December 2009

132. Apex court refuses to protect cop, says threats not part of duty, IANS, 16 January 2009, http://www.thaindian.com/newsportal/uncategorized/apex-court-refuses-to-protect-cop-says-threats-not-part-of-duty_100143031.html

The magistrate ordered the trial of the police officer on charges of threatening the complainant. Hussain moved the Calcutta High Court contending that he could not have been put on trial as the alleged wrongs had been committed by him while he was discharging his official duty. He claimed legal protection from prosecution under Section 197 of the CrPC and that he could not be put on trial unless the government sanctioned his prosecution.

The Calcutta High Court agreed and overturned the magistrate's order. Parveen Sultana filed an appeal before the Supreme Court which set aside the High Court's order.

Case II: Delhi High Court allows prosecution of senior cops for torturing and threatening the victim in Delhi¹³³

In December 2009, the Delhi High Court allowed criminal prosecution and investigation against four senior police officers for allegedly detaining a person illegally and torturing him. The accused police officers had challenged the trial court's order directing the police to register First Information Report (FIR) against them and initiate an investigation by a senior police officer.

In his complaint the victim named Neeraj Mishra, alleged that the then Inspector at Mukherji Nagar police station, Mohan Singh Rawat demanded bribes from him and threatened him with dire consequences when he had gone to get an FIR registered on 7 September 2007. When the victim complained before the ACP Model Town, the ACP did not act. Instead, the victim was summoned by Mr Rawat to the police station and allegedly tortured.

The victim further alleged that after the complaint was made to the Delhi Police Commissioner, the then Deputy Commissioner of Police (North-West Delhi), Assistant Commissioner of Police, Public Grievance Cell (ACP (PG)), ACP of Shalimar Bagh and ACP of Model Town started exerting pressure on him to withdraw the complaint and illegally detained him for almost six hours.

This forced the victim to file a complaint in the court. On 29 January 2008 Magistrate Vinay Singhal ordered an inquiry by a senior police official (not below the rank of Assistant Commissioner of Police) against the then ACPs of Shalimar Bagh and Model Town, ACP (PG) and then Deputy Commissioner of Police (North-West Delhi)

133. Delhi High Court allows prosecution of senior cops, The Hindu, 14 December 2009

3. Torture in the custody of the Armed Forces

The members of the military and para-military forces despolysed in insurgency situations have been responsible for torture. Since they enjoy impunity including under Section 6 of the Armed Forces Special Powers Act of 1958 applicable in armed conflict situations in North East and Jammu and Kashmir, it is extremely difficult, if not impossible to prosecute members of the armed forces accused of human rights violations.

On 6 March 2009, ACHR filed a complaint alleging that the army personnel belonging to 871st Field Regiment picked up Bhadrakanta Baruah, son of Late Yogaram Baruah on the night of 31 January 2009 and tortured in their custody at the Maibela Base Army camp in Sivsagar district of Assam on the suspicion of having links with the banned United Liberation Front of Asom (ULFA). In his reply to NHRC vide letter dated 27 April 2009 the Superintendent of Police of Sivsagar informed that immediately after Bhadrakanta Baruah and Ghana Neog were handed over to the police on 1 February 2009 at 1245 hrs by the army, they were medically examined and the doctor opined that both of them had “received simple injuries caused by blunt object.” Detailed investigation by police did not reveal any link of the victims with ULFA and they were released on the same day. Both the victims were farmers. The Ministry of Defence vide letter dated 15 February 2010 denied that the victims were tortured and claimed that they have confessed to having provided shelter to the ULFA. In its order delivered on 4 March 2010 the NHRC concluded that the Ministry of Defence was lying in its report and directed the Ministry of Defence to pay compensation of Rs. 50,000/- each to the two victims.

On 17 July 2009, one Raju Das alias Raju Saha was caught red handed by the public while trying to snatch Rs 30,000 from an Assam Rifles soldier in Silchar in Assam. Later a group of Assam Rifles personnel took him to the Jhalupara workshop No. 2 where they allegedly tied the victim to a post and tortured. The victim was reportedly bleeding profusely when he was handed over to the police on 18 July 2009.¹³⁴

On 4 September 2009 at around 10 pm, Pronoy Roy, a “sergeant major” of the ULFA’s 709 battalion was shot dead in an alleged encounter by the army and the police at Kalipukri Tilapara under Kokrajhar police station in Assam. According to the police, Pronoy Roy was killed in an encounter and that the security forces have recovered one 9 mm pistol, a satellite phone, a Chinese grenade, 19 bullets with two empty cartridges, four mobile sets, a detonator and some documents from him. However, on 5 September 2009, the the family of the victim alleged that he was picked up from a house where he was taking shelter and tortured by the army and the police before being shot dead. The victim’s elder bother, Pani admitted that Pronoy Roy was a militant but alleged that his “body bore cut marks all over, inflicted with sharp weapons.” This indicated that the victim was tortured before being executed in cold blood.¹³⁵

134. Human rights violation slur on AR jawans, The Sentinel, 20 July 2009

135. Torture whiff in militant’s death, The Telegraph, 6 September 2009

4. 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.

The 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).

A. Naxalites’ use of torture

Among all the armed opposition groups in India, the Naxalites or Maoists are probably the worst human rights violators. In blatant disregard for the international humanitarian law, the Maoists continued to kill civilians on the allegation of being “police informers”, members of the anti-Maoist civilian militia such as “Salwa Judum” and for not obeying their diktats.

a. Hostage taking, torture and execution

The Maoists have been responsible for brutal killing of their hostages after abduction. Often the hostages are killed by slitting their throats or beheading. Often these killings were authorized by Maoist ‘people’s courts or *Jan Adalats*.

On 10 January 2009 at around 11 pm, the Maoists abducted Narayan Singh (42 years) while he was returning to his village Kusumdih under Mahuatard police station in Bermo district of Jharkhand. According to the police, the Maoists killed him by slitting his throat in the forests of Kusumdih accused of being a police informant.

On 29 January 2009, Lakhmaram Gaode, head of Badgaon village in Kanker district of Chhattisgarh was killed by Maoists who had abducted him three days earlier. The police claimed the Maoists suspected Gaode of being an informant.¹³⁶

On the night of 11 March 2009, suspected Maoists abducted 42-year-old Manoj Kumar Singh, President of Haveli Kharagpur block, Janata Dal (United) in Bihar.

136. Village head killed, The Hindu, 31 January 2009

The hostage was allegedly tortured and then killed. Singh's body was recovered one kilometer away from his home with the throat slit open on 12 March 2009. According to the police, Singh was killed for not paying "levy" to the Maoists.¹³⁷

On the night of 7 June 2009, alleged Maoists abducted two brothers identified as Sundru (55 years) and Mangauram (35 years) from Padbeda village in Kanker district of Chhattisgarh. Both were allegedly beaten to death accused of being "police informers". The police recovered bodies of brothers late on the night of 8 June 2009.¹³⁸

On 4 September 2009, Maoists killed four villagers of Guddipal in Bijapur district of Chhattisgarh on suspicion of being "police informers". They were abducted three days earlier. According to the police, the victims were tortured and stabbed to death.¹³⁹

On 10 August 2009, the police recovered the dead body of Baldeo Besra, a former Maoist cadre who had been abducted allegedly by the Maoists some days earlier. The headless body was recovered near Nagi village under Bishungarh police station in Hazaribagh district of Jharkhand.¹⁴⁰

On 27 April 2009, the Maoists dragged a tribal leader Madakam Kasanna (45 years) from his house, tortured and then killed him at Kaliveru village in Khammam district of Andhra Pradesh.¹⁴¹

On 6 September 2009 at about 9.30 PM, a squad of 20-25 heavily armed Maoist cadres came to Pundidri village under Tamar block of Ranchi district of Jharkhand and picked up five villagers identified as Subodh Kumar Gautam (38 years), Gaur Singh Munda (35 years), Prahlad Sahu (28 years) and brothers Amit Prakash (19 years) & Sunil Singh Munda (17 years). The last two were students. The Maoists took them to the Kharkai bridge and at around 11 PM shot them. They were left to die there.¹⁴²

On the night of 3 October 2009, Salbam Irma, a member of the Undurikonda Panchayat of Kalimela block in Malkangiri district of Orissa was murdered allegedly by Maoists. He was reportedly abducted from his house and then killed on suspicion of being a "police informer". The alleged Maoists slit his throat and dumped the body near Undurikonda village.¹⁴³

137. Maoists kill JD(U) leader in Munger, *The Times of India*, 13 March 2009

138. Naxals beat two brothers to death, *The Hindu*, 10 June 2009

139. Maoists kill four villagers, *The Telegraph*, 5 September 2009

140. Maoist behead former colleague, *The Times of India*, 11 August 2009

141. Naxals kill Chhattisgarh tribal leader, *The Hindu*, 28 April 2009

142. Maoists slaughter students, 3 others, *The Telegraph*, 8 September 2009

143. Panchayat member murdered by Maoists, *The Hindu*, 5 October 2009

On 11 March 2009, the Maoists dragged Kedar Singh Bhotka (45 years) and his brother Ganesh Singh Bhotka from their house at Gurudih village under Katkamsandi police station in Hazaribagh district in Jharkhand. They were allegedly tied to a tree and beaten up by the Maoists. Thereafter, while Ganesh was released, his brother Kedar, who was a government school teacher, was killed for being a “police informer”.¹⁴⁴

On 24 April 2009, alleged Maoists beat to death Kasa Madhi (50 years), the village head of Palkhonda village of Skikhpalli panchayat under Malkangiri police station limits in Malkangiri district.¹⁴⁵

On the late night of 31 July 2009, the Maoists allegedly shot dead the head of a Pahari Korva tribal family and beat up another the family at Bhutha village in Surguja district of Chhattisgarh. According to the police, the Maoists forced the family to attend a public meeting organised by the Maoists in Surguja district but they refused to participate.¹⁴⁶

On 9 August 2009, alleged Maoists slit the throats of two persons identified as Siba Sankar and Bibhisan Mahanandia before shooting them in Chandrapur area of Rayagada district in Orissa. The Maoists suspected them of to being “police informers”.¹⁴⁷

On 17 October 2009, the Maoists dragged 26-year-old Mahendrakumar Narote from his house at Kulbhatti village in Dhanora tehsil and took him to a nearby jungle. The Maoists reportedly killed him by slitting his throat for allegedly being a “police informer”.¹⁴⁸

On 26 December 2009, a couple identified as Divesh Singh and his wife Devbrati Devi were burnt alive at Saraidih village by suspected Maoist rebels in Jharkhand’s Palamau district of Jharkhand.¹⁴⁹

B. Torture by other AOGs

On 17 February 2009, three Manipur government officials - Sub-Divisional Officer of Kasom Khullen in Ukhrul district, Dr Thingnam Kishan (38 years), his official driver Aribam Rajen alias Amuba, and a Revenue Department staff Yumnam Token (38 years) were allegedly tortured to death after being abducted by members of an AOG in Manipur. They were abducted on 14 February 2009

144. Maoists butcher teacher on Holi, *The Telegraph*, 13 March 2009

145. Maoists kill village head in Malkangiri district, *The Hindu*, 25 April 2009

146. Chhattisgarh resident killed for not attending Maoist meet, *The Deccan Herald*, 1 August 2009

147. Maoists kill police ‘informers’, *The Statesman*, 10 August 2009

148. Naxals kill two youths alleging police informers, 20 October 2009

149. Couple burnt alive by Maoists over land dispute, available at: <http://naxalwatch.blogspot.com/2009/12/couple-burnt-alive-by-maoists-over-land.html>

and killed. Their bodies were recovered from near Lukhrabi Bridge at Taphou Kuki village, about 7 Kms to the south of Senapati district headquarters. Their hands were tied behind their backs and police said all three were hit on the head with stones and other weapons. A blood stained spade and a blood stained big stone were found near their bodies.¹⁵⁰

150. See "Trio battered to death - Three other Manipur staff missing", The Telegraph, Kolkata, 18 February 2009 and "A New Definition Of Barbaric Killing Invites 48 Hrs Gen Strik; Bandh Already Enforced In Ukhul - Kasom Khullen SDO, two subordinates found bludgeoned to death", The Sangai Express, 18 February 2009

5. Torture in judicial custody

The use of torture in Indian prisons/detention centres is a matter of documented fact. The National Human Rights Commission registered 1,996 cases of torture of prisoners in 2006-2007, 2,481 cases in 2007-2008 and 1,596 cases in 2008-2009 (upto 11 December 2008).¹⁵¹ According to National Crime Records Bureau (NCRB) under Ministry of Home Affairs, 1,424 prisoners died in 2006, 1,387 prisoners in 2005, 1,169 prisoners in 2004,¹⁵² and 1,060 prisoners in 2003¹⁵³ in India. Of the 1,423 prisoners who died in 2006, 80 died as a result of “unnatural” causes.¹⁵⁴

There have been claims of existence of secret detention centres in India. An investigation by *The Week* has identified 15 “secret interrogation centres” in India - three each in Mumbai, Delhi, Gujarat and Jammu and Kashmir, two in Kolkata and one in Assam. Terror suspects are allegedly subjected to torture in these illegal detention centres to extract confessions/information.¹⁵⁵

In 2009, ACHR documented some of the cases of torture in judicial custody:

On the night of 20 February 2009, one Adapa Naresh (25 years) of Venkatapuram gram panchayat (village level council) died in judicial custody as a result of alleged torture at Rajahmundry central jail in Andhra Pradesh. He was remanded to judicial custody in connection with a case of molestation of a Scheduled Caste (lower caste Hindu) girl. The victim’s relatives alleged that he was tortured to death.¹⁵⁶

On 25 March 2009 an Ahmedabad-based NGO Jan Sangharsh Manch (JSM) filed a Public Interest Litigation (PIL) in the Gujarat High Court seeking the immediate transfer of Sabarmati Jail Superintendent V Chandrashekhar citing “torture” on some of the jail inmates. The petitioner’s advocate S H Iyer told the court that during a visit to the Sabarmati Central Jail on 14 March 2009 he discovered that the Jail Superintendent had created an atmosphere of terror in the jail and the inmates were being subjected to “inhuman treatment”. The petition stated that a convict Akbar was beaten up by Chandrashekhar to the point that Akbar’s leg was

151. The statement of Minister of State in the Ministry of Home Affairs, Mr Shakeel Ahmad while answering to unstarred question No. 2624 in the Lok Sabha on oppression of prisoners on 16.12.2008

152. The statement of Minister of State in the Ministry of Home Affairs, Mr Shakeel Ahmad while answering to unstarred question No. 5075 in the Lok Sabha on death of prisoners on 29.04.2008

153. The statement of Minister of State in the Ministry of Home Affairs, Shri Manikrao H Gavit while answering Unstarred Question No. 461 (deaths of prisoners) on 14.08.2007

154. National Crime Records Bureau, “Prison Statistics India 2006”, Chapter 9, available at <http://ncrb.nic.in/PSI2006/prison2006.htm>

155. “India’s secret torture chambers” By Syed Nazakat, *The Week*, 12 July 2009

156. Undertrial’s death triggers protest, *The Hindu*, 22 February 2009

fractured and he had to be admitted in the Jail Hospital with severe injuries. One Silvester, a witness in the Sohraubuddin fake encounter case, was also beaten up by Chandrashekhar. The petitioner's advocate also submitted the case of a Nigerian national, Louis, who was allegedly assaulted by jail authorities. The petition further alleged that prisoners suffering from various diseases like piles, urological ailments and HIV/AIDS were not being provided treatment.¹⁵⁷

On 9 April 2009, a prisoner identified as Gurnam Singh allegedly died as a result of torture at a jail in Karnal in Haryana. Superintendent of the Jail, Jagit Singh claimed that Gurnam Singh was unwell and he collapsed while being taken to the trauma centre.¹⁵⁸ However, Wazir Singh, younger brother of the victim, alleged that he was not allowed to meet his brother at around 7.30 am on 9 April 2009. The family suspect that the victim had died in the night but the jail staff did not tell the family. They further alleged that there were marks of torture on the body of the victim. The prisoners of barrack No. 7 confirmed before Judicial Magistrate Nishant Sharma that Gurnam Singh was beaten in the jail. Medical officer Dr Rajbeer Singh, who conducted the postmortem, said Gurnam was "brought dead" to the hospital and he had marks of injury on his hands, legs and chest.¹⁵⁹

On 26 May 2009, an undertial prisoner identified as Prasurram (45 years) died under mysterious circumstances in a local jail in Haldwani in Uttarakhand. The matter came to light only when the victim's elder son Rajesh Kumar came to meet the victim and was informed of the death. According to Mr Kumar, his father was physically and mentally healthy when he met him on 23 May 2009. He alleged that his father was tortured.¹⁶⁰

On 3 July 2009, one Kantiji Thakore, a detainee under Prevention of Anti Social Activities (PASA) Act, died allegedly as a result of torture by the jail officials in the Morbi Sub Jail of the Rajkot district in Gujarat. Following a complaint received from the International Human Rights Organisation alleging torture of the victim, the Gujarat High Court summoned Home Secretary, government of Gujrat, Inspector General of Prisons and the Jail Superintendent of Morbi jail to appear in person on 31 August 2009.¹⁶¹

On 31 July 2009, the police arrested 16 women, including a lawyer in connection with violence during a demonstration against a thermal power project in Hanakona in Karwar taluk in Uttara Kannada, district in Karnataka on 30 July 2009. They were held in Bellary jail. Inside the jail police subjected them to torture, including beating with batons and kicking with boots. Advocate Dhanalakshmi Haladankar, one of the victims said that the police kicked them and tore their clothes while

157. NGO seeks immediate transfer of Sabarmati Jail superintendent, *The Indian Express*, 27 March 2009

158. Prisoner dies in jail; kin suspect foul play, *The Tribune*, 10 April 2009

159. Death of Prisoner, *The Tribune*, 11 April 2009

160. Inmate's mystery death puts jail authorities in a spot, *The Pioneer*, 27 May 2009

161. HC summons state govt to explain death in custody, *Daily News Analysis*, 2 August 2009

other two victims, Sunita Naik and Pragati Naik sustained injuries on arms and abdomen.¹⁶²

On 14 August 2009, Nand Kumar alias Nandu (18 years, resident of Dilbagh Nagar) died as a result of alleged torture in Jalandhar Central Jail of Punjab. The victim was held in the Jalandhar Central Jail in connection with a case under the Excise Act. According to the Jail official, Nand Kumar was not in good health for a number of days. On 14 August 2009, his condition deteriorated and he was immediately taken to the Civil Hospital. But he died on the way. However, the family alleged that he was tortured to death by Jalandhar Central Jail guard. Before his death, the victim told his family that he was being tortured.¹⁶³

On 1 September 2009, an undertrial identified as Narendra Kumar Gupta (43 years) was allegedly tortured to death at Etah district Jail in Uttar Pradesh. The victim was arrested five days earlier for allegedly running a betting racket. According to the jail officials, he fell ill and was rushed to the district hospital where he died. However, the victim's son Bhola filed a complaint stating that his father was physically fit when he and other members of his family had visited him at the jail two days prior to his death. He alleged that Jail Superintendent Viresh Kumar, the jailor, the deputy jailor and the wardens tortured the victim and the jail doctor failed to provide appropriate medical attention, which led to his death. A case of murder was registered against the Jail Superintendent, the doctor and three other officials of the Etah district jail on 2 September 2009.¹⁶⁴

On 21 September 2009, over a dozen terror suspects, accused of carrying out bomb attacks in Jaipur on 13 May 2008, were allegedly tortured after they demanded permission to join prayers with other prisoners in the jail compound on the occasion of Id-ul-Fitr at the Central Jail in Jaipur, Rajasthan. Two of the accused held under the Unlawful Activities (Prevention) Act – Munawwar Hussain and Nazakat – have alleged in their complaint to the Director-General of Prisons, that jail officials dragged them out of their cells on 21 September 2009 evening with the help of “hard-core prisoners” and tortured them. All the terror suspects were reportedly held in cramped, dingy cells without ventilation and in isolation. The only time they can see the sunlight was three hours in the afternoon when they were taken out to an open verandah.¹⁶⁵ After the complaint was held, Deputy Jailor Bhairon Singh was transferred and the state government of Rajasthan suspended the Jailor of Jaipur Central Jail, Ashok Gaur, and a police constable posted at the prison, and ordered a departmental inquiry against the jail staff.¹⁶⁶

162. Karwar: Protesters Allege Police Brutality, The Deccan Herald, 4 August 2009 available at: http://www.daijiworld.com/news/news_disp.asp?n_id=63587

163. ACHR's complaint to NHRC, 18 August 2009, ACHR's Reference No. PN/13/2009

164. Jail staff accused of undertrial's 'murder'. The Indian Express, 3 September 2009 available at <http://www.indianexpress.com/news/jail-staff-accused-of-undertrials-murder/511754/>

165. 'Jaipur blasts accused beaten up in jail', The Hindu, 26 September 2009

166. Jail officials suspended for assault on inmates, The Hindu, 3 September 2009

6. 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 the 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”*.

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 Scheduled Castes and the Scheduled Tribes (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 Tribe 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 atrocities defined above are also included in the Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Nonetheless, despite legal protection, lower castes continue to be particularly vulnerable to violation because of the failure to implement these laws. The 2007 Annual Report of the National Crime Records Bureau reported a total of 30,031 cases - including 206 cases under the Protection of Civil Rights Act and 9,819 cases under the SC/ST (Prevention of Atrocities) Act of 1989 – against the Scheduled Castes in 2007. Although the average charge-sheeting rate for the crimes against the SCs was 90.6 per cent, the average conviction rate was only 30.9%. A total of 51,705 persons (78.9%) out of 65,554 persons arrested for crimes committed against Scheduled Castes were charge-sheeted but only 29.4% were convicted consisting of 13,871 persons out of 47,136 persons against whom trials were completed.

A. Torture by the upper castes

Beaten to death

On 6 January 2009, Saroj Jatav, a Dalit woman was beaten up and her three-month-old infant daughter named Anchal was killed by seven persons of Dhakad community (OBC) at Adrouni village, under the Shivpuri District of Madhya Pradesh. Five of the seven accused persons have been identified as Makhan, Hari, Satish, Dayal, Jagdish - all residents of Shivpuri. All of them belong to Dhakad community, which is recognized as an OBC. On 6th January, Saroj Jatav went to fetch water from the hand-pump at Adrouni village. Her infant daughter Anchal was on her lap. Makhan objected to her wearing slippers because she was a Dalit. He was later joined by Hari, Satish, Dayal, Jagdish and others to beat her up. When Saroj Jatav threatened to report the matter to the police, the accused accosted and beat her. The accused also took her 3-month-old child, Anchal, and beat her to death.¹⁶⁷

167. ACHR's complaint to NHRC, 12 January 2009, ACHR's Reference No. MP/16/2009

On 15 June 2009, a 48-year-old Dalit labourer identified as Chetram was beaten to death by a group of villagers after he asked to be paid by his employer at Dariapur village in Hardoi district in Uttar Pradesh. According to the police, the victim used to work in the fields of Nanhe Yadav, who had not paid him for a month. When Chetram demanded his wages and refused to go home after work, Yadav along with four friends started beating him with wooden sticks. He died from the beating. The police registered a case against the five accused and arrested Nanhe Yadav while the rest absconded.¹⁶⁸

On 17 August 2009 a Dalit youth identified as Rakesh Kumar (20 years) was allegedly beaten to death by an upper caste Jat family in a village under Nurmahal police station in Jalandhar district of Punjab. The victim was reportedly in love with an upper caste Sikh girl (name withheld) but her family strongly objected.. Police recovered the decomposed body of the victim and arrested the girl's Bikramjit's paternal uncle Balwinder Singh on charges of murder.¹⁶⁹

Setting on fire

On 18 July 2009 an upper caste landowner Sidde Gowda at Nelamakanahalli of Malavalli taluk in Mandya district of Karnataka tried to burn to death a woman identified as Savithamma (35 years) belonging to the Other Backward Classes (OBC) category after injuring her with a chopper. The assailant allegedly attacked her on her hands and head with a machete. He tried to burn her to death when she fell unconscious. She was however rescued and admitted to a hospital in Bangalore.¹⁷⁰

On 17 August 2009, a Dalit farmer identified as Ranabhai Rathod (48 years) succumbed to burn injuries. He was set on fire on 23 August 2009 by a group of eight upper caste men at Mangalpur village of Keshod taluka in Junagadh district of Gujarat. The accused poured kerosene on the Dalit and set him ablaze because of a dispute over land.¹⁷¹

On 21 September 2009, a 65-year-old Dalit identified as Narayan Khangar died after being set on fire by four upper caste persons identified as Usha Dhakad, Lalaram Dhakad, Sultan Dhakad and Bhura Dhakad at Makdijhara village in Shivpuri district of Madhya Pradesh. The victim was attacked after he was found working on his farmland on 19 September 2009. The land was illegally occupied by the accused. When the accused saw him working on the land, they objected to it and asked him not to work there. The victim refused to obey them and warned

168. Dalit beaten to death in Uttar Pradesh, The Hindustan Times, 16 June 2009

169. Dalit youth in love with upper cast girl murdered, The Hindustan Times, 17 August 2009

170. Woman fighting for life after murderous attack, The Hindu, 1 August 2009

171. After being set ablaze over land dispute, Dalit farmer dies, The Indian Express, 19 September 2009

them that he would lodge a complaint with the police if they do not allow him to work. The accused poured kerosene on him and set him on fire. The victim suffered 60 per cent burn injuries and he died in a hospital on 21 September 2009.¹⁷² A case under section 307 (attempt to murder) of Indian Penal Code and relevant sections of Prevention of Atrocities of SC/ST Act has been registered against the accused.¹⁷³

Beating and humiliating punishments

On the night of 19 June 2009, K. Subramanyan (42 years), a Dalit and driver with a private English medium school, was allegedly beaten and his hair and moustache partly clipped by his employer in Thrissur in Kerala. The beating was apparently as a result of his failure to work as a result of ill health. On the morning of 20 June 2009 he had to be hospitalised. According to the victim, he was summoned by his employer John Rafi. When he arrived his hands and legs were tied and Mr Rafi started beating the victim with a cane. Later, he ordered two of his aides to bring a pair of scissors and the victim's hair and moustache were cut. Following a complaint filed by the victim, John Rafi and his aides were arrested.¹⁷⁴

On 28 June 2009, two Dalit youths identified as Putan and Nanku (both around 24 years) were beaten and paraded naked and their faces painted black by the upper caste villagers at Kotar village in Sitapur district of Uttar Pradesh. The victims were allegedly caught stealing wood from Vinod Singh's mango orchard at Kotar village. Mr Singh, an upper caste, tied the youths to a tree and three of his friends beat them with wooden sticks and later paraded them naked through the village. Acting on a complaint held by the two youths, the police have registered a first information report (FIR) against Mr Singh and his three friends. They have detained Mr Singh.¹⁷⁵

On 18 July 2009, a Dalit man identified as Krishna Baheliya (50 years) was beaten up and left injured overnight for allegedly taking vegetables from a field at Nagla Kail village under Elau police station of Mainpuri district in Uttar Pradesh. The victim died on 20 July 2009. According to the police, Subhash Chandra and Sitaram of Nagla Kail village assaulted the victim alleging that he frequently stole their vegetables. The next day a temple priest informed the in-charge of the

172. ACHR's complaint to the NHRC, 22 September 2009, ACHR's Reference No. MP/22/2009

173. Elderly Dalit man set on fire over land dispute, The Times of India, 19 September 2009 available at <http://timesofindia.indiatimes.com/india/Elderly-Dalit-man-set-on-fire-over-land-dispute/articleshow/5030205.cms>

174. Dalit driver tonsured for missing work in Kerala, The Hindustan Times, 22 June 2009 available at <http://www.hindustantimes.com/india-news/thiruvananthapuram/Dalit-driver-tonsured-for-missing-work-in-Kerala/Article1-423958.aspx>

175. Two Dalit youths paraded naked in UP, The Deccan Chronicle, 29 June 2009, available at <http://www.deccanchronicle.com/national/two-dalit-youths-paraded-naked-354>

nearby police outpost after he found Mr Baheliya injured. The victim was taken to hospital but a First Information Report was issued only after the death of the victim thereby giving the accused enough time to escape.¹⁷⁶

On 23 July 2009, a group of upper caste Bhumihar men beaten up three Dalits identified as Ravidas, his mother Bhagwania Devi and his friend Lalbabu Paswan, in Kurji village under Phulwarisharief in Patna, district of Bihar for listening to popular Hindi songs on a mobile phone. Ravidas was seriously injured and was admitted to a private hospital in Patna.¹⁷⁷

On 5 August 2009, Moti Lal Baudh, a leader of the Bahujan Samaj Party (BSP), the ruling party of Uttar Pradesh, led by Dalit Chief Minister Ms Mayawati, went to the house of Kishori Lal, a Dalit and brutally assaulted his son, Chandrashekhar and other the family, including his wife. Later, the BSP leader and his henchmen dragged Chandrashekhar to the nearby Kohna police station and beat him up in front of the police while the policemen failed to act.¹⁷⁸

On 9 August 2009, three upper caste youth identified as Ashok, Sunil, and Verinder beat up Sonu (12 year), a Dalit boy and chopped off his one ear with a sickle at Aulada Jagirpur village under Dankore police station in Gautambudhnagar district of Uttar Pradesh. The minor's had apparently cut some grass for cattle fodder at the field belonging to the assailants' family.¹⁷⁹

On 20 August 2009, Mukteshwar Singh, a leader of BSP, the ruling party of Uttar Pradesh led by Dalit Chief Minister Ms Mayawati, allegedly beat 45-year-old Dalit labourer Kailash Ram with iron rods and wooden sticks in Ballia district of Uttar Pradesh. The victim had raised raised objections to alleged anomalies in the National Rural Employment Guarantee Scheme (NREGS).¹⁸⁰

Torture against Dalit women:

a. Rape cases

On 11 May 2009, four upper caste men, two of them identified as Gananidhi Nag and Sajan Agarwal, allegedly gang raped a 24-year-old unmarried Dalit girl under Paikmal police station limits in Bargarh district of Orissa. The victim had gone to Paikmal block office to meet Block chairman Mahesh Agrawal in connection

176. Dalit 'lynched' for plucking vegetables, The Indian Express, 21 July 2009 available at <http://www.indianexpress.com/news/dalit-lynched-for-plucking-vegetables/492056/>

177. Three Dalits beaten in Bihar for listening to songs, The New Kerala, 25 July 2009

178. BSP leader accused of beating Dalit inside police station, The Times of India, 8 August 2009

179. Dalit boy's ear chopped - For straying into farm of upper caste farmer, The Tribune, 11 August 2009

180. BSP leader booked for beating Dalit labourer, The Times of India, 21 August 2009

with her application for employment as an anganwadi worker. The chairman sent her to meet Ganamidhi Nag, who then took her to a warehouse, owned by Sajan Agrawal, where she was raped by more than three persons, including Ganamidhi and Sajan. Later the assailants threatened to kill her if she told anyone about the incident.¹⁸¹

On 16 February 2009, a middle-aged Dalit woman was raped by a dairy farm owner identified as Gurdev Singh, son of Channan Singh when she went to his farm to collect milk at Dharamkot in Moga district in Punjab. According to the police, the owner's servant, Bohar Singh, son of Amar Singh, kept a watch while the victim was raped. A medical examination of the victim reportedly confirmed rape. The police registered a criminal case of rape and involvement in the conspiracy against the dairy owner and his servant respectively.¹⁸²

On 27 June 2009 an 11-year-old minor Dalit girl family was allegedly raped at Samalsar village in Baghapurana sub-division of Moga district of Punjab by an upper caste man from Duareana village of Faridkot district.¹⁸³

On 15 August 2009, a 20-year-old Dalit woman was gang-raped by three persons from the dominant Rajput community at Neem Ka Thana in Sikar district of Rajasthan. According to the victim, she was stopped by Bharat Singh, Gopi Chand and Moti Singh when she was returning from the Government Kamla Modi College at Neem Ka Thana to her village. They allegedly took her to a hut near a well in a nearby field and gang-raped her. Despite naming the three accused in the First Information Report, the police allegedly refused to act. The local Dalit community organised a series of demonstrations, meetings and dharnas to protest. The police said the accused had disappeared. A fact-finding team of the Centre for Dalit Rights, which visited Neem Ka Thana and the victim's village, Narsinghpuri, discovered that the accused had repeatedly terrorised the Dalit community. The the police were reluctant to take action against them because of their political connections.¹⁸⁴

On the night of 19 September 2009, a Dalit woman was allegedly raped by two persons identified as Hakamsingh Kushwaha and Raisingh Kushwaha at Bhimpur village near Shivpuri in Madhya Pradesh. According to the police, the accused entered the make-shift house of the victim and allegedly raped her at gun-point when she was alone in the house. The police registered a case under the relevant sections of Scheduled Castes and Tribes (Prevention of Atrocities) Act.¹⁸⁵

181. Women up in arms against Dalit girl's rape, *The Times of India*, 18 July 2009

182. Dalit raped by dairy farm owner, *The Tribune*, 18 February 2009

183. Minor Dalit girl raped, *The Tribune*, 1 July 2009

184. Dalit body demands arrest of three Rajput men for rape, *The Hindu*, 1 September 2009 available at <http://beta.thehindu.com/news/states/other-states/article8300.ece>

185. Dalit woman gangraped at gunpoint in Shivpuri, *The Press Trust of India*, 21 September 2009

B. Cases of torture of Dalit women

On 24 June 2009, a 40-year-old Dalit woman identified as Barfi Devi was allegedly beaten up and paraded half-naked by five villagers at Sirsia village in Kushinagar district of Uttar Pradesh. The perpetrators accused the victim's husband of theft. They first tied the victim to a cot and beat her and then cut her hair and paraded her half-naked around the village. The police arrested two of the five accused men in this case.¹⁸⁶

On 27 July 2009, an influential upper caste landlord Sonu Singh reportedly drove his Ambassador car over seven Dalit women for refusing to work in his farmland under Korma police station in Sheikpura district of Bihar. According to police the accused demanded that female labourers to work for him for very low wages. When they refused he drove his car at them.¹⁸⁷

On 3 August 2009, upper caste men beat up a Dalit woman and prevented her from entering a temple Mahasu temple in Hanole of Vikasnagar near Dehradun in Uttarakhand. She allegedly crossed the line marked out to prevent dalits from getting too close to the temple.¹⁸⁸

C. Use of torture by Caste/ Village Panchayats

Traditional caste panchayats have a very poor record . These powerful caste panchayats have been responsible for torture and other forms of cruel, inhuman and degrading treatment to victims they perceive as offenders or violators of tradition. Punishment in the form of honour killing or outcasting the 'offenders' from the village was particularly prevalent in Haryana where Khap (caste) Panchayats dominate village level justice.

According to Jagmati Sangwan, state president of All India Democratic Women Association (AIDWA) at least 100 boys or girls have been murdered or forced to commit suicide every year in Haryana as a result of love affairs. Mr. D R Chaudhary, member of Haryana Administrative Reforms Commission, who had been investigating honour killings, stated that that Khap Panchayats regularly ruled in favour of killing couples or force them to leave villages..¹⁸⁹

The following examples demonstrate the abuse of authority by Khap Panchayats.

On 22 July 2009, a youth identified as Ved Pal Mor (21 years) of Matour village in Kaithal district was lynched by a mob of hundreds of villagers at Singhwai village in Jind district of Haryana in front of several policemen. Ved Pal Mor, accompanied by a warrant officer of the Punjab and Haryana High Court and the

186. Dalit woman paraded half-naked in Uttar Pradesh, *The Sentinel*, 26 June 2009

187. Car runs over Dalit women, *The Statesman*, 29 July 2009

188. Probe ordered into Dalit assault, *The Press Trust of India*, 7 August 2009

189. Honour over love: Over 100 killed every yr, *The Times of India*, 25 July 2009

police, returned to the village to take his wife Sonia Banwala.¹⁹⁰ On 10 March 2009 Ved Pal Mor and Sonia eloped and got married. But the Khap (caste) panchayat of Banwala refused to accept the marriage as both belonged to the same sub-caste. The Banwala Khap panchayat issued death warrants against Ved Pal Mor and Sonia.¹⁹¹

In July 2009, the Kadyan Barha khap panchayat in Dharana village in Jhajjar district of Haryana ordered the family of Rohtas Singh Gehlaut to leave the village or be ostracized because his son Ravinder married a girl belonging to the Kadyan 'gotra'. The villagers forced the Gehlaut family to remain confined inside their house for nearly a month. In August 2009, about a hundred policemen were deployed to protect the Gehlaut family.¹⁹²

In August 2009 bodies of two young lovers were found hanging from a tree with injury marks on their knees at Subana village in Jhajjar district of Haryana. The lovers had eloped and a complaint was registered against the boy, Sandeep (22 years) on 5 August 2009.¹⁹³

On 12 August 2009, a 35-year-old Anganawadi worker was beaten and paraded naked by four assailants led by a Sarpanch (village head) at Nadiabarei village under Patakura police station in Kendrapada district of Orissa for lodging a police complaint against threats and harassment. The assailants entered the house of the victim, dragged her out and then shackled her hands. They beat up and stripped her and forced her to walk through the village. When her husband and other villagers tried to rescue the victim the assailants threatened them.¹⁹⁴

190. Four arrested in Jind youth's lynching incident, Zee News.com; available at: <http://www.zeenews.com/news550198.html>

191. Caste body orders death for lovers, The Asian age, 21 March 2009

192. A TRIBUNE SPECIAL - Prisoners in their own house, The Tribune, 6 August 2009

193. Lovers' bodies found hanging in Jhajjar village, honour killing suspected, The Times of India, 10 August 2009

194. Woman paraded naked by sarpanch, The Times of India, 14 August 2009

7. Judicial interventions against torture

The Indian judiciary has played a powerful role by ruling against torture and extrajudicial killings by law enforcement personnel, among others. There is no law in India for compensation of victims and the public servants enjoy impunity under the law for acts done as part of duty. But the Courts have regularly awarded compensation to victims and prosecuted the accused.

I. Judgements awarding compensation

Case I: Award of compensation to five appellants by High Court of Punjab and Haryana¹⁹⁵

On 23 September 2010, the High Court of Punjab and Haryana, in the case *Appellants: Nachhattar Singh alias Khanda and Ors Vs Respondent: State of Punjab*, directed the state government of Punjab to pay compensation of Rs 20 lakhs to each of the appellants namely Nachhattar Singh alias Khanda, son of Bant Singh; Amarjit Singh, son of Kaula Singh; Nikka Singh, son of Bawa Singh; Surjit Singh, son of Jang Singh; and the legal heirs of Sira alias Jagsir Singh, son of Nachhattar Singh (dead) for false prosecution, illegal detention and torture for the last 13 years. The High Court also directed the trial court to initiate prosecutions against the accused, including two police officials who investigated the case that led to the conviction of the appellants by the trial court in 1998.

In its judgement dated 18 July 1998, Additional Sessions Judge, Barnala (the trial court) convicted Nachhattar Singh alias Khanda, son of Bant Singh; Sira alias Jagsir Singh, son of Nachhattar Singh; Amarjit Singh, son of Kaula Singh; Nikka Singh, son of Bawa Singh; Surjit Singh, son of Jang Singh under Sections 364/302, 148/149, 201 Indian Penal Code (IPC) and sentenced them to undergo rigorous imprisonment (RI) for five years, RI for life, R.I. for one year and R.I. for five years respectively.

They were directed to pay a fine of Rs. 1,000/-each under Sections 302 and 201 IPC, in default to undergo three months R.I. They were found guilty of murdering Jagsir Singh, son of Sukhdev Singh, resident of Village Tallewal.

Jagsir Singh was in fact alive when the FIR under Sections 364/201 IPC was filed against the appellants!

They appealed in the High Court of Punjab and Haryana at Chandigarh against the judgement of the trial court. The counsel for the appellants argued in the High Court that they were tortured in police custody and their blood was planted on the murder weapons. The Appellants had been in custody for five years and were

195. The judgment of the High Court of Punjab and Haryana at Chandigarh dated 23.09.2009 in *Nachhattar Singh alias Khanda and Ors Vs State of Punjab* case

released on bail by the High Court on the basis of the law laid down in Dharam Pal vs. State of Haryana 1999 (4) R.C.R. (Criminal) 600. Jagsir Singh son of Nachhattar Singh, one of the accused, committed suicide after he was released on bail.

The High Court found that *“it is clear that false and fabricated evidence both oral and documentary was created by Amar Singh PW2, Gurdev Singh PW3, Mukhtiar Singh PW4, Karnail Singh PW5, Sukhdev Singh PW7, Surjit Kaur PW8, Bikkar Singh PW9, ASI Darshan Singh PW13, SI Sarabjit Rai PW14 and Jeet Singh son of Chuhar Singh. Both Darshan Singh PW13 and Sarabjit Rai PW14 investigated the case with a bent of mind, to falsely implicate the appellants. This was done for extraneous considerations. Darshan Singh DSP and Madan Gopal S.P., the supervisory officers, also did not scrutinize the case diary and the investigation in a professional manner.”*

The High Court concluded that perjury has been committed by the complainant party and the Investigating Officers as they lied before the trial Court to get a conviction. *‘The High Court also found that FIR No. 171, dated 18.12.2008 under Sections 420, 195, 211, 465, 467, 468, 471 and 120B IPC registered at Police Station Raikot had been “registered to save the skin of a few private persons and police officials, especially the investigating officers. Witnesses who gave false evidence on oath have also been left out.”* The High Court rejected FIR No. 171, dated 18.12.2008 and directed the authorities to reinvestigate the case based on a new FIR.

The High Court acquitted all the appellants of all charges.

In its order the High Court stated:

“It is not only the private respondents, who are responsible for falsely implicating the appellants, but a major part of the responsibility falls on the shoulders of four police officials i.e. the Investigating Officer Sarabjit Rai PW14, ASI Darshan Singh PW13, Darshan Singh DSP and Madan Gopal SP. It is the solemn and sovereign function of the State to prosecute criminals but not the innocent. State is duty bound to do a fair and truthful investigation and thereafter present the challan before the competent Court. Such was the meticulous falsehood presented before the trial Court that the trial Court also believed the evidence which was brought before it. The trial Court did not have any alternative but to convict the appellants.”

The High Court ordered the state government of Punjab to pay Rs. 20 lakhs each to all the appellants after taking into consideration all the circumstances including five years rigorous imprisonment, physical torture and the humiliation suffered.

The High Court also directed the trial court to initiate proceedings under Section 340 of the Criminal Procedure Code against Assistant Sub Inspector Darshan Singh, Sub Inspector Sarabjit Rai, Amar Singh, Gurdev Singh, Mukhtiar

Singh, Karnail Singh, Sukhdev Singh, Surjit Kaur, Bikkar Singh; Jeet Singh, son of Chuhar Singh; Jagsir Singh, son of Sukhdev Singh; Balwinder Singh alias Binder, son of Sukhdev Singh; Gurdev Kaur, wife of Sukhdev Singh and Jagir Singh, son of Harnam Singh.

Case II: Orissa High Court orders Rs 300,000 compensation to widow of custodial death victim¹⁹⁶

On 6 January 2009, a Division Bench comprising of Justice B. P. Das and Justice R. N. Biswal of the High Court of Orissa in the case of *Ahalya Pradhan Vs. State of Orissa and Ors* directed the state government of Orissa to pay compensation of Rs. 300,000/- to the family of Bhalu alias Pitambar Pradhan who died in police custody at Mahanga Police Station in Cuttack district on 1 February 2003.

On 30 January 2003, the victim, Pitambar Pradhan, a resident of Bhakuda village was arrested in connection with theft (Mahanga Police Station Case No.12 of 2003). He was detained at the police lock-up. He was not produced before the local Magistrate. On 1 February 2003, Pitambar Pradhan was found hanging from the fan in the lock-up of Mahanga police station. The police claimed he had committed suicide.

Later, the police officials forced Mrs Ahalya Pradhan, the victim's wife and Sudhir Mishra, a Ward Member, to sign documents and blank papers. The victim's body was transferred to Cuttack for post-mortem. Mrs Ahalya Pradhan and residents of Bhakuda village asked the police to hand over the body for cremation. But the police refused and instead cremated it at the Khannagar Crematorium without consent.

First Information Reports (FIRs), including by the victim's wife, Mrs Ahalya Pradhan, were held in two police stations - Balichandrapur and Mahanga Police Stations, but the police failed to act.. Consequently, Mrs Ahalya Pradhan filed a Writ Petition seeking compensation for the death of her husband.

On 10 May 2004, the High Court of Orissa appointed Justice C. R. Pal, a retired judge, to investigate and submit a report.

In his investigation report Justice C. R. Pal concluded that it would not have been possible for victim Pitambar Pradhan to commit suicide had he been guarded. Justice Pal found that the police had violated the provisions of rules framed under the Police Act, Orissa as the police had not provided a sentry to guard Pitambar Pradhan.

While hearing Mrs. Ahalya Pradhan's petition, the two-judge bench of Justice B. P. Das and Justice R. N. Biswal of the High Court Orissa said the failure of the

196. Judgment of High Court of Orissa dated 6 January 2009 in the case of *Ahalya Pradhan Vs. State of Orissa and Ors*

police to prevent the deceased from committing suicide in police custody had been clearly established in the report of the Judicial Inquiry Commission.

The High Court of Orissa said:

“it is crystal clear that the death was as a result of negligence on the part of the Officers concerned to provide proper watch, which led to loss of a human life.”

In its order, the High Court while directing the state government of Orissa to pay compensation of Rs. 300,000/- to Mrs Ahalya Pradhan ruled:

“...the irresistible conclusion would be that the State Government is vicariously liable to compensate the petitioner because the victim has lost his life and the petitioner has lost her husband as a result of negligent act of the concerned Police Officers. Had they acted properly as per the provision of law and bit diligent in their duties, such untoward incident could not have occurred”.

Case III: Madras High Court orders Rs 200,000 compensation to a widow of custodial death victim¹⁹⁷

On 14 March 2009, a Division Bench comprising Justice P. K. Mishra and K. Chandru of the High Court of Madras in the case of *M. Kalithai Vs. State of Tamil Nadu rep. by its Secretary (Home), The Collector, The Inspector General of Police and The Inspector of Police* (W.P. No. 11569 of 1999) directed the state government of Tamil Nadu to pay compensation of Rs. 200,000/- to the family of Marisamy who died in police custody at Sankarankoil police station on 16 September 1998.

The Writ Petition was filed by Mrs M. Kalithai (victim’s wife) of Nelkattumseval in Tirunelveli district seeking compensation of Rs. 10,00,000.

According to the First Information Report, on 16 September 1998 at about 6.30 am, Marisamy was arrested along with two others, Ramar and Murugaiah by the Inspector of Police, Vasudevanallur from Nelkattumseval. They were brought to Sankarankoil police station at about 9.30 a.m. Marisamy was detained in the lock-up of the police station while the two others were kept in the Writer’s room for interrogation. At about 12 o’ clock, the police claimed that Marisami tried to commit suicide by hanging himself with a *lungi* from the window of the toilet. The police rushed Marisami to a nursing home where the doctor declared him dead.

The Revenue Divisional Officer (RDO), Tirunelveli conducted an enquiry. In its enquiry report dated 12 March 1999, the RDO stated that victim, Marisamy must

197. Judgment of Madras High Court dated 14 March 2009 in the case of *M. Kalithai Vs. State of Tamil Nadu rep. by its Secretary (Home), The Collector, The Inspector General of Police and The Inspector of Police* (W.P. No. 11569 of 1999)

have committed suicide after an argument with his father. However, the RDO did not record the evidence of the two others, Ramar and Murugaiah on the plea that they were the relatives of the victim. Based on the post-mortem report and the final medical opinion, the RDO concluded that the death was as a result of suffocation and as a result of hanging and not as a result of torture by the police. The RDO enquiry report was submitted to the State government in 1999.

The state government held Inspector Vijayaraghavan of Vasudevanallur police station, who was In-Charge of Sankarankoil police station, guilty of detaining Marisamy without recording the arrest in the station register. The government imposed punishments on the Inspector, a Sub-Inspector and four constables for allowing Marisamy to have a *lungi* and thereby facilitating suicide. However, the government refused to pay the financial relief of Rs. 100,000/- as provided under the Government Order (G.O.Ms. No.153, Public (Law and Order-B) Department, dated 31.1.1998) on the plea that the death was a suicide.

As per the existing norms in G.O.Ms. No. 153, Public (Law and Order-B) Department, dated 31.1.1998, financial relief of Rs. 100,000/- will be sanctioned by the Government in respect of the following categories:

1. (a) Death in caste/communal clashes
- (b) Death as a result of police torture
- (c) Death as a result of police firing
- (d) Rape by police.
2. Permanent incapacitation

In its order, the Division Bench found that the arrest of Marisamy was not recorded which was enough to hold that the authorities guilty of violating the Constitution and the Supreme Court judgment in the D.K.Basu case with regard to compensation for human rights abuse.

The Bench while rejecting the RDO enquiry report said “*On the strength of the dictum laid down by the Supreme Court, the report of the Revenue Divisional Officer deserves to be discarded..... the illegal arrest of Late Marisamy and lack of care in saving his life while in police custody are sufficiently proved.*”

Case IV: Award of Rs. 800,000 compensation by Madras High Court to a widow of custodial death victim¹⁹⁸

On 19 January 2009, Justice K. Chandru of the High Court of Madras directed the state government of Tamil Nadu to pay compensation of Rs. 800,000/- to

198. Judgment of Madras High Court dated 19 January 2009 in Writ Petition No.6195 of 2000 and Writ Petition No.9269 of 2000

petitioner Mrs. Krishnammal, wife of Thiru Vincent, who was tortured to death by police at Thalamuthu Nagar Police Station, Thoothukudi District on 18 September 1999. The High Court also directed the state government to take action against the guilty police officials.

The Writ Petition (W.P.No.6195 of 2000 and W.P.M.P.No.9269 of 2000) was filed by Mrs Krishnammal seeking for investigation by Special Investigation Team into the death of her husband, Thiru Vincent in police custody, appropriate disciplinary action against the guilty police personnel and grant of adequate compensation.

On 17 September 1999, the victim Thiru Vincent, a Ward Member of West Alangarathattu village panchayat, had gone to a local temple to attend a festival. Thiru Vincent was arrested by the police attached to Thalamuthu Nagar Police Station on the same day. Mrs Krishnammal, wife of Thiru Vincent became aware of the arrest on 18 September 1999. On the morning of the same day (around 7 am), she went to the police station to enquire about her husband. However, she found that Thiru Vincent was chained by his leg and was not able to speak properly. She also noticed injuries on his feet.. Mrs Krishnammal begged the Sub-Inspector of Police not to torture her husband. However, she was told that her husband would be beaten to death and she should visit the police station in a white saree the next day (meaning she will become a widow). Later, she was driven away from the police station. On the evening of 18 September 1999, Thiru Vincent was taken to the Government General Hospital, Thoothukudi where the doctors declared him dead on arrival.

The police registered a First Investigation Report (FIR) on 18 September 1999 (Crime No.170 of 1999). On 4 October 1999, the Revenue Divisional Officer (RDO) conducted an enquiry. The postmortem was conducted by Dr. A. J. Balakrishna Rao and Dr. S. Vellai Pandian. The postmortem report noted 38 injuries on the body. They concluded that the death was as a result of the injuries and breathing problems. The RDO in his enquiry report dated 9 April 2000, recommended action against all the police present in the police station on 17 and 18 September 1999 for causing the death of Thiru Vincent.

The report was forwarded to the state government. The state government agreed with the report and passed a Government Order (G.O. Ms.No.1284, Public (Law & Order) Department, dated 20.9.2000) directing the RDO, Thoothukudi to begin criminal proceedings against 10 police personnel.

The victim's wife, Mrs Krishnammal unsuccessfully requested copies of the documents. She also sent a letter dated 29.9.1999 seeking proper action against the accused and for adequate compensation.

The High Court held that the request for compensation was justified. The High Court observed:

"It will be out of place to mention that the citizens of this country cannot be left in the lurch without being granted relief in case of their fundamental right being deprived at the instance of the police personnel who are supposed to protect the person and property of the Indian citizens. If such acts are found uncontrolled by the State, the citizens of this country are not helpless and the long arm of Article 226 vests power on this court to order suitable compensation".

The High Court further observed:

"The petitioner lost her only breadwinner by the gruesome act committed by the policemen functioning under the control of the third respondent. At the time of filing of the writ petition, she had five minor children and she would have suffered to bring them up in life".

Case V: Gujarat High Court awards compensation to widow of custodial death victim in Gujarat¹⁹⁹

In July 2009, the widow of a victim of custodial death was granted Rs 200,000 by the state government of Gujarat at the order of the Gujarat High Court 19 years after her husband who died as a result of torture in Jamnagar district in Gujarat.

In 1990, the Bharatiya Janata Party and the Vishwa Hindu Parishad call a strike to protest the arrest of their leader L K Advani. The administration imposed a curfew and the police arrested 100 people who were subjected to custodial torture. One of the arrested persons, Prabhudas Vaishnani died after he was released on bail.

Following mass protest against the death of Vaishnani, the government appointed a commission of enquiry under the chairmanship of Retired Principal Judge of Small Causes Court, B B Desai. The government immediately gave Rs 50,000 in compensation to the widow of the victim. However, Vaishnani's widow moved a petition in the High Court in 1994, demanding a compensation of Rs 5 lakh.

In its report, the Inquiry Commission of Retired Principal Judge of Small Causes Court concluded that the police had abused their power and subjected the people to torture.

The matter had been pending before the Court since then because of the failure of the state government to file a reply. When the government finally produced an order for the payment of Rs 1.50 lakh to the petitioner the High Court observed that the government has absolute liability to compensate the victim of police abuse and cannot shift responsibility onto the police.

199. Custodial death: wife gets compensation after two decades, The Indian Express, 4 July 2009 available at <http://www.indianexpress.com/news/custodial-death-wife-gets-compensation-afte/484751/>

Case VI: Compensation awarded by Orissa High Court to aged parents of custodial death victim in Orissa²⁰⁰

On 27 August 2009, the High Court of Orissa directed the state government of Orissa to pay compensation of Rs. 3,000 per month to the parents of Krushna Chandra Behera who was allegedly murdered by a fellow convict in Choudwar Circle jail in August 2008.

After hearing the writ petition filed by the mother of the victim, the Bench of Acting Chief Justice I.M. Quddusi and Justice Kumari Sanju Panda observed that the death of the convict in custody was as a result of utter negligence of the jail authorities and that “The State government should pay compensation.

Case VII: Interim compensation awarded to the father of custodial death victim in Punjab²⁰¹

On 28 January 2009, the Punjab and Haryana High Court directed the state government of Punjab to pay an interim compensation of Rs 200,000 to Swaranjeet Singh after two years of the death of his son in judicial custody.

Following the custodial death of his 25-year-old son Harinder Singh in Amritsar Central Jail in October 2006, Swaranjeet Singh moved a petition in the court seeking an investigation by the Central Bureau of Investigation (CBI). The petitioner alleged that his son was tortured to death in Amritsar central jail.

The petitioner stated that his son was in “good health and sound physique” when he was produced before a magistrate on 26 October 2006 but the next day at 5.22 pm he was brought to civil hospital and declared dead at 6.30 pm. In the postmortem report external injuries on the body were found by the Department of Forensic Medicine, Government Medical College, Amritsar.

The Punjab and Haryana High Court took cognizance of a letter written to the Court by the victim’s father and an inquiry by the Sub Divisional Magistrate (SDM) of Amritsar was ordered. On the basis of the report of the SDM of Amritsar, the High Court passed a detailed order directing Senior Superintendent of Police (SSP) of Amritsar to register a First Information Report (FIR) against the police and to investigate. The SSP was also directed to file a status report after three months from receiving the certified copy of the order. Pursuant to the Court order an FIR dated 13 July 2007 was registered under Section 302 of the Indian Penal Code at Sadar police station against the jail officials.

But the Additional Chief Judicial Magistrate returned the challan, with concerns over the conduct of the investigating agency. The petitioner filed a contempt

200. HC orders compensation to kin of custodial death victim, *The Hindu*, 28 August 2009 available at <http://www.thehindu.com/2009/08/28/stories/2009082856150300.htm>

201. CUSTODIAL DEATH - Compensation for kin; probe ordered, *The Tribune*, 29 January 2009

petition stating that he was “running from pillar to post for almost two years for justice, but he has neither been given any monetary compensation, nor proper investigation is being carried out.”

This resulted in the interim order of Justice Surya Kant of the High Court to pay interim compensation of Rs 200,000 to the petitioner.

Case VIII: Allahabad High Court orders Rs. 500,000 to family of custodial death victim

On 1 April 2009 the Allahabad High Court directed the State Government of Uttar Pradesh to pay compensation of Rs. 5,00,000 to the wife and two daughters of the victim S.K. Awasthi who was beaten up and ill-treated at Naini Central by the jail authorities during his detention from 22 April – 10 May 2008. The court also directed the State to recover the amount of compensation from employees and officials of the Central Jail, Naini and to expedite the disciplinary proceedings.

Pursuant to an order by a Division Bench of the Allahabad High Court Advocate S.K. Awasthi was taken into custody and was held in Central Jail, Naini on 22 April 2008 to serve a one month imprisonment for contempt of court. On 10 May 2008 S.K. Awasthi was admitted to S.R.N. Hospital, Allahabad. His legs were shackled while at the hospital. On 13 May 2008 S.K. Awasthi died in the hospital.

On 13 May 2008 a Division Bench of the Allahabad High Court passed an order requesting the District Judge to hold an inquiry to find out- (a) as to under what circumstances the death of S.K. Awasthi has been caused, (b) whether S.K. Awasthi during his confinement in jail was manhandled or ill-treated either by the jail authorities or by the jail mates, and (c) what was the reason for shifting him to the hospital and keeping him chained during medical treatment. On 23 June 2008 the District Judge submitted a detail report. In his report the District Judge concluded that –

1. The cause of death of Sri S.K. Awasthi was as a result of a coma caused by an ante-mortem head injury. The head injury was caused by external force and not as a result of any disease.
2. Sri S.K. Awasthi was assaulted and ill-treated on 2.5.2008 in Circle No. 4 of the Central Jail, Naini by Bandi Rakchhak Sri Chandra Shekher but he was not sent to the Jail Hospital either for treatment or for medico legal examination on 2.5.2008. Bandi Rakchhak Sri Chandra Shekhar concealed the incident of assault and torture in his report prepared on the History Ticket.
3. Neither the Deputy Jailer Sri R.S. Yadav nor the Senior Superintendent, Central Jail, Naini, Sri S.K. Sharma, required physical production of Sri S.K. Awasthi on receiving the report of Bandi Rakchhak Chandra Shekhar.

4. Sri S.K. Awasthi was assaulted and tortured in Circle No. 1, Barrack No. 4, Cell No. 6, during the period of his separate confinement and this is where the head injury was inflicted on any day after 8th or 9th May, 2008 or any time within two or three days prior to his death. The jail authorities as also Jail doctors attempted to conceal the injuries.
5. The Senior Superintendent, Central Jail, Naini, the Jailer, the Deputy Jailer Sri Shivji Singh Yadav, and other jail employees posted in Barrack No. 4 of Circle No. 1 on 8-9 May, 2008, were held responsible for the assault and torture.
6. Jail Doctor Sri Ram Gopal Verma prepared fake and fabricated injury report dated 6.5.2008 relating to the alleged injuries of Sri S.K. Awasthi
7. The jail doctors as well as the Senior Superintendent, Central Jail, Naini and the Jailer did not promptly refer Sri S.K. Awasthi to S.R.N. and delayed the matter for about two days without justification.
8. Sri S.K. Awasthi was sent to the S.R.N. Hospital in shackles, and so while hospitalised in the S.R.N. Hospital, in violation of para 798 (b) of the U. P. Jail Manual, Article 21 of the Constitution of India and various decisions of the Hon'ble Supreme Court. The Senior Superintendent, Central Jail, Naini, the Jailer Sri Shobh Nath Yadav, Deputy Jailers Suresh Kumar Maurya, Shivji Singh Yadav and Ravi Kant and Bandi Rakchhaks Subhash Chandra Maurya, Vijai Singh, Surendra Pratap, Krishna Bihari, Akhilesh Dwivedi, Ram Naresh Yadav, Suresh Chandra Tiwari, Dev Nath and Surendra Kumar Patel are responsible for such handcuffing and chaining.
9. Sri S.K. Awasthi was neither handcuffed nor chained nor fettered in any way at the time of his production before the Joint Registrar (Criminal) of the Hon'ble High Court on 8.5.2008 and was also not escorted in the handcuffed and chained condition from the Central Jail, Naini to the Hon'ble High Court and also from the Hon'ble High Court back to the Central Jail, Naini.
10. Sri S.K. Awasthi had no external injury on his head or forehead, and was also not found, by the Doctors of the Hon'ble High Court dispensary, clinically abnormal or unfit at the time of his production before the Joint Registrar (Criminal) of the Hon'ble High Court on 8.5.2008.

II. Judgements awarding punishments

Case I: Sentencing of Sub Inspector Ranbir Singh to 10 years R.I. for custodial death of Dayal Singh²⁰²

On 15 January 2010, the High Court of Delhi set aside the order of acquittal of the trial court and sentenced Sub Inspector Ranbir Singh to 10 years of rigorous

202. The judgment of Delhi High Court dated On 15 January 2010 in Criminal Appeal No.176 of 1995, *State Versus Ranbir Singh*

imprisonment and a fine of Rs.55,000/- for the custodial death of Dayal Singh in 1986 in Criminal Appeal No.176 of 1995. Earlier the lower court had acquitted the accused giving him benefit of doubt.

On 19 September 1986 at 5-30 am, Dayal Singh was picked up from his residence at Govindpuri by Sub Inspector Ranbir Singh in connection with First Information Report (FIR) No.365/1986 under Section 380 of Indian Penal Code at Srinivasपुरi police station for theft of a VCR, some cassettes and sarees etc from the house of Ms. Sumati Jain, resident of 3, Friends Colony, New Delhi. Dayal Singh had worked as Chowkidar (guard) in the house of Smt. Sumati Jain and his service was terminated on 15 September 1986, i.e. the alleged date of theft.

Dayal Singh was tortured at Srinivasपुरi police station on 19 September 1986 in the custody of Sub Inspector Ranbir Singh, Constable Shiv Kumar Tyagi and Constable Mukhtiar Hussain and he died on 20 September 1986 as a result of torture. The victim was taken to All India Institute of Medical Sciences (AIIMS), New Delhi where he was declared “brought dead” at 12.30 A.M. on 20 September 1986.

That the victim died of torture was proved beyond any reasonable doubt. The post mortem conducted by Dr.R. K. Sharma found nine ante mortem injuries on the body.

Dr. R. K.Sharma opined that the cause of death was coma as a result of head injury which was ante mortem in nature and likely to be caused by application of blunt force and was sufficient in the ordinary course of nature to cause death. It has been established beyond doubt from the deposition of the witnesses that there was no injury on the person of the victim when he was first detained.

The Sub Divisional Magistrate conducted the inquest proceedings under Section 176 of Criminal Procedure Code and reported the cause of death in police custody as a result of torture on 20 September 1986. The FIR No.17/1987 under Section 302 r/w Section 120B of IPC was registered on 14 September 1987 in pursuance to Home Secretary, Delhi Administration reporting the cause of death of the victim in police custody pursuant to the inquest proceedings conducted by the SDM.

Sanction was accorded by the competent authority for prosecution of Sub Inspector Ranbir Sharma (the respondent) under Section 304 of IPC. However, charges were framed under Section 302 of IPC (offence of culpable homicide amounting to murder) to which the respondent pleaded not guilty and went to trial. On 17 December 1994, the trial court acquitted the respondent giving him the benefit of doubt.

The government of Delhi appealed against the order of the trial court before the High Court of Delhi. On 15 January 2010, the High Court set aside the acquittal of the lower court and convicted the respondent (Ranbir Singh) for the offence of culpable homicide not amounting to murder under Section 304 Part 1 IPC. He was

sentenced to 10 years of rigorous imprisonment and a fine of Rs.55,000/- out of which an amount of Rs.50,000/- be paid to the next of kin of the victim.

The counsel for the respondent argued that the sanction for prosecution of the respondent was for offences punishable under Section 304 of IPC relating to culpable homicide not amounting to murder and not under Section 302 of IPC under which the respondent was charged. To this the High Court stated,

“We would first like to deal with the last issue itself which is the nature of sanction required to prosecute a police official. In the present case, sanction was obtained. The sanction was for the act/offence committed by the respondent. There could thus be no question of the sanction being confined to a particular provision of the IPC. What is the most material aspect is that no sanction was really required in the present case since the respondent was alleged to have committed offences and such offences could not be said to be done in the course of duty. In this behalf, we may refer to the judgment Prakash Singh Badal & Anr. v. State of Punjab and Ors.; (2007) 1 SCC 1. In a recent judgment in Dalbir Singh v.State of U.P.& Ors.; AIR 2009 SC 167, it has been observed that torture and custodial violence cannot be permitted to defy the fundamental rights under Articles 20(3) and 22 of the Constitution. In CBI v. Dharampal Singh & Anr.; 123 (2005) DLT 592, learned Single Judge of this Court has observed that every act of a policeman of beating and torturing a person is not covered by any protection nor does it form a part of his duties. Thus, the plea has only been stated to be rejected in view of the settled legal position on this account.”

Case II: Sentencing of Head Constable Narender Kumar and Constables Vijay Kumar and Om Prakash in the custodial death of Laxman Singh alias Hanuman in Delhi²⁰³

On 6 March 2009, the Delhi High Court dismissed the Criminal Appeal No. 33/1993 against the judgment of the Additional Sessions Judge under Sections 302/34 of Indian Penal Code.

The Additional Sessions Judge had convicted the three appellants namely Head Constable Narender Kumar, Constable Vijay Kumar and Constable Om Prakash under Sections 302/34 of Indian Penal Code. They were sentenced to life imprisonment and also liable to pay fine of Rs. 5,000/- each. In default of payment of fine, they had to further undergo rigorous imprisonment (RI) of four months.

The appellants Vijay Kumar and Om Prakash were also been convicted for offences under Section 330/34 IPC and were sentenced to undergo R.I. for two years and a fine of Rs.1,000/- each. In default of payment of fine, they have been were sentenced to R.I. for one month.

203. Judgment of Delhi High Court in Criminal Appeal No.33/1993 delivered on 6 March 2009

The appellants filed an appeal before the Delhi High Court. On 1 August 1980, one Laxman Singh alias Hanuman, son of Huba Singh was picked up from Railway Station, Subzi Mandi by the police and was confined illegally in Andha Mugal police post in Delhi until 5 August 1980. Laxman Singh was tortured in the police post in order to extract a confession. On 5 August 1980, he suffered burn injuries. He was first taken to Hindu Rao Hospital and then to LNJP hospital by Assistant Sub Inspector Mool Chand. He died in hospital on 6 August 1980.

But the victim's dying declaration given to PW-7 Sh. R.S. Mahla, who is a judicial Magistrate stated that he was tortured by the police during interrogation. On 5 August 1980 at 10:30 A.M. when he was eating in the police post, Narender Kumar, Head Constable "again gave me beatings and he opened a stove lying nearby and poured kerosene oil over me. Om Prakash and Vijay Singh (both constables) who were present there lifted the match box, lit the match stick and put me on fire." This declaration was recorded by the Metropolitan Magistrate.

The fact of torture is corroborated by the post mortem report which among other things stated that "there are large number of bruises and abrasions on different parts of the body of the victim".

The investigation by the crime branch revealed that the victim was brought to Andha Mugal Police Post by appellants Vijay Kumar and Om Prakash and one person namely Tyagi on 1 August 1980 from Railway Station, Subzi Mandi and was beaten to extract a confession. Following the investigation, the appellants were charge sheeted under Section 302/330/365, 343, 218/120B I.P.C. 9. On 12 January 1984, trial court framed charges for offence under Section 302 read with Section 34 IPC against all the three appellants and in addition, it framed charges under Section 330 read with Section 34 IPC against appellants Om Prakash and Vijay Kumar.

In their statement, the appellants rejected the allegation of torture and setting fire to the victim. All the appellants alleged that they had been falsely implicated. The counsel for the appellants also challenged the authenticity of the declaration of the victim recorded by the Magistrate. The abuse was corroborated by the post mortem report.

The High Court noted that the cause of death given by Dr. Vishnu Kumar (PW25) was as a result of toxanemia and shock consequent upon burns caused by fire. The High Court stated, "The fact that victim was kept in illegal custody in police post Andha Mugal from 1st August, 1980 to 5th August, 1980 has also been duly proved on record. Thus, all the three appellants have been rightly convicted by the trial court and the present appeal is not sustainable and the same is hereby dismissed."

Since the appellants were on bail, the High Court ordered that they be taken into custody to undergo the remaining sentence as awarded by the trial court.

Case III: Madras High Court dismissed Writ Petition of police constable challenging departmental action in a custodial torture case²⁰⁴

On 7 October 2009, a Single Bench Judge of Justice K. Chandru of the High Court of Madras in the case of *P. Viswanathan Vs. Deputy Inspector General of Police and Superintendent of Police* [W.P. No. 36278 of 2006 (O.A. No. 1416 of 1998)] dismissed the petition of P. Viswanathan, police constable who tortured three schoolchildren at Edappadi Police Station for their refusal to clean his motorcycle on 15 November 1994.

On 15 November 1994, at about 12.30 pm, Sivalingam, Senthilkumar and Mohankumar, 8th standard students of Ayilapatty Government High School, were walking near the police station. Police constable, P Viswanathan asked the students to clean his TVS Suzuki Motor Cycle parked there. When the students refused, P. Viswanathan took them to the Edappadi police station and beat them with a bamboo stick indiscriminately. He also stripped them naked and kicked them with his boots. The children were hospitalized following the beating.

Following protests against the torture, the Sub-Collector, Namakkal conducted an enquiry. In the report, the Sub-Collector found P. Viswanathan guilty of stripping the three students and beating them with a stick. The Sub-Collector recommended disciplinary action against P. Viswanathan and his report forwarded to the District Collector dated 23.01.1985.

In July 1997, a punishment of reduction in pay by two stages for two years with cumulative effect was handed down to the constable.

In his petition, P. Viswanathan, a Grade I police constable attached to Edappadi police station, challenged the departmental action against him for the custodial torture of the three students. Further, P. Viswanathan alleged that the Sub-Collector had threatened and procured statements from various persons. In an order dated 12.08.2009, the High Court directed to produce the original file including the report of the Sub-Collector, Namakkal.

Justice K. Chandru observed:

“a perusal of the file clearly showed that after the charge memo was framed, the petitioner had won over the students and their parents. All of them like parrots stated such an incident never had taken place.....”

In its order Justice K. Chandru said:

“This Court is fully satisfied that the evidence recorded by the authorities are sufficient to hold the petitioner guilty. For the misconduct committed by the

204. Judgment of Madras High Court dated 7 October 2009 in the case of *P. Viswanathan Vs. Deputy Inspector General of Police and Superintendent of Police* [W.P. No. 36278 of 2006 (O.A. No. 1416 of 1998)]

petitioner, the respondents have imposed the penalty which commensurate with his misconduct. The statement of the petitioner that the Sub-Collector had threatened and got statements from various persons is wholly uncharitable and was not borne out by any records found out in the file. If at all there was any enmity between the petitioner and the Sub-Collector that was not even pleaded either in his explanation or in his appeal memo filed before the appellate authority.”

Further, Justice K. Chandru observed:

“the Supreme Court while laying down its famous 11 commandments for arrest of any person by the policehas forewarned the need to keep the police force fully sensitised about the constitutional guarantee given to citizens against custodial torture.

Case IV: Two policemen sentenced to life imprisonment in murder case²⁰⁵

On 20 February 2009, a fast-track court of Chitrakoot in Uttar Pradesh sentenced Sub-Inspector Jai Singh Yadav, Constable Harsh Kumar Shukla and another man Baratilal Yadav to life imprisonment after finding them guilty of murder.

On 3 December 2006, Munna Yadav of Dondamafi village in Markundi area had held a First Information Report (FIR) with the Markundi police station alleging that Sub-Inspector Jai Singh Yadav, Constable Harsh Kumar Shukla and Baratilal Yadav killed his uncle Rajaram Yadav at Majhigawan village on 3 December 2006 around 1.30 pm. The policemen allegedly tortured the victim to death after he refused to pay for the liquor the policemen consumed. The accused allegedly beat up the victim with sticks and hit him with rifle butts until the victim died.

On 12 January 2007, the police filed a chargesheet. According to the chargesheet, Baratilal's daughter-in-law Mintu, the nephew of one Ram Milan, village watchman Ram Bhawan and a villager, Rajkali, had witnessed the accused beating Rajaram to death. But apart from Ram Bhawan, all three witnesses denied they were present. The Additional Sessions Judge Lalchand found the three accused guilty of murder and sentenced them to life imprisonment.

Case V: Punjab and Haryana High Court orders prosecution of a Magistrate, 10 policemen including a Deputy Superintendent of Police and 3 doctors²⁰⁶

On 25 September 2009 the Punjab and Haryana High Court ordered the registration of a case against nine police and other officials, including three medical officers, a Sub-Divisional Magistrate and a Deputy Superintendent of Police. The court also directed the State to pay interim compensation of Rs.500,000 to the victim's widow, Khelo Devi.

205. Two cops get life term for murder, The Indian Express, 21 February 2009

206. Book SDM, DSP in custodial death case: HC, The Tribune, 26 September 2009

Justice Mahesh Grover directed the government to register a criminal case against nine respondents, including Deputy Superintendent of Police Pat Ram, Sub-Divisional Magistrate Sujan Singh and medical officers of Rewari General Hospital, Dr P.D. Mehra, Dr J.K. Saini and Dr Ashok Saini. The court also directed the Central Bureau of Investigation (CBI) to carry out further investigations into the case and immediately initiate appropriate proceedings against Nitin Kumar Yadav, then Additional Deputy Commissioner of Rewari district for inaction in the matter.

The case relates to the death of Chhajju Ram, of Manakpur village of Charkhi Dadri area of Bhiwani district of Haryana, who died in the custody of Crime Investigation Agency of Rewari district on 14 July 2005. The victim was picked up and brought to the CIA police post apparently based on statements made by Vinod Sharma, gang leader criminals. The victim was subjected to torture during interrogation. His health deteriorated and he was taken to the Civil Hospital, Rewari, where he died.

The report of postmortem conducted by a board of three doctors - Dr P.D. Mehra, Dr J.K. Saini and Dr Ashok Sani - apparently concurred with the police claim that Chhajju Ram seemed to have died of cardiac arrest. However, a subsequent post-mortem conducted by the Post Graduate Institute of Medical Sciences, Chandigarh stated that injuries found on the body could have caused the death.²⁰⁷

207. 4 years on, nine booked for custodial death, The Tribune, 16 October 2009

8. NHRC's role to combat torture

The National Human Rights Commission (NHRC) was constituted under the Protection of Human Rights Act of 1993 to protect and promote human rights. However, it has failed to effectively address torture and other human rights violations. While it awarded compensation, it deliberately ignored evidence of torture

I. Failure to recognize torture

The NHRC's on a number of occasions has failed to recognize torture despite medical evidence supporting allegations of torture. While considering the cases, the NHRC overly relies on official records (often reports of the security establishment) that it often ignores contrary evidence including medical records.

Case I- Torture of innocent villagers of Gambrikhata village under Gauripur police station and Bangshijhora village under Bagaribari police station in Dhubri district of Assam

On 16 August 2003, ACHR filed a complaint with the National Human Rights Commission against the torture of several innocent people at Gambrikhata village under Gauripur police station and Bangshijhora village under Bagaribari police station in Dhubri district of Assam on 1-2 August 2003. The victims were apparently abused for failing to locate the whereabouts of a militant belonging to National Democratic Front of Bodoland (NDFB).

The NHRC registered the case (Case No. 59/3/2003-2004-AF) and sought replies from the Ministry of Defence, government of India and the Director General of Police, Assam within four weeks. Vide letter dated 1st April 2005, the Inspector General of Police (OSD) forwarded the investigation report conducted by the Superintendent of Police, Dhubri.

The Superintendent of Police, Dhubri investigated the incidents at both Gambrikhata village under Gauripur police station and Bangshijhora village under Bagaribari police station and found that the army tortured villagers at both these villages.

With respect to the events at Gambirakhata village the Superintendent of Police, Dhubri in his investigation report stated that:

“That on the night of 1.8.2003 the army personnel from Kajigaon Camp went to the village Gambirakhata to nab the above active militant. In the next day morning i.e. 2.8.2003, they searched the village for the purpose. During search, they brought some people to Gambirakhata L.P. school field and asked them about the location of the above N.D.F.B. Militant. The local people could not say anything about the location of the above Militant. During enquiry, the local people namely (1) Sri Betendra Nath

Brahma s/o Lt Rajendra Nath Brahma (2) Sri Sebakar Brahma s/o. Lt. Manindra Nath Brahma (3) Sri Utpal Brahma s/o Lt. Subhash Bhrashtra (4) Sri Jundaw Brahma s/o. Lt. Biswajit Brahma (6) Sri Ushat Brahma s/o Shri Chakradhaj Brahma (7) Sri Harsha Bardhan Brahma s/o Loresh Brahma (8) Sri Heramba Brahma s/o Lt. Srimanta Brahma (9) Shri Samar Singh Brahma S/o Lt. Biren Brahma (10) Shri Bijoy Brahma S/o Lt. Paresh Brahma (11) Ramendra Brahma S/o Sri Soni Ram Brahma (12) Pradip Brahma S/o Lt Bijindra Bath Brahma (13) Shri Harendra Nath Brahma all of village Gamirakhata Part-I, P.S. Gauripur Dist. Dhubri (Assam) stated that they had been tortured by the army personnel causing them injuries while they could not say anything about the location of above NDFB Militant. The above injured person namely (1) Shri Betendra Nath Brahma (2) Harendra Nath Brahma (3) Shri Sebakar Brahma (4) Pradip Brahma (5) Utpal Brahma (6) Jundaw Brahma (7) Indra Mahan Brahma (8) Ushat Brahma (9) Harsha Vardhan Brahma (10) Heramba Brahma (11) Samar Singh Brahma (12) Bijoy Brahma (13) Ramendra Brahma took treatment at Dhubri Civil Hospital and Kokrajhar by (sic) district.”

The Superintendent of Police, Dhubri in his report noted that the victims did not report the matter to the police stations “out of fear by the victims from the Army personnel”

With respect to Bangshijhora village under Bogribari Police Station, the Superintendent of Police, Dhubri in his investigation report found that:

“On the night of 1.8.2003, the Army personnel from Kajigaon Camp went to the village Bongshijhora and in the next day morning i.e. 2.8.2003 they searched the village to nab the above militant. During search they brought some people to Monglajhora L.P. School field and asked them about the location of above NDFB Militant. The local people could not say anything about the location of Militant. During enquiry, the locl people namely (1) Jatindra Nath Brahma S/o Lt Suburam Brahma (2) Dasarath Brahma S/o Sukendra Nath Brahma (3) Dayananda Brahma S/o Pabitra Brahma (5) Sontosh Kr. Brahma S/o Lt. Ram Charan Brahma (6) Haricharan Brahma S/o Lt Ram Charan Brahma (7) Phanindra Brahma S/o Moneswar Brahma (8) Karno Brahma S/o Gangaram Brahma (9) Adhir Kr. Brahma S/o Lt. Rupendra Nath Brahma (10) Ramendra Nath Brahma S/o Lt. Bhubendra Nath Brahma (11) Haita Ram Brahma S/o Lt. Bhubendro Nath Brahma all of village Bangshijhora P.S. Bogribari, Dist. Dhubri (Assam) stated that they had been tortured by the Army personnel while they could not say anything about the location of above NDFB Militant. As a result they received injuries on their persons. They took treatment at Kajigaon State Dispensary and one of the injured namely Dasarath Brahma S/o Sukendra Nath Brahma of Bongshijhora took treatment at Dhubri Civil Hospital. Further during enquiry it was also found that many other villagers had been tortured by Army personnel on that day.”

The Superintendent of Police, Dhubri in his report noted that the victims did not report the matter to the police stations “out of fear by the victims from the Army personnel.”

Yet, the Under Secretary to the Government of India, Ministry of Defence vide his letter No. 11(3)/2005-D(AG) dated 21 July 2006 has denied all the allegations of torture against the army personnel on the grounds that “*no report of any nature or torture has been held by the villagers after the alleged incident either with the Civil Police or the Army authorities. Neither has any medico legal case been requested by the concerned hospital or the loals of the area where presumable victims were treated*”.

Strangely, the NHRC gave more weight to evidence of the Ministry of Defence while appearing to ignore the investigation report of the Superintendent of Police of Dhubri which clearly indicted the Army personnel. The NHRC in its final order stated that “*Considering the report sent by Ministry of Defence and in view of the fact that no FIRs have been held at the Police Station by the Villages and no M.L.Cs have been prepared in respect of injured persons, it will be difficult to substantiate the allegations that the Army has unleashed the violence on the innocent villagers of village Gambirakhata and Bangshijhora. The fact that the villagers of both the villages had feigned ignorance about the whereabouts of NDFB Militant who belonged to their village, is indicative of the fact of misplaced sympathy with the Militant outfit. Considering these circumstances, no case is made out regarding the violation of Human Rights and as such close the case.*”

Further it is important to note that the NHRC had failed to give an opportunity to the complainant (ACHR) to submit its comments on the response of the Ministry of Defence. ACHR has challenged the order of the NHRC before the Gauhati High Court [WP(C) No. 4833/2009]

II. Denial of opportunity of being heard

The NHRC regularly closes without fully examining case records. The NHRC has closed at least two cases filed by ACHR in 2009 on the grounds that the ACHR did not submit comments while, in fact, ACHR had submitted its responses.

Case 1- Arbitrary closure of case related to rape of three tribal women by Assam Rifles personnel in Tripura (Case No. 2/23/2006-2007-AF/UC)

On 9 February 2006, three tribal women, including a pregnant woman, were allegedly gang raped by personnel of the 36th Battalion of Assam Rifles during an anti-insurgency operation at Sachindra Roajapara under Chhamanu Police Station in Dhalai district of Tripura.

The Asian Centre for Human Rights (ACHR) on 20 April 2006 filed a complaint with the National Human Rights Commission (NHRC) which the NHRC

registered as Case No. 2/23/2006-2007-AF/UC. On 13 May 2006 the NHRC issued notice to the Secretary (Home), Ministry of Home Affairs, Government of India and Director General of Police, Tripura calling for report within four weeks. Subsequently, the NHRC received a report dated 4 December 2006 from Under Secretary to the Government of India. On 28 June 2006, the NHRC forwarded the gist/copy of the report to ACHR to submit comments within one month. On 10 August 2007 ACHR requested the NHRC to grant 12 weeks time to submit comments which was granted on 31 August 2007 and NHRC asked ACHR to submit comments by 27 November 2007. The ACHR submitted its comments to the report of the Ministry of Defence on 24 December 2007. The reply of ACHR was delivered by hand and the “received” stamp of the NHRC was taken as proof of submission of the reply by ACHR. In its reply ACHR provided details on the flaws in the report of the Staff Court of Inquiry headed by Lt Col Krishna Kumar of 15th Assam Rifles. ACHR argued that because of the flaws the NHRC must reject the report of the Ministry of Defence.

On 13 November 2008, ACHR delivered, by hand, a note to the NHRC seeking the current status of the case as no communication/information had been received from NHRC since submission of the comments. The NHRC failed to reply.

On 27 December 2009 the NHRC vide its letter dated 2 December 2009 informed ACHR that the case had been closed because “No response has been received” from ACHR.

Case 2: Arbitrary shooting at Ms Aiti Bora by a Naga Armed Personnel in Assam

On 23 March 2005, Naga Armed Police (NAP) personnel shot Ms Aiti Bora while she was washing clothes at the bank of Giladhari River in Merapani in Golaghat district of Assam. The bullet hit the victim’s leg and she had to be admitted to hospital.

Asian Centre for Human Rights (ACHR) filed a complaint with the NHRC on 24 March 2005 and the complaint was registered as Case No. 17/3/2005-2006. The NHRC issued notices to Chief Secretary and Director General of Police, Assam directing them to file a report regarding the said incident within four weeks. On 14 June 2008, the Superintendent of Police, Golaghat, Assam submitted his report to the NHRC. The report submitted by the Superintendent of Police, Golaghat, after having made an on-the-spot investigation, concluded that the NAP personnel open fired while they were hunting birds and, shot the victim Mrs Aiti Bora.

On 1 October 2008, the NHRC supplied a copy of the Superintendent of Police’s report dated 14 June 2008 to ACHR for comments. On 13 November 2008 ACHR submitted its comments. The response of ACHR was delivered by hand and a “received” stamp was given by the NHRC. Yet again the NHRC closed the case on 19 February 2009

“.....Since the comments of the complainant have not been received, the Commission assumes that the complainant has nothing further to urge in the matter....”

ACHR has challenged the order of the NHRC before the Delhi High Court [WP (C) No. 8212 of 2009]

III. Failure to comply with Delhi High Court orders

The National Human Rights Commission which is headed by former Chief Justice of India has repeatedly failed to comply with the orders of the Delhi High Court.

The ACHR has filed a number of writ petitions against the NHRC primarily relating to the failure to give equal opportunity of hearing, equal access to the documents and complete disregard of the evidence of torture.

On 8 December 2008 the Hon'ble Delhi Court allowed the prayer of the Asian Center for Human Rights and directed the NHRC to hear the following two writ petitions:

- i. Writ Petition No.9326/2007 pertains to the NHRC Case No. 2422/4/2004-2005 relating to the ACHR's complaint against torture and extortion of one Arjun Paswan of Gaya district of Bihar by the personnel of the General Railway Police at platform no.8 of Patna Junction on 14 September 2004;
- ii. Writ Petition No.9338 of 2007 relates to the NHRC Case No. 44/3/2004-2005-WC with regard to the gangrape of a pregnant Adivasi woman by the three personnel of the 11th Jammu and Kashmir Light Infantry (JAKLI) Regiment of the Army at her residence at Padmapukri village in Kokrajhar district of Assam during the night of 29 June 2004.

The Court had directed Asian Center for Human Rights to produce all relevant materials in these two cases before the NHRC and directed the NHRC to fix date and time to hear the Asian Center for Human Rights..

However, until today, the NHRC has failed to hold any hearing on both these cases.

IV. Award of compensation by the NHRC

The National Human Rights Commission in a number of complaint awarded compensation. The NHRC awarded to the victims in 2009 with regard to the following complaints filed by Asian Centre for Human Rights:

Case I: Compensation for the custodial death of Mukhtikanta Muduli in Balasore Jail in Orissa

On 12 January 2009, the National Human Rights Commission (NHRC) directed the state government of Orissa to pay compensation of Rs 100,000 to

the next of kin of Muktikanta Muduli who died in Balasore Jail in Orissa on the night of 28 August 2007 following torture. The NHRC took up the case (No. 494/18/1/07-08-JCD) following a complaint from the Asian Centre for Human Rights alleging torture of the victim by four jail officials. At the intervention of the NHRC a joint enquiry into the circumstances of death was conducted by the Sub Divisional Magistrate and the Additional Superintendent of Police, Balasore. The joint enquiry found that *“The Warder (Sarbeshwar Das) tied the hands of the prisoner to the iron grill with a lungi at about 00.30.AM. and kept him in standing position. The hands were tied from outside and the prisoner was made to stand inside the cell. He kept standing in that position for more than three hours. At about 3.30 A.M, the Warder on duty observed that the prisoner was motionless.”*

However, the government of Orissa contended before the NHRC that *“the Warder who had tied the hands of the prisoner to the grill had acted in good faith and without malice. His act was not in nocuous and unintentional and his purpose was to bring the unruly prisoner under control. It has been further pleaded that imposition of penalty in the circumstance of the case will have a demoralizing effect on the custodial staff of the jail.”*

But the Commission found no merit in the plea of the state government. In the view of the Commission *“If the prisoner was showing withdrawal symptoms and causing nuisance and discomfort to the other prisoners, there could have been better and civilized ways to control him. The doctor could have been called and he could have been given a sedative. It was utterly inhumane to tie his hands behind him and to keep him standing for more than three hours. As would be seen from the report of IG (prisons) to the Principal Secretary, the probable cause of death was massive heart attack. The post mortem report shows patches on lungs..... The State cannot, therefore, escape its liability for the death of the prisoner.”* The Commission therefore directed the State Government to pay a sum of Rs. 100,000 as monetary relief to the next of kin of victim Muktikanta Muduli.

Case II: Compensation to torture victim, Laldusiana in Mizoram

On 23 March 2005, ACHR filed a complaint seeking the intervention of the NHRC against the custodial torture of Laldusiana, son of Lalfeli of Serchhip by Sub Inspector (SI) J.P. Remthanga alias Pope in Serchhip police station under Serchhip district of Mizoram on 24 February 2005. The victim was beaten up in the presence of his mother Lalfeli and had to be admitted to Serchhip civil hospital and was later referred to Aizawl civil hospital.

The NHRC registered a case (Case No. 1/16/2005-2006) and sought reports from the concerned authorities in Mizoram. A Departmental Enquiry was conducted by the Sub Divisional Police Officer, who tried to protect the accused. The Departmental Enquiry report No.E/RC-72/SP(S)/2005/502 dated 8 November 2005 sent to the NHRC by the Superintendent of Police, Serchhip stated among

others that *“The Enquiry Report could not ascertain the facts while all the witnesses examined stated that SI J.P.Remthanga had beaten the accused person on his palms and sole two times each. The victim and his mother stuck to their allegations.”* ACHR representatives met the victim Laldusiama and his mother Pi Lalfeli in Serchip and confirmed the allegation of torture. Subsequently ACHR submitted detailed comments on the report of the SP, Serchip.

Satisfied with the reply of ACHR, the NHRC vide proceedings dated 2.12.2008 recommended payment of Rs. 25,000/- to victim Laldushiana, as immediate interim relief by the State Govt. of Mizoram within 6 weeks. Pursuant to the directions of the Commission, Deputy Secretary to the Govt. of Mizoram, Home Department vide letter dated 17.2.2009 submitted compliance report along with proof of payment.

Case III: Compensation to minor rape victim in Jammu and Kashmir

On 9 June 2008, ACHR filed a complaint seeking the intervention of the NHRC against the kidnapping and rape of a 17-year-old girl by constable Shabir Ahmed and his accomplices in the police residential quarter in Jammu in the state of Jammu and Kashmir on 1 June 2008. The NHRC registered a case (Case No. 50/9/5/08-09) and directed the authorities to investigate. The report of the Senior Superintendent of Police, Jammu *“confirmed the allegation made in the complaint stating that FIR No. 100/2008 under section 363, 366A, 342, 376, 109, 354 & 511 RPC had been registered against Shabir Ahmed and his two accomplices and that after completion of the investigation chargesheet had been filed in the court on 11.07.2008.”*

Despite notice and subsequent reminder, the state government of Jammu and Kashmir failed to submit its reply to the NHRC. Hence, in its direction of 8 July 2009 the Commission presumed the state government had nothing to argue and directed it to pay compensation of Rs. 200,000 to the victim.

Case IV: Compensation of Rs 100,000 in the case of custodial death of Abdul Latif Malik in Jammu and Kashmir

In the case of custodial death of Abdul Latif Malik (48/9/4/08-09-AD) at the hand of the Jammu and Kashmir police, the next of kin of the victim were provided Rs 100,000 ex-gratia relief at the intervention of the NHRC following a complaint from ACHR.

In its complaint dated 11 June 2008, ACHR alleged that Abdul Latif Malik was picked up by the police on the morning of 7 June 2008 and killed in custody. However, the police claimed that Malik had confessed to his connection with Laskher-e-Toiba (LeT) and when the police were taking him to the hideout where he had hidden an IED, he jumped from a hill top to escape from the custody. He was taken to hospital where he died.

Pursuant to the intervention of the NHRC, the Magisterial enquiry report revealed that “Abdul Latif had no connection with militants” and recommended grant of ex-gratia to the next of kin of the victim. The post mortem report found 12 injuries on the victim’s body. With the intervention of the NHRC the District Level Screening and Coordination Committee 2 January 2009 approved grant of ex-gratia relief of Rs.100,000 to the next of kin of the victim.

Case V: Compensation of Rs 500,000 in the custodial death of Mohan Lal in Jammu and Kashmir

On 4 September 2009, the NHRC directed the state government of Jammu and Kashmir to provide compensation of Rs 500,000 to the next of kin of Mohan Lal, a rickshaw puller who was tortured to death in Jammu in July 2003. The NHRC had registered a case (Case No. 55/9/2003-2004-AD/UC) on the basis of a complaint filed by Asian Centre for Human Rights (ACHR) on 9 July 2003. In its complaint ACHR stated that the victim was picked up by Jammu Police from Amritsar, Punjab for his suspected involvement in connection with cases of burglary and was tortured to death.

The state government of J&K denied in its communication dated 24th December 2003 that Mohan Lal was tortured in custody. It claimed that he was released on 22 June 2003 and that he died of “dehydration and infection”. However, the post mortem reports contradicted these claims. The first post mortem of Mohan Lal conducted at Jammu found 16 ante mortem injuries but the second post mortem conducted at Amritsar revealed 41 ante mortem injuries including incise wounds, blisters and electric current marks. In its order dated 4 September 2009 while recommending Rs 500,000 compensation to the next of kin of Mohan Lal, the Commission stated –

“Ante mortem injuries like electric current marks and blisters which are reflected in the second post mortem report prepared at Amritsar, indicate torture of the worst kind. Merely because a person is suspected of involvement in incidents of theft, the investigating agency is not entitled to treat the suspect in such cruel manner. Passing of electric current through a human body in order to elicit information about the crime like burglary is against all canons of civilized investigation. It is a flagrant violation of human rights.”

Case VI: Compensation of Rs 200,000 to Nipul Saikia tortured by army in Assam

On 16 October 2006, ACHR filed a complaint before the NHRC (Case No. 91/3/2006-2007-af) alleging torture of an innocent farmer named Nipul Saikia, son of Moneswar Saikia, resident of Khowang in Dibrugarh district of Assam by army personnel at the Tiloi camp during illegal detention on 9 - 12 October 2006. On 9 October 2005, Nipul Saikia was picked up from his house by personnel of 11th Guards Regiment from Tiloi camp on charges of being connected to the

United Liberation Front of Asom (ULFA) and subjected to torture in custody. The NHRC upheld the allegations of ACHR and directed the Ministry of Defence to pay compensation.

In response, the Under Secretary, Ministry of Defence, Government of India, vide his reports dated 14.10.2009 and 4.11.2009 submitted the compliance report stating that an amount of Rs. 2 lakhs has been paid to Nipul Saikia as compensation on 30.6.2009 and submitted the proof of payment.

Case VII: MHA asked to pay compensation to torture victims in West Bengal

On 2 December 2009, the NHRC directed the Ministry of Home Affairs to pay a compensation of Rs 500,000 to the next of kin of the victim, Masud Rana Sarkar (19 years) and Rs 50,000 each to those injured in the assault by the Border Security Force (BSF) personnel in South Dinajpur district in West Bengal. Rana was tortured to death by the BSF personnel on 5 March 2007 and three others were injured in the assault. The NHRC took up the case (Case No. 180/25/18/07-08-PF) after it received a complaint from ACHR on 20 March 2007 alleging torture of the the family of Latifur Rahman Sarkar resulting in the death of his son, Masud Rana Sarkar (19 years) by the personnel of 72nd BSF at Daudpur village under Kumarganj police station in South Dinajpur district on 5 March 2007.

The General Security Force Court (GSFC) of the BSF exonerated all five accused BSF personnel who were tried for committing offences under Section 45 of BSF Act and rules i.e. ‘committing a civil offence’ read with Sections 302 and 323 Indian Penal Code i.e. ‘culpable homicide amounting to murder’ and ‘voluntarily causing hurt’. The Director General of the BSF requested the NHRC to close the case without providing the grounds for the exoneration.

However, the Magisterial Enquiry Report submitted by the District Magistrate, South Dinajpur clearly established that a group of BSF personnel caused grievous injuries to the victims, including two women and the victim died as a result of the injuries. Based on the magisterial inquiry, the NHRC recommended to the Ministry of Home Affairs to pay compensation to the victims and submit proof of payment and compliance report within six weeks.

9. Scrutiny by United Nations

The UN Special Rapporteur on Torture in his report to the UN Human Rights Council raised the following cases of torture transmitted to the Government of India.

91. 05/03/09 AL TOR

Mr. M. S., approximately 28 years old, residing at Char Parashpur, Sushil Colony, Murshidabad District. On 28 December 2008, Mr. S. went to the Border Security Force (BSF) Camp at Outpost No. 1, 90 Battalion, B Company in Farajipara, to deposit the ration slip for a bag of rice he had bought from the ration dealer.

However, the BSF personnel did not allow him to carry the rice, seized it from him and tore his ration slip. Mr. S. was detained at the Outpost from 10:30 a.m. to 5:00 p.m. At around 5:00 p.m., Mr. S. inquired as to the reason for his detention, but he was hit by BSF personnel with wooden sticks, which made him fall to the ground. At that time, other personnel started beating him with their boots, resulting in black spots all over his body and bleeding from his penis. The BSF personnel then ordered Mr. S. to run away or they would kill him. He tried to run, but was unable to do so because of his injuries.

He was reportedly helped by other villagers, who took him to see a doctor, and then to lodge a complaint at the Jalangi Police Station. The police officers referred the victim to the Sadikhan Diar B.P.H.C. Hospital for treatment. Mr. S. was discharged from the hospital on 1 January 2009. On 8 January 2009, Mr. S. went to the Jalangi Police Station to lodge a complaint, but the police officer on duty refused to take the written complaint. On 9 January 2009, he lodged a written complaint before the District Magistrate and the Superintendent of Police in Murshidabad. A criminal case was reportedly opened against the accused BSF personnel.

By letter dated 30/07/09, the Government indicated that the investigation into the matter has shown that neither the local civilians nor the Village Council members are aware of such an incident. Further, the complainant has denied any such incident in a written statement submitted in the presence of the Village Council members. He also confessed that he made a false complaint against the BSF and was withdrawing it.

92. 06/06/09 JUA HLTH; TOR

Mr. Roy Varghese, 51 years old. Mr. Varghese was sentenced to ten years' imprisonment for drug trafficking in 1992. In 2001, he was admitted to a psychiatric hospital and diagnosed with schizophrenia. Although he completed his sentence, he was not released from the hospital because he needed additional treatment.

In 2003, Mr. Varghese allegedly set two patients on fire, causing their deaths. He was charged with murder, but was pronounced unfit to stand trial. Since then, he has been held in solitary confinement at Central Jail, in Jaipur, Rajasthan.

He has also been deprived of his necessary medical treatment. On 9 February 2009, a complaint was filed with the Director General of Prisons, calling for a report on the case, but no response has yet been received.

93. 13/08/09 UA TOR

Arrests following a police shootout in Imphal, Manipur.

There have been ongoing protests following a police shootout which took place in Imphal Town on 23 July, where a pregnant woman and a minor were reportedly killed, and five others were injured. On 4 August, as a reaction to the protests, the Manipur Government imposed a curfew in the Manipur valley. Mr. Karam Sunil, Mr. Phurailatpam Deban, Mr. Dayananda Chingtham, Mr. Thounaojam Naobi and Mrs. Leimapokpam (ongbi) Nganbi, all leaders of the Working Committee of the Apunba Lup were arrested on 5 August. The arresting authorities did not have arrest warrants and they also seized their mobile phones and vehicles. First Instance Reports were filed against all five detainees for unlawful activities. Three human rights defenders, Mrs. Phanjoubam (ongbi) Sakhi, Mrs. Lourebam (ongbi) Nganbi and Mrs. Yumlebam (ongbi) Mema were also arrested and taken to the Imphal Central Jail. The police arrested an unconfirmed number of people, for allegedly defying the curfew. However, there were claims that people were arrested at their homes and were not involved in the demonstrations. Out of those who have been arrested, about 100 are believed to have been injured by the police. Mr. Naorem Prakash of Langthabal had one of his eyes removed, and two other men are struggling to regain their eyesight as a result of alleged gunshots fired by the police.

94. 24/09/09 JUA FRDX;

HRD; IND; TOR

Arrests of **Mr. Jiten Yumnam, Ms. Longjam Memchoubi, Mr. Likmabam Tompok, Mr. Amom Soken, Mr. Irom Brojen, Mr. Thiyam Dinesh, Mr. Chung-shel Koireng, Mr. Taorem Ramananda and Mr. Samjetshabam Nando**. Mr. Yumnam, is a member of the Coordinating Committee of the Asia Pacific Indigenous Youth Network (APIYN) and Joint- Secretary of Citizens' Concerns on Dam and Development (CCDD). Ms. Memchoubi is a member of Apunba Lup and president of the Poirei Leimarol Meira Paibi Apunba Lup. Mr. Tompok, Mr. Soken, Mr. Brojen, Mr. Dinesh, Mr. Koireng and Mr. Ramananda are members of the All Manipur United Clubs' Organization (AMUCO) and Mr. Nando is a member of the All Manipur Ethnical Socio-Cultural Organisation (AMESCO).

On 14 September 2009, at approximately 12:30 p.m., Mr. Yumnam was arrested at Imphal Airport in Manipur, while on his way to a regional meeting on climate change in Bangkok, Thailand. Police also confiscated his laptop, digital camera, passport and approximately 500 USD in cash.

On the same day, at approximately 3:15 p.m., Mr. Tompok, Mr. Soken, Mr. Brojen, Mr. Dinesh, Mr. Koireng, Mr. Ramananda and Mr. Nando were arrested at AMUCO's head office in Kwakeithel by a combined team of Imphal West police and Singjamei police. Mr. Jiten Yumnam's family members went to the police station, but the police denied any report of his arrest.

On 15 September, Mr. Yumnam, Mr. Nando and the six previously mentioned members of AMUCO were presented before the Additional Chief Judicial Magistrate in Lamphel and subsequently remanded in police custody until 29 September. They have reportedly been charged with 'attempting to wage war' and 'conspiring to commit offences against the state', of violating Section O of the Official Secret Act by leaking information to others and unlawful association and other related offences. During his detention, Mr. Jiten Yumnam was allegedly subjected to electric shocks to extract information from him. At approximately 5 p.m. on the evening of 15 September, the eight detainees were reportedly taken to J.N. Hospital at Porompat, Imphal East where they underwent a medical examination.

The medical certificate concerning Mr. Yumnam stated that he had been treated for electric shocks. After the examination, the detainees were taken back to the Imphal Police Station.

On 25 August, Ms. Memchoubi was arrested at her home by the Manipur Police. She was presented before the Chief Judicial Magistrate in Imphal and subsequently remanded in police custody for fifteen days.

95. 6/10/09 AL TOR

Mr. Abhijit Adhikari. On 14 May 2009, three Border Security Force (BSF) officers from Outpost No. 8 went to Mr. Abhijit Adhikari to look for him. After his mother denied that he was there, they entered the home and forcibly dragged him out of the house, while beating him. They took Mr. Adhikari to the Angrail BSF Camp and tied him to a tree with an iron chain.

The next morning, he was beaten with sticks and forced to lie on the ground while the officers kicked his back, waist, buttocks, and chest. The same day, Mr. Adhikari was sent to the Custom Office, Petrapole Circle, North 24 Parganas, where he was forced to sign some blank papers. He was released after his family paid Rs. 1000 as a bribe. He remained in the hospital for two days.

Mr. Adhikari's mother tried to lodge a complaint at Caighata Police Station, but the duty officer refused to take the complaint. The second officer also refused. On 15 May, she submitted a written complaint before the Sub-Divisional Police Officer. On 17 June, Mr. Adhikari's mother received a notice (C No. VIII (II) 41- EXP/PTP/09-10), stating that Mr. Adhikari had been arrested on 15 May for not producing any valid document for some cattle he had bought.

96. Followup to earlier cases

Motahir Ali Tapadar, (A/HRC/10/44/Add. 4, 82).

By letter dated 19/01/09, the Government indicated that the concerned authorities conducted an investigation into the case of the alleged death due to torture of Mr. Motahir Ali Tapadar. They reported that on 20 September 2007, after a minor quarrel with a neighbour, Mr. Motahir Ali was taken into custody by Sub Inspector Mr. Narayan Tamuli. He sustained injuries during his detention. The next morning, he was taken to the Primary Health Centre and then to Silchar Medical College, where he passed away. Mr. Mohatir Ali's body was later handed over to his relatives. An inquiry was subsequently conducted by the Additional District Magistrate of Silchar. Further, a police case was registered at the Kotigorah Police station against the erring police officials and is presently being tried in the Court.

97. Excessive use of force by the security forces in confronting demonstrations in Jammu and Kashmir. (A/HRC/10/44/Add. 4 para. 84).

By letter dated 24/06/09, the Government indicated that the state of Jammu and Kashmir witnessed prolonged agitations on a local subject matter within the purview of the state administration. The disturbances that occurred between June and August 2008 were democratic protests and their confrontational nature was handled by the state authorities as part of the management of law and order. The agitators at times turned into violent and unruly mobs, so the police had to use legitimate force to disperse these crowds in order to save lives and public property, and to maintain public order. The action taken by the security forces was minimal, with the sole aim of maintaining law and order in a civil society. It was fully justified in order to prevent greater harm to the public good at large.

98. Neel Kumar Mondal (A/HRC/10/44/Add.4, para. 85).

By letter dated 29/12/09, the Government indicated that the deceased was a sharecropper who had a bad reputation and often indulged in illegal activities. On 1 June 2008, he was a part of a group of cattle smugglers spotted while they moved cattle towards the India-Bangladesh border. When challenged by BSF constables, they fired back with improvised firearms and a countrymade bomb. The BSF was then compelled to open fire. The subject died on the spot. The spot where the subject died, far from where he worked as a sharecropper, is a prohibited area at night.

99. Mr. Brindaban Sumar (A/HRC/10/44/Add. 4 para. 87).

By letter dated 12/02/09, the Government indicated that the alleged torture and mistreatment of Mr. Brindaban Kumar, which had been registered at the local police station, has been disposed of by the local court on account of a compromise petition by the complainant and an amicable settlement on the case.

100. Sabir Ali, Iqbal Shahi, Ms. Anisa Abdul Jabbar, Muhammad Allaudin Syed, Ms. Zill Gohar, Asad Gohar, Muhammad Ashfaque, Ms. Shaista Gohar, Ayoub Gohar, Muhammad Irshad, Muhammad Sajjad Babar, Ms. Shabana Gohar, Zaheer-ud-din 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 Ikhlaiq, 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., (A/HRC/7/3/Add.1, para. 83).

By letter dated 12/02/09, the Government indicated that after due consideration, a decision was taken to deport 67 Pakistani nationals. The decision was taken after extensive consultations during which no wellfounded evidence was discovered that could suggest any systematic persecution of these Pakistani nationals in Pakistan. Neither the Human Rights Commission of Pakistan nor any major internationally-recognized human rights organisations had drawn attention to any systematic persecution of Mehdi Foundation International of Pakistan. As per existing bilateral Protocol on Consular Access signed between India and Pakistan, consular access was provided to these 67 Pakistani nationals during which the Pakistani High Commission in Delhi confirmed their nationalities and provided them with travel documents.

Even though the necessary arrangements had been made to release and repatriate these Pakistani nationals on 18 November 2008, they could not be repatriated due to a stay granted by the Honourable High Court of Delhi on their deportation. The matter is sub judice.

101. Zecharias Abraham and Mikias Mekonnen,

(A/HRC/7/3/Add.1, para. 67).

By letter dated 21/08/09, the Government indicated that a case was duly filed at the Chennimalai police station and an investigation was carried out. Subsequently, a charge-sheet was filed against the accused, who was later found guilty by the Judicial Magistrate, Perundurai and punished with a fine.

102. Amit alias Montu Babubhai Dabhi, (E/CN.4/2006/6/Add.1, para. 87).

By letter dated 25/06/09, the Government indicated that on the basis of a statement by the complainant, Mr. Amit alias Montu Babubhai Dabhi, a case was duly

registered at the Bapunagar Police Station under the relevant sections of the Indian Penal Code against a police inspector and three police constables. The offence was investigated by the Police, where it was established that the allegations were baseless and false and the matter was dismissed.

103. Ramesh Rajendra, (E/CN.4/2005/62/Add.1, para. 725).

By letter dated 19/01/09, the Government indicated that on 6 April 2005, Mr. Rajendran was taken into custody and taken to the Kollam Police Station, where he sustained injuries during his detention. He was then taken to the District Hospital, Kollam, where he was declared dead. An autopsy was later conducted and the body handed over to his relatives. A case was registered at the Kollam Police Station against the concerned police authorities and its investigation was authorized first to the District Superintendent of Police and then to the Crime Branch of the Central Investigation Department. Based upon the conclusions of the inquiry, the two accused police constables were suspended, arrested and produced before the Judicial Magistrate Court. They were remanded to Sub Jail and later released on bail. Other senior police officers were suspended from duty and disciplinary action was taken against them. Further, a financial assistance of Rs. 1,000,000 (USD 2500 approx.) was immediately granted to the mother of the deceased.

104. Mr. Sahadevan (A/HRC/4/33/Add.1, para. 80).

By letter dated 23/06/09, the Government indicated that the facts of the complaint are inaccurate. Mr. Sahadevan is a prime accused, along with others, in a formally registered case in Mannuthy Police Station, Kerala (Case No. 68/06). Mr. Sahadevan was arrested on 5 February 2006 at Mulayam junction and produced before the court on 6 February, following which he was remanded to judicial custody. He was neither detained in any unauthorized manner nor ill-treated while in police custody. The accused did not lodge any complaint before the magistrate alleging ill-treatment.

105. Mr. Sahadevan (A/HRC/4/33/Add.1, para. 80).

By letter dated 23/06/09, the Government indicated that Mr. Sahadevan is a prime accused in registered case 68/06 in Mannuthy Police Station, Kerala, since he trespassed into another man's home, brutally assaulted him and his family members, damaged property and outraged the modesty of his wife. Mr. Sahadevan was arrested on 5 February 2006 at 10:00 p.m., following which he was remanded to judicial custody. Mr. Sahadevan was neither detained in any unauthorized manner nor ill-treated while in police custody. None of the accused lodged any complaint before the magistrate alleging any ill-treatment.

Annexure I: Torture of Mr Joel Elliot, an American freelance journalist and the plight of Indian aam admi

The photographs in the cover page of this publication are of Mr Joel Elliot, an American freelance journalist who was beaten up by personnel of Delhi Police at Jungpura in South East Delhi in the early morning of 6 October 2009. The police claimed that Mr Elliot was trying to steal a taxi in an inebriated condition and beaten up by the local people of the area. However, as Mr Elliot stated in his statement that he was subjected to torture in police custody. The photographs are self-explanatory.

Based on the statement and photographic evidence, Asian Centre for Human Rights filed a complaint with the National Human Rights Commission of India on 12 October 2009 among others demanding prosecution of the guilty and award of compensation of US\$ 500,000.

The NHRC has registered the case (No. 2989/30/8/09-10), and on 29 October 2009 issued notice to the Commissioner of Police, New Delhi calling for a report within four weeks. Over five months have passed since the notice was issued by the NHRC, as of 8th April 2010 states that “Response from concerned authority is awaited.”

If an American journalist can be subjected to such torture in the capital of India, one can imagine the plight of the Indian “Aam Aadmi”.

As this report goes for the print, The Hindustan Times (8 April 2010) published photograph of one Mr Vinod Sharma who was killed in police custody at Gulabi Bagh showing that both his eyes were blackened and swollen with frozen blood – proving that he was brutally boxed before he died.

Annexure IA



National Human Rights Commission, New Delhi, India

Case Details of File Number: 2989/30/8/09-10

Diary Number	112586
Name of the Complainant	SUHAS CHAKMA, DIRECTOR
Address	NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE, C-3/441-C, JANAKPURI WEST DELHI , DELHI
Name of the Victim	JOEL ELLIOT, AN AMERICAN NATIONAL AND JOURNALIST
Address	SECOND FLOOR, N-31 B, JUNG PURA EXTENSION, SOUTH DELHI , DELHI
Place of Incident	JUNG PURA SOUTH DELHI , DELHI
Date of Incident	10/6/2009
Direction issued by the Commission	Issue notice to the Commissioner of Police, New Delhi calling for a report within four weeks.
Action Taken	Notice Issued
Status on 4/8/2010	Response from concerned authority is awaited.

Note: For further details kindly contact **National Human Rights Commission, Copernicus Marg, New Delhi, PIN 110001 Tel.No. 23385368 Fax No. 23384863 E-Mail: covdnhrc@hub.nic.in**

Disclaimer: Neither NHRC nor NIC is responsible for any inadvertent error that may have crept in the Complaint Information being published on NET. The Complaint Information on net is for immediate information to the Complainants/ Victims.

Annexure IB

Press Statement

The Caravan Asks for Investigation of Delhi Police's Assault on its Journalist

We at The Caravan magazine strongly demand that justice be done to our staff writer, Joel Elliot, an American national, who was assaulted by the Delhi Police personnel in uniform in the early morning of October 6, 2009. The police have alleged that Mr. Elliot was trying to steal a taxi, but we highly doubt their story and demand a thorough investigation into this matter. We believe Mr. Elliot was unjustly tortured and inhumanly treated by the police (a few photographs of the torture are attached with this statement, where marks of bamboo batons on his thighs, stitches on his forehead, broken front tooth etc. are clearly visible).

Mr. Elliot has been working with us since May 2009, and he is a journalist of high integrity and good professional conduct. We demand a high-level inquiry into the harassment faced by Mr. Elliot and appropriate justice on the basis of results of the inquiry. Attached below is also the statement of Mr. Elliott.

Anant Nath
Managing Editor
The Caravan
Delhi Press
New Delhi



Oct. 8, 2009

Statement of Joel Elliott about the night of Oct. 5 and the morning of Oct. 6

Background: I am a journalist working for The Caravan, a narrative journalism magazine run by Delhi Press. I also freelance for a number of publications, including The New York Times, The Christian Science Monitor, San Francisco Chronicle and Global Post. I hold a Bachelor of Science degree in Journalism from Toccoa Falls College in Georgia, USA. My work has won a number of state, regional and national awards in the United States.

Narrative:

On the evening of Oct. 5, I visited the home of Kate Webb and Ryan Fletcher, two freelance journalist friends of mine who were flying out to London at 5 the next morning. My own flight, to the United States, would leave in a few days hence, and so we wanted to spend one more evening together as we three would not see each other again for quite some time. Their home is in Jangpura Extension, as is mine. We are separated by some six or seven blocks, perhaps eight.

I became tired sometime around 2 a.m. Oct. 6, and set out on foot, alone, to my home. As I was walking in the darkness, I came around the corner of a building and walked literally into the middle of an altercation between at least four Delhi Police Officers, in uniform, beating a person beside the street. As I had not been paying attention, one police officer's baton struck me, perhaps by accident, while he was beating the other person on the ground. Startled, I shouted. When I realized what was happening to the person on the ground, I shouted again. The police officer closest to me turned and advanced, shouting something in a language I did not understand. I shouted back, saying they couldn't just beat people in the street. In the middle of the exchange, the officer swung his baton and struck me in the left upper arm area and began to raise his baton to strike again. I struck him in the jaw, and as he reeled back, turned and fled, turning off of the way to my home, as the officers were in the way. They gave chase, but I had somewhat of head start, and it was quite dark, so I was able to evade their line of vision for a time. It took me a few moments to find my way back to a road that I recognized. The problem was that they could easily catch me in their mobile command post. I began searching for a hiding place, and the most obvious places were in the row of cars parked along the left-hand side of the road. I slowed to a fast walk, trying door handles to see if one were unlocked. I was hoping I could hide inside one of the cars until the police passed, since I was afraid they found me. Door after door I tried, to no avail. The last car I tried was an Ambassador cab – I had been particularly hopeful about this car, because it had darkened windows. However, I had apparently chosen a car near Bhogal Market that was parked next to a guard, or a driver, because someone came out of the shadows shouting. I tried to explain I wanted a hiding place, not to steal a car (after all, my home was only five or six blocks away – why would I need a taxi?). But the man was shouting in a language I did not understand, and apparently did not understand me, either. His shouts alerted the police, who were already in pursuit, as was mentioned before, and they arrived quickly and surrounded me. Advancing quickly, they began beating me with their batons. In self-

Joel Elliott

defense, I swung at, and connected, with a few of them, but I quickly went down beneath a rain of blows on my head, back, arms, thighs, shins, buttocks and ankles. The beating continued for some time after I had fallen.

They shackled my arms behind my back, so tight that to this date I have drastically reduced sensation in my left thumb. Then they shackled my ankles together and threw me bodily into the back of the mobile command vehicle. Three officers climbed into the rear compartment with me, and resumed beating me, this time with their fists. They also slammed my face into the seat and into the floor, which action I was unable to resist, since my hands were shackled behind my back.

After some time we arrived at what I later learned was the AIIMS Hospital. At the time, however, I was not aware of location, because the officers had continually slammed my head down, and I was unable to see out of the windows for some time. They threw me from the rear of the truck, and I landed on the asphalt hard, without being able to catch myself. Unable to walk, I found the skin being removed from my knees and lower body as the officers hoisted me up by my arms behind my back and dragged me into the hospital entry way. Again, at this point I had no way of knowing where I was; I believed I was in the police station. When a nurse emerged with a hypodermic needle, I began screaming for help and for someone to call the US Embassy. After the officers' rough treatment of me, I was afraid of what the syringe contained. As far as I knew, the woman was an employee of the police department. No one explained to me in English what was happening. I struggled, the officers held me down, and I finally was forced to be injected by an unknown substance – one that later turned out to be a sedative. When the injection was complete, the officers again picked up my upper body and dragged me across the concrete floor and parking lot back to the truck.

Once inside the truck, the three officers in the rear continued to strike me in the face and head as we rolled to the police station.

At the police station, the officers hauled me out of the rear of the truck and tossed me to the ground, still shackled. I began again screaming for someone to call the US Embassy to report this beating and continued torture. I lay like this for perhaps two hours.

After 15 or 20 minutes of my shouting for help, an officer came out and began kicking me, apparently angered by my calls for help. He did this one or two more times, as I still continued calling for help. After an hour or two had passed, several officers came out and dragged me into the police station, still scraping my lower body across the concrete. They threw me into a holding room with a concrete floor. I lay like this for perhaps a couple of hours, still shouting for someone to call the US Embassy.

Two officers came in two or three times and kicked me while I was lying on the floor, apparently to make me be quiet. In between these instances, they targeted the other person in the room, a young Indian man of perhaps 17 who had been sitting quietly near a table along the wall. One two or three occasions, two officers entered the room, and one held him down on the table while the other beat the soles of his feet with a baton. The young man screamed, but the beating went on and on.

I am not sure whether this was the same young man I saw being beaten earlier in the morning.

Around 9 a.m., the police asked for my street address and called for my flatmate to come and get me. At no point during the six or seven hours they had held me did they offer me any food or water. At no point did they offer me the opportunity to make a phone call. At

Joel Elliott

no point until my release did they unshackle me. At no point did they contact the US Embassy, according to the Embassy itself. The police are required to notify the US Embassy the moment a foreigner is arrested.

My flatmate took me to the hospital for treatment. I was covered in blood from head to toe from the police beating. My pants, which were still on me, were torn to shreds, and covered in blood. My shirt had been torn from my body. The hospital staff, concerned about the gaping wound to the side of my head and blood clots in my right eye, combined with the massive bruising across the whole of my body, kept me at AIIMS Hospital for two days and one night. I received five stitches to my eyebrow.

Conclusion:

I request a thorough inquiry into the six to seven hours of beating and torture I endured at the hands, feet and batons of Delhi Police. I request that the police officers responsible be removed from their positions.

Further, I seek \$500,000 US dollars in compensation for pain and suffering and mental anguish the Delhi Police inflicted upon me.

Date: October 8, 2009

Time: 4 p.m

Place: New Delhi

India address: Second floor, N-31 B, Jungpura Extension, New Delhi

Mobile number: 09654023864

Joel Elliott

Annexure IC



Published on April 08 2010 ,Page 5

Physical torture killed man: Report

GULABI BAGH POLICE Relatives of deceased say body had torture marks, stab wounds; case report submitted to NHRC (Both his eyes were blackened and swollen with frozen blood -- proving that he was brutally boxed before he died.

SUNIL SETHI Vinod Sharma's cousin
Jatin Anand jatin.anand@hindustantimes.com
NEW DELHI:



• Shyam Murti Sharma's mother outside the mortuary in Delhi on Wednesday.
SUSHIL KUMAR / HT PHOTOS



• Vinod Sharma is survived by his wife and daughter.

A day after the owner of an eatery in Gurgaon was allegedly picked up by police and died under mysterious circumstances at the Gulabi Bagh police station, preliminary medical examination of the 35-year-old (Hindustan Times has exclusive pictures of his body) has attributed the death to physical torture.

"Though the official report is expected to be tabled before the Metropolitan Magistrate on Wednesday, prima facie it seems that Vinod Sharma was subjected to sustained physical trauma leading to his death," said a source close to the three-member medical panel instituted to undertake a post-mortem examination in the case.

Sharma's family members said initial medical reports are opposite of what the Delhi Police said -- Sharma died after suffering an internal injury in his head that he sustained during a drug-induced road accident.

"Both his eyes were blackened and swollen with frozen blood -- proving that he was brutally boxed before he succumbed to his injuries," said Sunil Sethi, Sharma's cousin, as he anxiously waited outside the Maulana Azad Medical College mortuary on Wednesday.

"While his temple has a nasty bruise, two stab wounds -- one on his neck and the other on the right side of his chest -- are clearly visible," alleged Sethi.

Meanwhile, the family of Shyam Murti Sharma (24), who the police claimed was Vinod's partner in crime, denied the police allegation that the duo had been behind a spate of crimes in the city in early April.

"How could Shyam and Vinod have been behind the car snatching in Dhaura Kuan when Shyam left our Jammu home for Delhi on the night of April 3?" asked Shyam's brother Anil Sharma (26), who is pursuing his MBA from Jammu University.

Police said Shyam Murti was produced at the Tis Hazari courts on Tuesday and was in judicial custody at the moment.

"This was the second time that the small town boy from Jammu had come to Delhi. How could he have had the courage to indulge in crime here?" The police, however, chose to remain tight-lipped on the issue.

"A report on the case had been submitted to the NHRC on the very day that the incident took place," said a senior police officer, requesting anonymity.

Joint Commissioner of Police (Northern Range) Karnail Singh said, "We will take strict action against the police officers concerned if the police's version of the incident turns out to be incorrect."

ASIAN CENTRE FOR HUMAN RIGHTS

(ACHR has Special Consultative Status with the UN ECOSOC)

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