

# NEED FOR A NATIONAL LAW FOR PREVENTION OF TORTURE



**A BACKGROUND PAPER**



## **National Conference on Prevention of Torture in India**



25 June 2007, India International Centre, New Delhi

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## I. Introduction

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Torture is the most naked assault on human dignity that ruins the victim physically, psychologically and mentally. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that no one should be subjected to torture or other cruel, inhuman or degrading treatment or punishment. This has been reiterated in numerous international human rights laws and international humanitarian laws.

The prohibition of torture and other cruel or inhuman or degrading treatment or punishment is absolute and no exceptional circumstances including war, internal disturbances or public emergency may be invoked as a justification for torture. Torture is recognized as a crime against humanity.

## II. Intensity of torture in India

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Torture is recognised as a criminal offence in India. At the same time, torture is almost an integral part of law enforcement and administration of justice irrespective of whether the States/areas are afflicted by armed conflicts or not. Although the colonial-era Kalapani-style prisons have been abolished in independent India, police stations and prison cells are feared for torture. It would be hard to find any police station or jail where the inmates are not subjected to torture and other cruel, inhuman or degrading treatment or punishment.

Apart from the law enforcement personnel, the armed opposition groups (AOGs) and members of the upper castes have also been responsible for torture and other cruel, inhuman or degrading treatment or punishment.

The data collected by the National Human Rights Commission (NHRC) and the National Crime Record Bureau (NCRB) of the Ministry of Home Affairs, Government of India to a limited extent indicates the intensity of torture.

The NCRB recorded the following deaths in police custody: 144 deaths in 2005, 94 in 2004 and 121 in 2003. In comparison to the NCRB's figures, the National Human Rights Commission reported 1340 custodial deaths including 183 deaths in police custody and 1157 in judicial custody during 2002-2003 and 1,493 custodial deaths including 136 deaths in police custody and 1,357 deaths in judicial custody during 2004-2005. One of the major limitations of NCRB reports is its failure to record deaths in judicial custody.

Apart from the glaring discrepancies between the figures, the statistics of torture provided by NCRB and NHRC represent only miniscule of the cases of torture in India. In its Annual Reports, the NHRC also classifies all other forms of torture by the law enforcement personnel under "Other Police Excesses" which is not in conformity with stated commitment to prevent torture. In fact, torture often forms a part of other crimes separately classified by the NHRC such as disappearances, custodial violence, illegal arrest, unlawful detention, fake encounters.

Though there are no specific data, torture and other cruel, inhuman or degrading treatment or punishment by the armed opposition groups are regularly reported from across the country.

## III. Vulnerability of certain groups

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Torture is widespread and endemic in India but those living in armed conflict situations, Dalits, indigenous/tribal peoples, minorities, refugees and asylum seekers, economically downtrodden, women and children remain more vulnerable to torture, inhuman and degrading treatment because of their location, caste, ethnic origin, religious belief and gender.

Often women are targeted on the basis of their gender. According to the National Crime Records Bureau (NCRB), at least 7 women were raped by the police personnel in their custody in 2005.<sup>1</sup> Among

women, Dalit and tribal women are more vulnerable to torture and violence. On 26 May 2003, three Special Police Officer (SPO) personnel gang raped 15-year-old Meyanti Reang, a tribal girl near Manoranjana Das para camp at remote Gandacherra subdivision under Dhalai district of Tripura, and pushed a cane up her sex organ when she provided resistance.<sup>2</sup> Pursuant to the complaint filed by Asian Centre for Human Rights to the NHRC (Case No. 5/23/2003-2004-WC), on 15 September 2004 the NHRC directed the state government of Tripura to pay a compensation of Rs 50,000 to the victim. The accused police officials were suspended with effect from 3 June 2003 and the State government has initiated criminal proceedings against the guilty personnel.<sup>3</sup>

Torture on the Dalit and tribal women are also perpetrated by members of the upper castes. On 10 September 2006, a 40-year-old Dalit woman was allegedly stripped in public, beaten up and then raped by three persons belonging to upper caste Gurjar community at Lohabasai village in Morena district of Madhya Pradesh.<sup>4</sup> Often, such atrocities against the Dalits are sanctioned by the so-called caste panchayats.

Torture against the Dalits by the law enforcement personnel carries caste tones. Inscribing “casteist language” have been taking place especially in Punjab.



*Neevi Jaat*, lower caste, was inscribed with a hot iron rod on the back of a Dalit under-trial, Mohan Lal in Punjab

The officials of Jalandhar Jail in Punjab tattooed “*Neevi Jaat*” (lower caste) with a hot iron rod on the back of a Dalit under-trial, Mohan Lal on 24 April 2005. Mohan Lal told a local court in Ludhiana that the jail officials denied him permission to enter a temple in the jail premises because he belonged to the Scheduled Castes and branded with hot iron rod when he dared to enter the temple.<sup>5</sup>



*Choor*a, lower caste, was inscribed on the back of Dalit undertrial Mr Narinder Singh in Punjab

On 20 February 2006, officials of Nabha Jail of Punjab inscribed “*choora*”, lower caste, on the back of Dalit undertrial Mr Narinder Singh. Narinder Singh was performing religious prayer in his cell in the morning of 20 February 2006, the *lambardar* of his cell got annoyed over his prayer and allegedly verbally and physically assaulted him and other inmates of the cell. Then the *lambardar* and other jail officials produced him before the Assistant Superintendent of the jail who told him to remove his clothes. Then, he was brutally beaten up by the jail staff with sticks. The Assistant Superintendent of the jail, who was allegedly in an inebriated condition, also beat him up and inscribed “*choora*” on his back with the hot metal. Thereafter, Mr Narinder Singh was allegedly paraded naked in his cell.<sup>6</sup>



## IV. Torture in armed conflict situations and the role of the ICRC

In conflict situations, the common people are subjected to torture and other atrocities by the security forces and the armed opposition groups (AOGs).

According to the Annual Report 2006 of the Ministry of Home Affairs 19 out of 28 States are affected by armed conflicts. These states are 11 Naxalite afflicted States, namely, Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Maharashtra, Orissa, Madhya Pradesh, Uttar Pradesh, West Bengal, Kerala and Karnataka; seven North Eastern States of Assam, Manipur, Meghalaya, Tripura, Nagaland, Arunchal Pradesh, and Mizoram; and Jammu and Kashmir.



A victim of torture by the Assam Rifles at Leplen village, Manipur, 17 May 2002

In all these armed conflict situations, the perpetration of torture both by the security forces and the armed opposition groups has become more blatant, acute and systematic in recent years.

While the government has often failed to bring members of the armed opposition groups responsible for torture to justice, it also refuses to establish accountability for torture by the security forces. Impunity to the perpetrators encourages further torture.

### a. Torture by the law enforcement personnel

Torture is an integral part of cordon and search operations in the armed conflict situations whether in the Naxalite-affected states or North East or Jammu and Kashmir. Innocent civilians are often arrested on the suspicion of being members or supporters of the armed opposition groups and then subjected to torture. Often torture is perpetrated in reprisal for the attacks on the security forces by the armed opposition groups.

On 9 October 2006, Nipul Saikia, a farmer, was arrested by the personnel of 11th Guards Regiment in Dibrugarh district of Assam on the suspicion of having links with the United Liberation Front of Asom (ULFA). He was allegedly subjected to third degree torture including electric shocks in army custody to extract a false confession. The army reportedly admitted to having tortured the victim in custody.<sup>7</sup>

On the night of 13 January 2006, two youths identified as Fayaz Ahmad Bhat and Abdul Majeed Parrey were allegedly picked up by the security forces from Sumbal in North Kashmir for their alleged links with AOGs. They were allegedly subjected to third degree torture in illegal detention. While Parrey succumbed to injuries, Bhat was reportedly admitted to a hospital in Srinagar with serious injuries. The army reportedly ordered a court of inquiry into the incident. The Jammu and Kashmir Police also registered an FIR against the army and began a probe.<sup>8</sup>

On 4 January 2006, Sorokhaibam Basanta was arrested from his home at Charangpat in Manipur by personnel of 34th Assam Rifles. He was allegedly taken to the security camp blindfolded and tortured including by application of electric shocks at his back, buttock and private parts for half an hour during interrogation. He was released the next afternoon.<sup>9</sup>

Custodial deaths are often dismissed as suicides. On 11 August 2005, Amar Chandra Das, employee with State Bank of India, was allegedly tortured to death by sub-inspector Dipen Debbarma and constable, Ranjit Debbarma who had beaten him with

belt and clubs at Subroom police station in South Tripura district of Tripura. The deceased was picked up by the police while returning from Dak Banglow on the previous night.<sup>10</sup> The deceased's body reportedly bore deep cut marks and bruises including in the head and genitals. The police claimed that he committed suicide using his shirt.<sup>11</sup>

## **b. Torture by the armed opposition groups**

Chilling massacres by the members of the armed opposition groups often draws national attention. Other forms of torture such as chopping off tongues, firing at legs and mutilation of the body parts in order to create fear are also regularly reported. Often victims are brutally tortured in full public view and then sentenced to deaths by the so-called *Jana Adalats* or People's Court of the Naxalites.



Survivors of Monikonta massacre by the Naxalites

On 25 April 2006, Naxalites kidnapped 52 tribals including 13 women from Manikonta village in Dantewada district of Chhattisgarh while they were returning to the relief camp at Dornapal. The villagers were being sheltered at Dornapal relief camp and had gone to Manikonta village to bring their personal belongings. The Naxalites killed 15 villagers in custody and released the rest. While the bullet-ridden bodies of two abducted villagers were recovered on 28 April 2006, bodies of 13 others

villagers were recovered from a deep forest with slit throats. The bodies also bore multiple wounds, meaning that they were brutally tortured before being killed.<sup>12</sup> The rest 37 abductees were released on 29 April 2006 after warning that they would not join the Salwa Judum programme of the government. Representatives of Asian Centre for Human Rights met some of the released hostages. They told ACHR representatives that their captors "selected" 13 hostages, tied their hands from behind and blindfolded them. Then, the Naxalites allegedly stabbed them repeatedly before slitting their throats in front of other hostages. The hostages were allegedly denied adequate food and were forced to drink urine when they demanded water.<sup>13</sup>

On the night of 13 June 2006, the Naxalites allegedly beat to death Samaru Ram, the Sarpanch (village head) of Edka village under Narayanpur police station area in Chhattisgarh after he was sentenced to death in a *Jan Adalat* for allegedly demanding a police station in the village. He was beaten in full public view and left to die without access to any medical help.<sup>14</sup>

The AOGs slit the throats of the victims and chopped off the tongues or other body parts to create chilling fear. On the intervening night of 14-15 June 2006, alleged cadres of armed opposition groups reportedly chopped off the limbs of 13 Muslim villagers, including a woman identified as Fatha Begum, at Donga hamlet in Mahore area of Udhampur district in Jammu and Kashmir. A group of armed cadres reportedly asked the villagers to come out of their houses, lined them up in an open field and then began to chop off their limbs mainly noses, tongues and ears without giving any reason. One of the victims, Abdul Ahad whose tongue and nose had been chopped off died at the sub-district hospital at Mahore.<sup>15</sup>

On 14 August 2005, suspected members of Lashker-e-Toiba abducted and chopped off the tongue of Abdul Majeed of Sariliya-Sumi area of Gandoh tehsil in Doda district of Jammu and Kashmir on the charges of being an informer of security forces.<sup>16</sup>



On 13 December 2004, suspected cadres of the Kanglei Yawol Kanna Lup (KYKL) abducted vice-chancellor of Manipur University, N Bijoy Singh and registrar R K Ranjan.<sup>17</sup> The outfit reportedly demanded Rs 1 crore for their release.<sup>18</sup> They were released on 18 December 2004 after being shot at their legs allegedly for manipulating the selection of the director for the Audio Visual Research Centre of the university. A KYKL spokesman said the officials were 'punished' as part of the outfit's "Operation Langleipak" to 'cleanse' the educational system in Manipur.<sup>19</sup>

On 24 November 2004, armed cadres of the KYKL abducted eight teachers including two lady teachers of the National Institute of Open Schools (NIOS) in Manipur. Before releasing them, members of the KYKL shot at the legs of the six male teachers and caned the two female teachers as punishment for allegedly allowing malpractices in the NIOS examinations.<sup>20</sup>

### c. Role of the International Committee of the Red Cross

Many of the armed opposition groups have command structure and the leadership can be held responsible for violations of international humanitarian laws. International Committee of the Red Cross (ICRC) has a critical role to play in armed conflict situations for ensuring the respect for the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). The Additional Protocol II, *inter alia*, prohibits "violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment" by the law enforcement personnel and the members of the armed opposition groups.

Despite blatant violations of the Geneva Conventions and its Additional Protocol II by the armed opposition groups too in most of the armed conflicts situations in India, International Committee of the Red Cross has not been granted permission except in Jammu and Kashmir.

## V. Laws facilitating the perpetration of torture

In India, there are many laws and "procedures established by law" which facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment.

### a. Non-applicability of the D K Basu judgement to the armed forces

The Armed Forces Special Powers Act of 1958 empowers the armed forces to arrest and detain. Sub-section (c) of Section 4 provides:

"Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest."

Further, section 5 of the AFSPA further provides:

"Any person arrested and taken into custody under this Act shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest".

The armed forces are not required to issue a memo of arrest. They seldom handover those arrested to the police in time. The "protection of life and personal liberty" under Article 21 and "protection against arrest and detention in certain cases" under Article 22 of the Constitution of India has been put to ransom.

In the event of arrest by the armed forces, the guarantees as laid down by the Supreme Court in the *D K Basu judgment* of 1996 are not applicable. The Supreme Court issued the following rulings in the case of *D.K. Basu versus State of West Bengal*:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear

identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register;

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest;

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee;

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest;

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained;

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the, police officials in whose custody the arrestee is;

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major

and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee;

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well;

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record;

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation; and

(11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board.

As the D K Basu judgement is only applicable to the police, arrest by the armed forces often leads to incommunicado detention, which further facilitates torture.

## **b. Impunity encourages torture**

Impunity is the single most important factor which encourages all forms of human rights violations including torture. The government provides impunity by making it mandatory to seek prior permission to prosecute the accused law enforcement personnel.

Section 6 of the Armed Forces Special Powers Act of 1958 provides that "No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to

be done in exercise of powers conferred by this Act.”

ACHR is not aware of any particular case where permission has been granted for prosecution under Section 6 of the Armed Forces Special Powers Act of 1958.

Similar impunity is provided under the sections 45 and 197 of the Criminal Procedure Code, 1973.

Section 45 relating to the protection of members of the armed forces from arrest provides that:

(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force 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 shall apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.

Section 197 of the CrPC further provides that:

“(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.

(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.

(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.”

The government justifies such impunity on the grounds of providing protection for discharging of official duties. Therefore, section 45 of the CrPC refers to “anything done or purported to be done by him in the discharge of his official duties” and section 197 of the CrPC refers to “acting or purporting to act in the discharge of his official duty”.

However, torture, rape or other criminal acts against the citizens can never be part of discharging official duties by the law enforcement personnel.

The government of India also claims that these provisions are intended to protect the members of the armed forces from frivolous or vexatious penal as well as civil actions that may arise from the acts committed in the discharge of official duty.

Through these provisions of the Criminal Procedure Code and other National Security Laws, the Executive in effect expressed its lack of faith in the judiciary. Otherwise, it would have been left to the judiciary to decide whether the charges are

vexatious, abusive or frivolous or whether acts which have been done are part of the discharging official duty. The executive prevails over the judiciary through a “procedure established by law”.

Even when actions are taken in the rarest cases by the concerned authorities of the law enforcement personnel, the punishment seldom commensurates with the crime committed. On 5 February 2006 Ajit Mahanta was killed in the custody of the army after being arrested from Kakopathar area of Assam. A military court on 24 July 2006 found two soldiers identified as Nishant Sharma and Sudip Gurung guilty of killing Ajit Mahanta. But the punishment given to them was too lenient. While Nishant Sharma was suspended from his service for one year, Sudip Gurung was merely sentenced to two months’ rigorous military imprisonment. Besides, the army provided a compensation of only Rs 100,000 (\$2,130) to the family of Mr Mahanta.<sup>21</sup> It is clear that the sentence was too lenient and not commensurate with the crime of violation of the right to life.

## VI. Violations of the medical ethics

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

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

punishment which is not in accordance with the relevant international instruments.”

Apart from participation in torture of the detainees by some doctors, blatant violations of the medical ethics during post mortem are reported regularly but seldom investigated or acted upon. In a rare case i.e. the Bilkis Bano gang rape and massacre during the Gujarat riots of 2002, two doctors were found guilty of not conducting proper medical and postmortem tests on the rape and murder victims. The Central Bureau of Investigation found that they did not even bother to take the victims to the hospital for the postmortem and ‘haphazardly conducted the tests at the scene of crime.’<sup>22</sup>

### a. Deliberate inconclusive findings: Custodial death of Rohtas Singh

Asian Centre for Human Rights recently investigated custodial death of 21 years old, Mr Rohtas Singh, son of Mr Pratap Singh, resident of Banchari village of Hodal subdivision under Faridabad district of Haryana on 17 April 2007. The police claimed that the victim committed suicide by hanging himself from the top most cross bar of the ceiling of the lock up by using the quilt cover which was given to him.

The post mortem report however recorded the following injuries: “left eyes were black, abrasion on the left cheek and abrasion on the right forearm”. The post mortem report also recorded that “injuries are ante-mortem, fresh....and caused by blunt force”.

Despite such injuries, the post mortem report merely stated “Death is by hanging” without explaining whether it was a case of suicide or homicide.

The police officials could not explain as to why a quilt was at all provided to the deceased in the summer. Moreover, ACHR team found that the height of the ceiling was about 12 feet, and there was no stair or chair on which the deceased could climb up to hang himself from the cross bar of the lock up.

The post mortem report has been deliberately made inconclusive to protect the accused police personnel.

### **b. Contradictory findings: Custodial death of Mohan Lal**

On 2 July 2003, Mr Mohan Lal, son of Pheru Ram of Mahal village, Amritsar in Punjab died at District Police Lines (DPL) hospital at Jammu in Jammu and Kashmir while in police custody. The deceased, who was a rickshaw-puller by profession, was arrested from Amritsar on 21 June 2003 in connection with burglaries and dacoities in Jammu. He died due to brutal torture at Gangyal police station in Jammu.<sup>23</sup>

The first post mortem conducted at DPL hospital in Jammu on 3 July 2003 by one Dr Laxman stated that the death was not caused due to injuries but by blood infection.<sup>24</sup>

After strong protest by the deceased's native villagers in Punjab, the district Magistrate of Amritsar ordered another post mortem following the hand over of the dead body to the relatives. This time, a three-member medical board comprising Dr Ashok, Dr Manpreet Kaur and Dr Kirpal Singh reportedly found as many as 36 injury marks on different parts of the body of Mr Mohan Lal. The post mortem report categorically stated that the deceased died of torture.<sup>25</sup>

The violations of medical ethics at DPL hospital to protect the culprits could not have been more glaring.

### **c. Barbaric acts: Chopping off the private parts of the victims of Kalinga Nagar police firing during post mortem**

On 2 January 2006, the police opened fire at the tribal villagers who were protesting against the forcible land acquisition by the government for Tata Iron and Steel Co Ltd at Kalinganagar in Jajpur district of Orissa, killing 14 tribals.

Out of the total 14 persons killed, the dead bodies of six persons were sent for autopsy.<sup>26</sup> In violation of the medical ethics, the doctors chopped off the palms of five dead bodies at their wrists without taking the consent of their relatives. In addition, the genital organs of all six, including a woman, were mutilated in the name of post mortem.<sup>27</sup>

Three senior doctors - Head of the Department of

Anesthesia, Dr Bobekanda Swain; Head of the Department of Surgery, Dr Shantanu Kumar Sahu; and Head of the Department of Orthopedics, Dr. Anup Kumar Nathsharma - who had allegedly performed the post mortem of the dead bodies were later suspended following protest from the Adivasis against the acts of barbarism.<sup>28</sup>

## **VII. Conclusion: The need for a national law and increased cooperation with the United Nations**

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All democratic and civilized governments have the obligations to prevent, prohibit, investigate and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment.

The obligations with regard to the prohibition of torture, *inter alia*, include the duty to ensure that "the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible".

### **a. Failure to adopt a national law**

Despite widespread perpetration of torture, no national law has yet been adopted to address torture.

Speaking at the inaugural session of a seminar on "Custodial Justice" organized by the National Human Rights Commission on 30 March 2006, Union Home Minister, Mr Shivraj Patil stated that government of India's has been considering enactment of "a legislation to provide compensation to victims of custodial violence".<sup>29</sup>

This was a welcome remark considering that India is yet to withdraw its reservation to Article 9 of the International Covenant on Civil and Political Rights (ICCPR) relating to an enforceable right to compensation to victims of unlawful arrest or detention.

While ratifying the ICCPR in 1979, the government of India stated: "With reference to



Article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the Article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of Article 22 of the Constitution of India. Furthermore, under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State”.<sup>30</sup>

The reservation of the government of India was obnoxious and incongruous. Apart from numerous judgements by the Courts in India, the National Human Rights Commission of India in its 2004-2005 Annual Report stated that “since its establishment in October 1993, the Commission has directed interim relief to the extent of Rs 10,07,12,634 to be paid in 617 cases.”

Moreover, compensation for custodial violence is only one aspect of the obligations of the government. Any national law must criminalize torture and incorporate the mechanisms investigate and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment by putting the onus on the concerned law enforcement personnel. In addition, prior permission to prosecute accused law enforcement personnel must be done away with.

A draft bill on custodial violence has reportedly been prepared by the government of India but it is being treated as “state secret”. Only the NHRC has reportedly been privy to the draft bill.

## **b. Failure to cooperate with the United Nations**

While signing the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 14 October 1997, the government of India stated “ratification of the Convention is to follow”. Ten years have passed since the signing of the Convention but it has failed to ratify the Convention. The National Human Rights Commission of India has been consistently urging the government of India to

ratify the CAT.

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

Apart from the failure to ratify the CAT, India also continues to maintain the dubious distinction of refusing an invitation to the United Nations Special Rapporteur on Torture for the longest period of time since 1993. The pending requests for invitations from the UN Special Rapporteur on Torture as currently stands are to India (1993); Egypt (1996); Algeria (1997); Tunisia (1998); Israel (2002); Turkmenistan (2003); Afghanistan (request first made in 2005); Belarus (2005); Bolivia (2005); Equatorial Guinea (2005); Eritrea (2005); Ethiopia (2005); Iran (Islamic Republic of) (2005); Iraq (2005); Libyan Arab Jamahiriya (2005); Saudi Arabia (2005); Syrian Arab Republic (2005); Yemen (2005); Fiji (2006); Liberia (2006); Papua New Guinea (2006) and Uzbekistan (2006).<sup>31</sup>

In and around India, Pakistan (1997), Nepal (September 2005) and China (November 2005) had invited the Special Rapporteur while the United Nations Committee Against Torture also visited Sri Lanka in 2004.

## **c. Recommendations**

The government of India has so far abysmally failed to fulfill its obligations to prohibit torture.

As a democratic country, a member of the United Nations and an aspiring member of the United Nations Security Council, the government of India, among others, must adopt a comprehensive national law on custodial violence with full and active participation of the civil society, immediately ratify the Convention Against Torture and extend invitation to the UN Special Rapporteur on Torture.

## Endnotes:

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