RUGGED ROAD TO JUSTICE

A SOCIAL AUDIT OF STATE HUMAN RIGHTS COMMISSIONS IN INDIA

VOLUME-I

EDITED BY

HARSH DOBHAL & MATHEW JACOB

HRLN

HUMAN RIGHTS LAW NETWORK

NEW DELHI, INDIA

RUGGED ROAD TO JUSTICE

A SOCIAL AUDIT OF STATE HUMAN RIGHTS COMMISSIONS IN INDIA

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—Harsh Dobhal & Mathew Jacob

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INTRODUCTION

The need to have independent bodies which will oversee and monitor the State's protection and promotion of human rights and contribute towards such policies is widely acknowledged and established within the framework of the Constitution of India. The Indian Constitution is a repository of these human rights available to citizens and persons living in India. The majority of these rights are available against the State and it is the duty of the State to guarantee the protection of these rights. The Constitution also sets out the manner in which these rights can be enforced. The establishment of independent institutions is an effort to further the commitment of the Indian State under the Constitution, and to help it fulfill its commitment under several international human rights conventions which mandate the State to respect, protect, promote and fulfill rights.

The United Nations emphasises that national human rights institutions (NHRIs) should play a critical role "in promoting and monitoring the effective implementation of international human rights standards at the national level."[1] In order to discharge their functions in an impartial and effective manner, such institutions should be accorded independence and autonomy. They can be created either under the Constitution or a statute. In India, the statutory route has been the preferred mechanism for establishing the majority of the human rights institutions (HRI). Whether such institutions are indeed independent or not has been the subject matter of several wevaluations.

HRIs are uniquely positioned between the government and civil society organisations. Yet, they have to be independent of the influence of both. This can be compli-

1. "OHCR and NHRIs" at http://www.ohchr.org/EN/COUNTRIES/NHRI/Pages/NHRIMain.aspx

cated, particularly for the national and state commissions of India, as they are supposed to be constituted by the state as well as funded by them.[2] In order to gain credibility and earn the confidence of the people, such institutions will have to discharge their functions without any fear or favour concerning the State. They should be willing to challenge the government and hold it to task for violations of human rights. At the same time these institutions should not be driven by NGOs. Anne Smith describes the complexities:

> …if an NHRI is seen as being too close to the government or holding an agenda dictated by government departments, especially those who provide the funding, then they will be viewed by NGOs and the civil society at large as simply a puppet of the government and, therefore, damage their credibility. Conversely, if a NHRI allows NGOs to influence its workings such that an overly close relationship develops between the two, a NHRI will simply be seen as another "pro-NGO" ...Notwithstanding, if it is deemed to be pro-NGO, the NHRIs credibility in the eyes of the most powerful group, the government, will be diminished. (Ibid, 209)

Unfortunately, HRIs in India are clearly allied with the State. They have effectively become an instrument of the state and have been largely viewed as puppets of the State. One can refer to K.G. Kannabiran for a further understanding of the same. In an article published in the *Economic and Political Weekly* in 1992[3], Kannabiran argued that the creation of such institutions was due to international pressure on India. India is constantly criticised for its human rights record, and therefore needs an institution that legitimises the exploitative orders of the inhumane state agencies. India has therefore created bodies which guard and supervise the political system, whilst having no intention of reducing human rights violations. These are bodies with a mandate to protect and promote human rights but which will actually act like a shield for the state by giving the appearance of setting its human rights records straight in front of the international community.

> ...the government obviously doesn't propose to give up its present policy. Then the present proposal is one of those familiar political sleight of hand devices like the appointment of commissions of enquiry under the ineffective and over-worked Commissions of Inquiry Act 1956. A human rights commission is not going to resolve the political crises. Until these are resolved, violence by the State is bound to continue ... If the government is really concerned about setting right its human rights record it has to take serious steps to rebuild the existing institutions, namely, the courts, instead of merely multiplying institutions. In fact it is more the responsibility of persons who regularly interact with these institutions, such as lawyers, public interest and human rights groups, jurists and academics to exert pressure on these institutions. The human rights record can never improve by the setting up of a commission without changing the existing social order. The debate on the setting up of a human rights commission should lead to a review of the functioning of the justice system and attempts have to be made to rebuild these institutions. The setting up of a human rights commission as a response to criticism of the government's human rights record will at best be a formal act. This will not reduce human rights violations, but may be used to cover up such violations. (ibid, 2093)

What Kannabiran argued in 1992 is still valid two decades later. Despite the creation of 21 state

2. Anne Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing?, Human Rights Quarterly, 28 (2006), 904-946, at 909

3. Kannabiran, KG, "Why a Human Rights Commision?" Economic and Political Weekly, September 26, 1992, (Commentary). Page 2092-2094

human rights commissions and a National Human Rights Commission, a National Commission for Minorities, a National Commission for Scheduled Castes, a National Commission for Scheduled Tribes, a National Commission for Women, a National Commission for Protection of Child Rights etc, the human rights record of the State has actually worsened. However, India has attained a high level of legitimacy and acceptance through the establishment of these commissions. These commissions have seldom been successful in promoting and protecting human rights. Be it the cases of disappearances in Assam, killings by army and paramilitary forces in Kashmir, Manipur, West Bengal and Chhattisgarh, farmer suicides in Maharashtra and Andhra Pradesh, land acquisitions and mining in Orrisa and Jharkhand, droughts in Rajasthan and the rotting of food grains in the Haryana, atrocities against dalits and tribals, crime against women or the Batla House encounter in New Delhi, all that the commissions have done is seek a report from the Government of India or respective state government concerned. In some cases, they have carried out investigations and issued recommendations but these are seldom abided by.

'Paper Tigers' or 'Toothless Tigers' are the words that came up somewhat rampantly during the consultation meetings held with various human rights groups across India. With mere recommendatory powers can we expect any more from these commissions? The images of human rights activists protesting in front of the NHRC during the Batla House encounter are still fresh. Can justice be expected from an institution which is another organ of the perpetrator, i.e., the State? Or, in the struggle for justice, will approaching human rights institutions simply result in re-victimisation from the same forces that are accused of the violation. The NHRC, being insensitive to the human rights issues, has asked the same accused to carry out the investigation into the issues. In other words, the NHRC has asked the police to investigate themselves, and then submit a report. There is no doubt that there is a clear lack of political will amongst the commission members. This can clearly be correlated with the political appointments in the commissions which will be discussed later in this section of the report.

The action taken by the NHRC under the leadership of Justice J.S. Verma during the Gujarat riots was exemplary. But there are not many success stories to count and mention with regard to the interventions made by the NHRC and SHRCs. During various meetings and Independent People's Tribunals (IPTs) held on the functioning of the SHRCs across the country, a mixed feeling came to the fore concerning these institutions. The participants in these meetings were various civil society groups, human rights organisations and individuals, lawyers, members of the media, retired judges of high courts and the Supreme Court and other eminent civil society members such as academics and individuals from other professions. While one part of civil society condemned the current functioning of the commissions and asked for their closure for reasons of huge investments, political appointment and wastage of tax payers' money, the other group, though understanding and condemning the current functioning of the commissions, proposed a strengthening and streamlining of the commissions.

That there is a need for human rights commissions cannot be denied. One of the prime reasons is that they are quasi-judicial bodies with powers enshrined through the Constitution of India. They act as an accessible justice mechanism, an alternative to court proceedings which in India are very lengthy, time-consuming and unimaginably expensive. The NHRC and SHRCs have the power of a civil court under the Code of Civil Procedure, 1908. The commissions also have the power to move the high courts and the Supreme Court. The Protection of Human Rights Act, 1993 (PHRA) specifically mentions the establishment of a human rights court in each district. In some states they have been notified but are not yet working, whilst in other states they are yet to be notified and not much information is available in the public domain with regard to their functioning. These human rights courts mostly exist just on paper, as revealed by a number of civil society groups during the IPT process.

Globally, HRIs have gained enormous acceptability. They are a recent phenomenon and their establishment can be easily dated back two decades to the early 1990s. The international community had constantly moved for the establishment of national infrastructures for the protection and promotion of human rights, for bodies which would be constant watch dogs on matters related to human rights. This much was apparent at the Vienna World Conference on Human Rights in 1993. Later in December 1993, the UN General Assembly adopted the principles relating to the status and functioning of national institutions for the protection and promotion of human rights, famously known as the Paris Principles. The Paris Principles are the benchmarks which clearly lay down procedures for the establishment and functioning of national human rights institutions.

In the early 1990s, India was transitioning itself into the global market through newly adopted policies of liberalisation, privatisation, and globalisation. At the same time India was under enormous international pressure concerning its human rights records. In a neo-liberal framework, it was of the utmost importance for India to be accepted as a potential market and partner, and to have the adequate infrastructure that promotes and protects human rights.

The first mention of the potential establishment of a human rights commission in India was in the election manifesto of both the Congress and Bharatiya Janata Party in 1991. The Congress party came to power in 1991 and in the year 1992 started having discussions on establishing human rights commissions. On March 16, 1992, speaking in the Rajya Sabha, the then Home Minister, Mr. S.B. Chavan, mentioned that the proposed commission was to counter the false and politically motivated propaganda being spread by foreign and Indian civil rights agencies. On April 24, 1992, Mr. V.N. Gadgil, the official spokesperson of Congress, stated that the commission's findings would act as correctives to the biased and one-sided NGO reports and would be an effective answer to politically motivated international criticism.[4] The above statements by the home minister and the spokesperson of the ruling party make evident the international pressure under which the Act was passed, and the fact that the Indian State had no real interest in providing the institution with sufficient powers, resources and autonomy. The purpose of the establishment of the commissions and the enactment of the PHRA 1993 seems to have been driven by international pressure and to showcase India's pro-human rights image to the international community. The State, in the meanwhile, has appeared to be continuing with the rights violations.

There were hardly any discussions held before the enactment of the Act. Almost all the major civil society organisations were excluded from the seminars and consultations that took place. The government's background note on the establishment of the commissions was not made public and placed before the Parliament. The government didn't even follow normal parliamentary procedures of first referring a bill to the Parliamentary Standing Committee for scrutiny, but instead rushed the bill to be adopted.[5] It was later referred to the Parliamentary Standing Committee where it faded from notice. The NHRC was established on September 28, 1993 by a Presidential Ordinance. Two months later, a fresh bill was submitted to Parliament and on January 8, 1994, after a relatively indifferent parliamentary discussion, the "Protection of Human Rights Act, 1993" won Presidential approval and came into effect.[6]

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4. South Asia Human Rights Documentation Centre (2001), "Judgement Reserved: The Case of the National Human Rights Commission of India", pages 2-3, SAHRDC, New Delhi
5. Nierhoff, S (2006), "From Hope to Despair: The Complaints Handling Mechanism of the National Human Rights Commission of India", page 2-3, People's Watch, Madurai
6. South Asia Human Rights Documentation Centre (2001), "Judgement Reserved: The Case of the National

Since the inception of the PHRA 1993, there have been talks about its amendment. The Act clearly contradicts the Paris Principles, which will be discussed in detail in the later sections of this report. In 1996, the Kerala High Court submitted a draft proposal for amendments to the NHRC's procedural regulations after conducting a spot study of various sections of the NHRC's Law Division. A year and a half later, McKinsey & Co. prepared a report highlighting what it found to be the commission's main problem – a severe backlog of pending cases – and suggesting solutions. In May 1999, the Staff Inspection Unit (SIU) conducted a staff study of the commission, the first since its inception, at the request of the Ministry of Home Affairs. Unfortunately, few, if any, of the extensive recommendations made in these reports have been implemented.[7] Minor amendments were made in the year 2000 and 2006.

It's now almost two decades since the inception of the commission. To date, 21 SHRCs and an NHRC have been created. Article 21 of the Act states, "A state government may constitute a body to be known as the..." In other words, it is not binding on states to establish an SHRC. The states of Haryana, Uttrakhand, Mizoram, Meghalaya, Nagaland, Tripura and Arunachal Pradesh still don't have SHRCs. Furthermore, the SHRCs in many states are defunct and dormant for several reasons; for example, no appointments being made for long periods of time, no infrastructure by the government etc. Examples of this can be seen in the SHRCs of Manipur and Himachal Pradesh. Many SHRCs came into existence as a result of civil society movements and public interest litigations. When the NHRC was contacted in this regard, it claimed that it had already requested the state governments to establish SHRCs. The NHRC and SHRCs are parallel bodies and the NHRC is not an appellate body for the SHRC.

The following report is a social audit of the functioning of six SHRCs in West Bengal, Assam, Karnataka, Kerala, Andhra Pradesh and Uttar Pradesh. The objective for and methodology of undertaking the social audit is mentioned below. This section will also give a critical understanding of the PHRA 1993 vis-à-vis the Paris Principles with examples from the six states. A social audit of all the SHRCs and the NHRC is being conducted by the Human Rights Law Network (HRLN) in collaboration with several civil society groups across India. The social audit reports of the remaining SHRCs and the NHRC will be published in subsequent volumes.

OBJECTIVE

The NHRC and SHRCs were constituted following the PHRA 1993, with an aim to provide access to justice to a number of people who find it difficult and expensive to approach Indian courts. However, despite this mechanism being in place, these commissions have not been able to achieve desirable results, and the human rights situation has continued to deteriorate. Most of the violations reported to these commissions are committed by the country's law enforcement agencies and security forces. The commissions suffer from a number of handicaps, such as a lack of autonomy, politically made appointments, inadequate resources and no independent investigative mechanism, thus making them incapable of effectively addressing violations. Over the years, there has been a huge trust deficit between these commissions and the people in general, and rights groups in particular. The country's image as a vibrant democracy will be at stake if such institutions fail to live up to people's expectations.

The study of the institutions, which protect and promote human rights, specifically the interests of marginalised sections of society, is important, given that there is limited information available on the

Human Rights Commission of India", pages 2-3, SAHRDC, New Delhi

7. South Asia Human Rights Documentation Centre (2001), "Judgement Reserved: The Case of the National Human Rights Commission of India", page 3, SAHRDC, New Delhi

actual functioning of these institutions and the positive gains obtained. With the growing number of incursions on human rights, these statutory institutions assume a lot of importance in the state. Such commissions play a significant role in evaluating existing safeguards, recommending amendments to strengthen the safeguards, inquiring into violations of rights by the State, and developing human rights literacy amongst the general public. Given the recent records of violations and of State complicity, we felt it was imperative to study this independent quasi-judicial body in each state, and to evaluate their work, results, function, powers and people's assessment of these institutions in light of the statutory law and the international principles on human rights institutions.

It is with this backdrop that we conceptualised the plan to engage with these institutions (by filing complaints and following them up, building a network of civil society closely working with the commissions, conducting IPTs and social audits, and disseminating awareness material), and convince lawmakers, government officials, the judiciary and media to strengthen these commissions, to build and change public opinion, to strengthen civil society's capacity and partner with groups to engage with commissions, and to press for desired amendments to the Act through campaigns, lobbying and advocacy.

RESEARCH METHODOLOGY

For the purpose of our study, we are examining the working of all the functioning SHRCs across India. What are the benchmarks against which we can judge the SHRCs across 18 diverse states? What is the perception of the people and civil society organisations concerning the commissions and their work? What changes to the law are necessary for their effective functioning? These are some of the questions the final report will seek to answer. We believe that the key ingredient that determines the success or failure of a human rights institution is independence. The commissions should have the foundational, functional, operational, and financial independence to conduct their affairs and discharge their functions. We have attempted to assess whether the commissions are truly independent in their working, whether they are meeting their statutory objectives and whether the legislation itself is in compliance with the Paris Principles[8] and other international standards such as the Commonwealth Secretariat's *National Human Rights Institutions Best Practice* (2001), the ICHRP & OHCHR's *Assessing the Effectiveness of National Human Rights Institutions* (2005) and Amnesty International's *National Human Rights Institutions: Recommendations On Effective Protection and Promotion of Human Rights* (2001).

The research methodology adopted for the purpose of the report included collecting data on the work of the commissions, like annual reports, cases and orders/recommendations passed by the commissions. Additionally, we interviewed staff, members and chairpersons of the commissions and civil society organisations, and gathered media reports on the work of the commissions. We approached legal experts and former members and chairpersons of the SHRCs to throw light on the working of the commissions. In cases where we were denied access to information, RTI applications were filed under the Right to Information Act, 2005. The information collected was tested against the set standards and objective of the parent statute, the Protection of Human Rights Act, 1993 and the International Guidelines.

8. In 1993, the UN General Assembly adopted Principles relating to the Status of National Institutions (The Paris Principles) which laid down the core minimum standards on competence, composition, responsibilities, and methods of operation. There is a definite need to assess whether the Commissions are working in compliance with the Paris Principles

A. Document Analysis

Primary data from the states of Uttar Pradesh, Andhra Pradesh, Karnataka, West Bengal, Assam and Kerala was gathered; this included cases, complaints, orders/recommendations passed and annual reports of the last two years. We gathered information about the administrative set-up, complaints received and disposed of, significant work done, budgets, and details of staff from the annual reports of the SHRCs.

B. Applications under the Right to Information Act, 2005

We also obtained information about the total number of complaints received and disposed of, and the details of the staff working at the SHRCs through RTI applications. We have requested information on annual budgets, action taken reports, and recommendations passed by the SHRCs in certain cases. The SHRCs have denied us information on specific reports and recommendations on the grounds that these are confidential. Inspections were requested under RTI Section 2(J) and a large volume of data was analysed.

C. Media Reports

We tracked media reports on the commissions from 2006-2011 so as to assess the nature of their interventions in matters concerning human rights issues.

D. Independent People's Tribunal

In each state, to start the process of participatory analysis of the functioning of the SHRCs, a consultation meeting was held. This meeting has the representation of people who have constantly engaged with the SHRCs through complaints and research, and also a set of lawyers and activists from various districts within the state that are trained in the procedures of approaching the commissions. This meeting helps by providing a detailed situational analysis of the commission's functioning, capacity building of the people and the formation of a civil society working group which will engage with the commission at various stages of the campaign and work towards strengthening and streamlining it.

For the purpose of this study a format was developed and was sent to civil society organisations, legal experts, and the chairperson, members, secretary and staff of the commissions. The questions ranged from constitution of the commission, knowledge of the staff on laws pertaining to human rights, initiatives in the last two years, powers, complaint mechanisms and relationship between the commission and civil society organisations. The questions were framed to assess the independence, function, transparency and accessibility of the commissions. Samples of representative complaints were documented with all the available information in the testimony format.

The objective of organising the IPTs is to engage with and look at the functioning of these commissions critically through the eyes of the victims, experts and human rights activists, thus to catalyse the SHRCs to function as effective, efficient, transparent and accountable institutions that address human rights violations. The IPT exercise aims at putting together evidence dispassionately and comprehensively, so that cases of human rights violations not addressed adequately by the SHRC mechanism can be brought before the courts and orders can be obtained to address specific failures and problems.

IPTs were held in all the six states. The cases deposed before the jury in the IPTs pertained to diverse sections of people covering most part of the states. Thus the effort was made to select cases from as many parts of the state as possible that represent a certain pattern of vioaltion. The selection process meticulosly ensured that cases of all vulnerable sections like women, dalits, tribals, children and

members of minority communities were taken up in the IPTs. Similary, it was ensured that the different and diverse patterns of violations such as custodial torture, extrajudicial killings, rape, violence against women and children, dalits and tribals, matters related to land rights, etc were represented in the IPT. Further, these cases were deposed before a jury panel comprising retired high court judges, senior advocates, academicians and other renowned civil society members. Along with the victims, experts who have thorough knowledge and experience of the functioning of the SHRCs also deposed before the jury. After listening to the victims and experts, each jury passed its observations and recommendations with regard to the functioning of the commission and suggested ways of strengthening the instituion.

PARIS PRINCIPLES

The Paris Principles are the principal source of normative standards for HRIs. In 1991, the United Nations organised an international workshop, which resulted in the formulation and adoption of these principles. They are a detailed set of guiding principles for establishing and maintaining strong and effective HRIs. The Paris Principles were subsequently endorsed by both the UN Commission on Human Rights and the UN General Assembly.[9] They started the process of serious international co-operation and standardisation of HRIs.

The Paris Principles are broad and general. They apply to all HRIs, regardless of structure or type. They provide that a national institution should be established in the national constitution or by a law that clearly sets out its role and powers and that its mandate should be as broad as possible.[10] They lay down four factors needed to establish and monitor the HRIs, namely independence through legal and operational autonomy, independence through financial autonomy, independence through appointment and dismissal procedures and independence through pluralism of composition.[11]

The first principle under the head 'Composition and Guarantees of Independence and Pluralism', clearly states that the HRIs should be pluralistic and should co-operate with a range of social and political groups and institutions, including non-governmental organisations, judicial institutions, professional bodies and government departments. It clearly mentions the involvement of HRIs with all stakeholders in civil society. It also clearly mentions the role of government departments as 'advisors'.

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;
(b) Trends in philosophical or religious thought;
(c) Universities and qualified experts;
(d) Parliament;

9. General Assembly Resolution 48, U.N. GAOR, 85th meeting, U.N. Doc. A/Res/48/134(1993)
10. Assessing the Effectiveness of National Human Rights Institutions, 2005. International Council on Human Rights Policy, OHCHR
11. South Asia Human Rights Documentation Centre (2001), "Judgement Reserved: The Case of the National Human Rights Commission of India", page 21, SAHRDC, New Delhi

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).[12]

The third principle under this heading mentions the independence through legal and operational autonomy of the HRIs. While it is important to have an HRI, it is equally important to empower it with constitutional powers to carry out and enforce its mandate. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.[13] It has to be noted that the idea of pluralism, or diversity, in the membership of a human rights commission figures strongly in the Paris Principles. Pluralism, through the participation of people from a variety of professions across of civil society and from members of different marginalized groups, ensures a diversity of viewpoints within the commission and helps legitimize the roles of these commissions. Maintaining pluralism is one of the most important factors in guaranteeing the efficacy of an HRI. It fosters independence from the government, and helps an HRI deal with complaints against the State with a reduced worry that the HRI will be improperly influenced by the State.

The second principle under the heading 'Composition and Guarantees of Independence and Pluralism', states that the HRIs should have an infrastructure that allows them to carry out their functions. Particular importance is attached to the need for adequate funding to allow the institution to be functionally and financially autonomous. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect its independence.[14]

The Paris Principles clearly lay down the factors that should be involved in the establishment and monitoring of the HRIs, with special emphasis on plurality and independence. The principles also mention the functioning of the HRIs. The various functions of the HRIs are described in the principles as "responsibilities", suggesting that these are the things that institutions are obliged to do.[15]

The functioning of the HRIs can be broadly categorised beneath the headings of recommendations and proposals to the government, the protection and promotion of human rights, acting as a human rights monitoring agency, the promotion of international cooperation, and compliance of the state with regard to various human rights statutes and treaties, human rights education, and functioning as a quasi-judicial body (not a compulsion). The third clause, under the heading 'Competence and Responsibilities', clearly lays down the responsibilities of the HRIs.

" (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organisa-

12. Paris Principles
13. Paris Principles
14. Paris Principles
15. Assessing the Effectiveness of National Human Rights Institutions, 2005. International Council on Human Rights Policy, OHCHR

tions, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;

(b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which states are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs."[16]

The Principles provide that HRIs should make recommendations and proposals to governments on various matters relating to human rights, including existing and proposed laws, human rights violations and the national human rights situation in general. They require national institutions to promote teaching and research on human rights and organise public awareness and education programmes. The Paris Principles also address methods of operation and by implication, the powers of national institutions. They are entitled to consider any issue falling within their competence without authorisation from any higher authority. They are entitled to hear any person or gather any evidence needed to consider matters falling within their competence. Furthermore, HRIs are called on to publicise their decisions and concerns, as well as to meet regularly.[17]

"(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

16. Paris Principles

17. Assessing the Effectiveness of National Human Rights Institutions, 2005. International Council on Human Rights Policy, OHCHR

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
(c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;
(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
(g) In view of the fundamental role played by the non-governmental organisations in expanding the work of the national institutions, develop relations with the non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas."[18]

The Paris Principles do not require HRIs to have a 'quasi-jurisdictional' function – that is, to handle complaints or petitions from people whose human rights are alleged to have been violated. However, where HRIs do have this function, the Paris Principles list particular obligations:

— To seek an amicable settlement through conciliation, a binding decision or on the basis of confidentiality;
— To inform petitioners of their rights, and available remedies, and promote access to them;
— To hear complaints and transmit them to competent authorities; and
— To make recommendations to competent authorities.[19]

The Indian NHRC and SHRCs have quasi-jurisdictional functions. This will be discussed in detail later in this section. A complaint can be brought to the notice of a commission by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. In such situations, the HRIs need to abide by the above mentioned four points.

From the discussion above, it can be easily established that the Paris Principles clearly lay down the framework for HRIs. It can be said that the Paris Principles are the first systematic effort to enumerate the role and functions of HRIs. While it can be called an ideal document with regard to the establishment of HRIs, it clearly lacks guidelines highlighting the functioning of the HRIs. For example, the Principles are silent with regard to cases against armed forces. The Paris Principles are a good starting point for discussion with regard to HRIs. The role of the Indian State is much larger than what has been prescribed for in the Principles for an effective and strong HRI.

PROTECTION OF HUMAN RIGHTS ACT 1993

The narrative on the inception of the PHRA 1993 has already been dealt with in the earlier sections. While some practitioners call it a token and a toothless act, others are of the belief that whatever limited

18. Paris Principle
19. Assessing the Effectiveness of National Human Rights Institutions, 2005. International Council on Human Rights Policy, OHCHR

provisions are prescribed for in the Act, if utilised to the fullest, they can lead towards the protection and promotion of human rights. This section is an attempt to glance through the Act and get an understanding with regards to the powers and functioning of the commissions.

The definition of human rights[20] as per the Act is very clear. It reflects the fundamental rights enshrined in the Constitution of India and the Universal Declaration of Human Rights. It refers to rights relating to the life, liberty, equality and dignity of the individual. The underlying objective of the Act, as the name suggests, is to protect human rights in India. The Constitution of India is a repository of human rights available to citizens and persons living in India. The majority of these rights are available against the state, in that, it is the duty of the State to guarantee the protection of these rights. The Constitution also sets out the manner in which these rights can be enforced against the State. The NHRC and several SHRCs have been established through the PHRA 1993.[21] Section 21 of the PHRA 1993, with regard to the establishment of SHRCs, has stated that, "A state government ***may*** constitute a body to be known as..." Legally it is not binding for states to have SHRCs. Many states like Karnataka and Uttar Pradesh have seen Public Interest Litigations (PILs) filed by civil society groups for the establishment of a commission. Higher judiciary, on various instances, have asked state governments to establish the SHRCs.

The NHRC ought to consist of a chairperson who has been a Chief Justice of the Supreme Court, one member who is, or has been, a judge of the Supreme Court, one member who is, or has been, a judge of a high court and two members who have practical knowledge and experience of human rights.[22] The members of other national commissions are deemed to be the members of the NHRC.[23] The chief executive officer of the commission is a secretary general.[24] Similarly, the SHRCs ought to consist of a chairperson who has been a chief justice of a high court, one member who is, or has been a judge of a high court or district judge with a minimum of seven years of experience, and one member having practical knowledge and experience of human rights.[25] Similar to the NHRC, the chief executive officer of the state commission is a secretary general.[26]

The appointment of chairperson and the members of NHRC is done by a committee consisting of the Prime Minister, Speaker of Lok Sabha, Minister of Home Affairs, Leader of the Opposition in Lok Sabha, Leader of the Opposition in Rajya Sabha and Deputy Chairperson of Rajya Sabha.[27] The duration of the term of the chairperson and the members is five years.[28] Similarly, the appointment of the chairperson and members of the SHRCs is done by a committee consisting of the Chief Minister, Speaker of the Legislative Assembly, Minister in-charge of the Department of Home Affairs and the Leader of the Opposition in the Legislative Assembly.[29] The duration of the term of the chairperson and the members is five years.[30]

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20. Section 2 Definitions of PHRA 1993
21. Sections 3 and 21 of PHRA 1993
22. Section 3 (2) of PHRA 1993
23. Section 3 (3) of PHRA 1993
24. Section 3 (4) of PHRA 1993
25. Section 21 (2) of PHRA 1993
26. Section 21 (3) of PHRA 1993
27. Section 4 (1) of PHRA 1993
28. Section 6 (1 and 2) of PHRA 1993
29. Section 22 (1) of PHRA 1993
30. Section 24 (1 and 2) of PHRA 1993

With regard to the functions and powers of the commissions, they have the power to look into any matter of human rights brought before them through the victim or on behalf of the victim by a complainant.[31] Though it is largely argued that the commissions can only look into complaints against public servants as mentioned in Section 12 (a) (ii), Section 12 (a) (i) clearly says that it has the obligation to look into any complaint of violations of human rights. It also has the power to carry out *suo moto* inquiries.[32] The commissions have dismissed a large number of matters stating that they are *sub judice*. They have the power to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.[33] The commissions have the power to review and study the safeguards provided by the constitution, treaties and other international instruments on human rights and institutions and make necessary recommendations to the government.[34] The commissions should involve and encourage the efforts of non-governmental organisations and institutions and spread human rights literacy among various sections of the civil society.[35]

The commissions, while enquiring into a complaint, have the power of a civil court.[36] Every proceeding before a commission is deemed to be a judicial proceeding.[37] A commission, for the purpose of investigation into a matter, can utilise the service of any officer or agency.[38] The appointed officer or the agency needs to submit a report before the commission within a stipulated time and on that report the commission, after satisfying itself with the facts (cross verifying and asking for replies from different parties) will issue recommendations.[39] The recommendations can direct the concerned for payments of damages, initiate proceedings for prosecution, and/or move the high court or the Supreme Court.[40] The recommendation issued by the commission has to be supplemented with a compliance report by the government normally within a period of one month.[41] However, in dealing with the complaints against armed forces, the commission can only seek a report from the central government. Obtaining the report, the commission can either proceed with it or make its recommendations to the central government which is duty bound to furnish the action-taken report normally within a period of three months. The commission should then publish its report together with the recommendations and action taken. It has to be noted that other sections of this law are not applicable with regard to complaints against the armed forces.[42]

The commissions are duty bound to furnish annual reports, and special reports if needed. The reports have to be tabled on the floor of the house by the government along with the action taken report. If any recommendation has not been accepted by the government, the reason has to be mentioned.[43]

One of the ground-breaking sections under the PHRA 1993 is the establishment of Human Rights Courts (HRCs). The HRCs were envisaged for a speedy trial in cases of human rights violations. In

31. Section 12 (a) of PHRA 1993
32. Ibid
33. Section 12 (b) of PHRA 1993
34. Section 12 (c), (d), (e) and (f) of PHRA 1993
35. Sections 12 (h) and (i) of PHRA 1993
36. Section 13 of PHRA 1993
37. Section 13 (5) of PHRA 1993
38. Section 14 (1) of PHRA 1993
39. Section 14 (2), (3), (4) and (5) of PHRA 1993
40. Section 18 of PHRA 1993
41. Section 18 (f) of PHRA 1993
42. Section19 of PHRA 1993
43. Section 20 of PHRA 1993

each district a court of session ***may*** be specified as a human rights court. For each human rights court, there should be a specified public prosecutor or an advocate with not less than seven years of practice.[44]

The above sections have clearly laid out the broad understanding of the Paris Principles and the PHRA 1993. Based on the Paris Principles and the PHRA 1993, the following section tries to understand the functioning of six State Human Rights Commissions of West Bengal, Assam, Karnataka, Kerala, Andhra Pradesh and Uttar Pradesh. While looking into the functioning of the commissions, an attempt is also made to refer to the powers of the PHRA 1993 vis-à-vis the Paris Principles. For the same purpose the indicators used are **Establishment, Independence, Appointments and Composition, Infrastructure, Relationship with Civil Society, and Accessibility.**[45] Examples from the above-mentioned SHRCs will be quoted wherever deemed fit for a clearer understanding.

ESTABLISHMENT

The Paris Principles clearly state that for the establishment of the HRIs, they should be part of the law and entrenched in the Constitution. This legitimises the independence of a commission and enshrines it with legal powers. Following this, the NHRC and SHRCs were established under the PHRA 1993. The reasons for the Act, and how it came into existence have already been discussed in earlier sections of this report. Although the PHRA 1993 lays the ground for the establishment of the commissions, it contains many flaws contradicting the Paris Principles, in terms of independence, appointments, engaging with civil society etc. Civil society groups lobbied for amendments to be made to the PHRA 1993, and for it to be in accordance with the Paris Principles but, to date, they have been ignored. There has been a clear decline in the way the commissions function over the years if we look at the nature of complaints taken up and action taken hitherto. As mentioned, the social audit process brings out that the commissions' failures are not only because of the weak PHRA 1993, but also because of the lack of political will of the commissions. Positive clauses with regard to the effective powers of the commissions have not been put into practice. While the Act refers to engagement with civil society organisations and encourages human rights work in the country, the commissions appear to be happy to ignore civil society and be content being an extension of the State.

The PHRA and the establishment of the commissions serve as mere showpieces to portray a positive image to the rest of the world. It has been an extremely sad state of affairs. India has yet to make its National Human Rights Plans of Action, an action it committed to at the World Conference on Human Rights in Vienna. The lack of will to uphold its own mandate has affected the entire state of affairs, and people who held great hopes for the commissions now tend to take the old route to justice back with the courts. There are visible gaps in the jurisdictions of the national and state commissions. The complainant is unaware of whom to approach in which case. Sometimes cases have been addressed by the NHRC whilst in other instances similar cases have been transferred to a SHRC. It also has to be noted that transfer of a case means closure at the NHRC's end and is shown as a disposed of case, while in reality the complainant is still seeking justice.

44. Sections 30 and 31of PHRA 1993

45. The following indicators are part of the Benchmarks as prescribed by the OHCHR through its publication; Assessing the Effectiveness of National Human Rights Institutions, 2005. International Council on Human Rights Policy

INDEPENDENCE

A commission's independence reflects its effectiveness. It establishes its legitimacy and credibility. Independence from the government and any other private interest is the strong foundation on which a commission needs to be established. The indicators of independence are appointment mechanisms, terms of office, mandate, powers, funding, investigation etc.

The PHRA 1993 clearly violates the Paris Principles when it comes to independence. The NHRC and SHRCs have been established by the PHRA 1993 and are answerable to the Parliament. The line between the legislative and the executive is very thin. Instead of answering to an independent authority, the NHRC and SHRCs are responding to the government of the day. The NHRC and SHRCs report to the Ministry of Home Affairs, the same ministry which also oversees the work of the police, immigration, communal harmony, border management, special laws for terrorism and insurgency etc. Although most complaints lodged with the commissions are made against these departments, the NHRC and SHRCs appear to be bound by restrictions to move against them. This makes the commissions totally ineffective and allows a huge scope for government invasion into the commissions' functioning.

The PHRA 1993 fails to make the NHRC and SHRCs independent bodies. They receive instructions from government ministers, since they are required to report to them by virtue of their appointments having been made by them. There has been no recorded evidence of the NHRC and SHRCs taking suitable action against the government of the day or of moving a court to action. In most of the complaints of grave human rights violations, in which state parties are perpetrators, matters are closed by simply recommending petty compensations. The commissions' silence on the issues of armed killings and torture in various states, arbitrary arrests, sedition laws etc., are clear examples of the same. While the NHRC did brilliant work to take *suo-moto* action in the Gujarat carnage and conducted the investigation, its silence in the court was evident of government pressure.

In the report from Assam, it can be seen that the NHRC and SHRCs have been quiet observers of secret killings and disappearances. Victims' narrations and the commissions' proceedings have been documented in order to investigate the role of the latter. In the case of Biman Bose[46], it took the Assam SHRC 10 years to order a compensation of Rs. 20,000, while no action was initiated against the perpetrators of the crime. This token-like justice clearly demonstrates the restrictions under which these commissions operate. There are similar examples from the state of Karnataka, where the Karnataka SHRC has not moved an inch to protect the victims of communal attacks led by the members of the *Vishwa Hindu Parishad* and *Rashtriya Swayamsevak Sangh*. Attacks on progressive journalists have become a common occurrence in the state. The commission in Karnataka is scared to move against the communal forces which have the support of the ruling BJP government. In West Bengal, the SHRC has not moved an inch in the huge volume of cases filed by many human rights groups on the issues of BSF killings. In cases of custodial deaths and brutal police tortures, there are instances where the commission has ordered compensatory payments to victims of only Rs. 5000 and 3000. Most of the cases are, shockingly, still pending for many years. The story is no different in Andhra Pradesh, Kerala and Uttar Pradesh. Because commissions are not guaranteed their independence, they remain mere showpieces of the State.

Payment of compensation is, on principle, not accepted by many civil society organisations. For an act of crime by State forces tax payers' money is wasted, while the State forces and agencies continue to operate in the same way. There are no recorded instances available which prove that departmental

46. This case was deposed in the Assam IPT organised by HRLN in Guwahati

proceedings or criminal charges have been initiated against the accused. The State and the commission are hand in glove when it comes to the protection of the accused fellow from their department.

The commissions have zero independence when it comes to investigation into a matter of human rights violation. The investigation mechanism of the commissions is completely flawled in nature. In the reports from various states compiled in this edition, one can find several instances where the perpetrators of the crime and the accused were asked by a commission to clarify the charges against them and furnish a report. Upon receiving a complaint of police torture, a commission has asked the same police to investigate the matter, and based on the report has closed the matter. Or, upon receiving a complaint of negligence by a government department leading to violation of human rights of the victims, the commission has asked the same department to conduct the investigation and furnish the report.

It has been very shocking to learn that commissions seldom conduct independent investigations. This results not only in biased investigation and manipulations of facts, but in many instances in the form of a re-abuse of the victims for having approached the commission to file a complaint against the accused. Investigations of complaints concerning human rights violations are different to criminal investigations. Even in criminal matters, human rights violations can be investigated independently of the criminal charges. In such cases we need not have the police doing all the investigation. It can be conducted by a team comprising of doctors, academicians, psychologists, human rights activists etc.

Financial autonomy of a commission guarantees its overall freedom. This also means an independent way of operating, and no commitment to the government. But the commissions in India depend solely upon the Ministry of Home Affairs. The commissions don't raise their funds on their own. The commissions should determine their budget and channel funds for the same. In the national plan, a separate fund is to be kept for the commissions to operate on. Financial independence will ensure the commissions are not accountable to the government but rather to the people. The financial situation of the commissions is very disappointing. During the visit to the Assam SHRC it was observed that even paper and printing resources were not available, and most of the time they have to be supplied by the people approaching the commission. In Karnataka SHRC, the corridors were filled with files and staff trying to sort through them, while the commission has asked the state government repeatedly for a new building to operate in. The situation of other commissions is no better. The staff members are also appointed after requests to the government, and are sent to these commissions on deputation, more often on punishment posting.

In brief, the commissions are completely under the control of the government of the day. Be it with regards to appointment, investigation, finance or their functioning. The idea of the Paris Principles, for an independent autonomous commission, has been defeated in the past two decades.

APPOINTMENT AND COMPOSITION

The composition and appointment process of the commissions is the most crucial element in determining the independence and adequate functioning of a commission. The PHRA 1993 contradicts the Paris Principles on the appointments to and composition of the commissions. It has legitimised the appointments in such a way that is always in favour of the ruling government.

While the Paris Principles mention the diversity in the composition of the commissions, keeping it positioned between the government and civil society, the PHRA 1993 has given all the power to the government with regards to the appointments to the commissions. The provisions laid down by the Paris Principles have already been discussed in the earlier sections of this report. According to the PHRA

1993, the appointment of members to the commissions is to be conducted by a committee comprising of the Prime Minister, Speaker of Lok Sabha, Minister of Home Affairs, Leader of the Opposition in Lok Sabha, Leader of the Opposition in Rajya Sabha and Deputy Chairman of Rajya Sabha. If we look critically at the appointment committee, four out of six members are from the ruling government. It is evident that a person not acceptable to the ruling government can't become a member or Chairperson of the NHRC. The story is the same for the SHRCs. With the current provisions, the bias in appointment can't be dismissed. Most civil society groups see the appointments to the commissions as post retirement benefits for government friendly bureaucrats and judges. The commissions have turned out to be parking lots and means of welfare for the retired bureaucrats and judges.

There has been no representation of members of civil society in the existing commissions. Human rights activists are not welcomed onto the boards of the commissions. Members of State forces, who in most instances have been party to or guilty of the crimes investigated, have been in the commissions. Representation of women in the commissions has been a serious worry. No woman has ever been appointed as a member or chairperson of a commission. Representation of the marginalised, such as dalits and tribals is also seldom seen. While the commissions deal with a large volume of complaints involving women, dalit and tribal cases, the lack of representation of these sections of society makes them equally vulnerable and marginalised in front of the commissions too. Though the Act mentions the appointment of one member who has knowledge and experience of human rights work, this provision is generally not adhered to.

To ensure diversity in the appointment process, there needs to be an engagement between the government and civil society. There need to be nominations for the commissions which can then be elected by the committee, which again needs to be comprised of members who are independent of the government. While the government argues that there are retired judges in the commissions who provide legitimacy, these judges need to act like advisors for the commissions which should be represented by people who have expertise in human rights and have carried on such work for a considerable amount of time.

The composition of the commissions is also not adequate to deal with a large volume of cases. With only a chairperson and a few members, it is impossible to do justice to the complaints that come before the commissions. The commissions now need to move out from the national and state capitals and have offices at the district level. It is extremely difficult for a person from a far-off village to continuously come to the state capital in order to deal with their case. The complainant incurs a huge amount of expenses in this way. Operating in each district would ensure that the workload of national and state commissions is more appropriately distributed, and hence they would be more able to reach out to everyone approaching them for justice.

The narrative from the six states that we are looking at specifically is not encouraging. The commissions have constantly struggled to have a full board as per the current provisions of the PHRA 1993. States like Assam, West Bengal and Uttar Pradesh have run for years without a chairperson. When we approached the Assam SHRC, there was no chairperson, and both the members had been on leave/medical leave for a long time. It operated with only one secretary who was on a part-time appointment. West Bengal and Uttar Pradesh have been without chairpersons for a considerable amount of time. Civil society groups in Uttar Pradesh allege that the seat was kept vacant for more than a year to accommodate the current chairperson, since he had given a favourable order for the government. Through an RTI, it was found that he had come to the office for only some 30 odd days in the previous calendar year. The situation of the southern states which are part of this report seems relatively better but the same flaws can be observed from time to time.

With the current situation, it is evident that the commissions are actually at the mercy of the ruling government, whilst civil society, in all regards, is kept at the periphery of the operations. Out of a whole pool of civil rights activists in India, none has ever made it to the NHRC. The international community concerned with the functioning of human rights institutions should look into the matter, the reasons for this are loud and clear. In such a situation commissions are not doing anything but justifying the horrendous acts of the state.

The criteria for appointment mentioned are in favour of the ruling government. Appointment to a commission has been laid out in such a way that an entire section of society, people who have been fighting for rights for several decades, have been excluded from the operations of the commissions. For the appointments to be transparent and pluralist in nature there need to be amendments to the existing PHRA 1993. The powers with regard to the appointment and composition have to shift to an autonomous body which looks into the functioning of the commissions. The direct appointment by the executive and the legislative is not desirable and the records of the last two decades show that they have failed to protect and promote human right in India. The commissions, as they stand, don't reflect the social and political diversity of India.

INFRASTRUCTURE

Proper infrastructure remains a concern for the commissions in India. They are at the mercy of the government for everything with regard to their operations. Most of the SHRCs operate from the buildings allotted to them by the state governments. Despite several years of existence none of them have managed to obtain their own buildings. Most of them are located among other government offices and share an inadequate amount of space. The NHRC, despite having been operational for the past two decades, and despite having a huge building, lacks financial resources and proper knowledge of human rights. This is the case with state commissions too.

There can be genuine concerns raised when it comes to the infrastructure of the commissions in Assam, Andhra Pradesh, Karnataka, Kerala, West Bengal and Uttar Pradesh. During the visit to the Assam SHRC, it was found that it operates from an old building that it shares with the Guwahati Metropolitan Development Authority. The building not only smells bad because of the lack of maintenance, but also, the staircases are dark and don't contain a single light-bulb. The office is situated on the 3rd floor which makes it impossible for a disabled or elderly complainant to access. The Andhra Pradesh SHRC, when approached with regard to a few cases, seemed to have lost the details of the cases amongst their files. There was no file maintenance system and everything was just stacked haphazardly in a room. The attitude of the staff towards us was also rather negative. The Karnataka SHRC meanwhile operated from a new building. They have been asking the government for an independent building for years but this has not been granted to them. The current office doesn't have enough space to accommodate the commission's staff. Many members of staff were working in the corridors of the floors allotted to the SHRC.

This situation is similar with other SHRCs too. To enter into the West Bengal SHRC one needs to go through a security check like the ones at the airport. Very few amongst the commissions have a website. For those commissions who do have a website, there is hardly any information available with regard to the commission. The most operational website of all the commissions is that of the NHRC. It has to be mentioned that all these commissions are not disabled-friendly. Their presence amongst other state offices makes it difficult for victims to approach them. In some commissions, even to get a RTI reply, paper has to be furnished by the other party.

RELATIONSHIP WITH CIVIL SOCIETY

From the above discussions it is quite evident that the commissions are allied with the governments. They have been set up to be just another government department. While their mandate is for the protection and promotion of human rights, they are just engaged in giving a clean chit to the government and upholding its human rights record.

The commissions' relationship with civil society is very limited and restricted, if in fact there is any relationship at all. There is no membership of representatives of civil society in the commissions in any capacity. While conducting the IPTs, the commissions stayed away from the proceedings and in most cases we were told that the commissions are not answerable to civil society and that they are constitutional bodies answerable only to the government. Such is the attitude of these commissions that they seldom engage in any concrete manner with civil society organisaitons and human rights groups.

The commissions need to engage in human rights education programmes and build awareness amongst the general public concerning their rights. No commission seems to be carrying out these activities. It was surprising to discover that even some lawyers and human rights activists don't know the commission's address in their state. Over the years, the commissions have just fulfilled the bare minimum of their mandate, by being in existence, and they have never reached beyond this. The impression of these commissions being just another government department is validated by the fact that they never involve themselves with civil society.

For members of civil society, the only way they can engage with the commissions is by way of being a complainant. As mentioned before, the websites are not functional in most cases. Furthermore, the websites are mostly in English, thus making it difficult for the local people to understand them. The attitude of the commission members, and their view that they are supreme authorities, alienates them from the people. Even the most urgent of human rights violations, instead of being immediately investigated by the commission, are simply transferred from desk to desk. While the Karnataka SHRC has constantly asked the government for the involvement of civil society members in investigating complaints, the government has never paid this request any attention.

ACCESSIBILITY

Commissions mandated with protecting and promoting human rights ought to be accessible to the people, especially to those belonging to various marginalised communities. The commissions should give special importance to hearing the complaints of such groups. Also, public information should be available and shared with a larger group through various mediums.

The commissions in India operate from the state capitals. None of the commissions have shown any intent to move out from the comfort zone of the capital in order to be at district level, with the exception of the Karnataka SHRC. For people living in different districts in the state it is increasingly difficult and expensive to come to the state capital again and again for their complaints. There is not a single individual present representing the commissions in the districts. The commissions are not accessible to people with disabilities or to elderly citizens.

The commissions in all the states have failed to equip themselves with a diverse staff. Most of the appointments are made by the government and most of the members are men belonging to the higher socio-economic strata of society. It is very difficult for a woman or individual from the marginalised sections to approach the commissions and seek justice. In grave cases of custodial rape and torture, a

woman victim has to address her case to the exclusively male members of the commission. Sensitivity and compassion amongst the members is clearly lacking.

Also the commissions have seldom conducted any activities in the past, whereby the people in far off districts can learn about the existence of the commissions and their powers. For most people, the commissions remain an unknown entity. There is a clear lack of awareness among the common people about the commissions, and therefore most of the complaints lodged with the commissions are sent by civil society groups on behalf of the victims.

In accordance with the PHRA 1993, for the commissions to be more accessible, it is important that human rights education programmes are conducted in each district by the commissions along with civil society groups. Also, the commissions need to have representatives at district level, making it easier for people to approach them and follow up their cases. The establishment and proper functioning of the human rights courts will also help in this process.

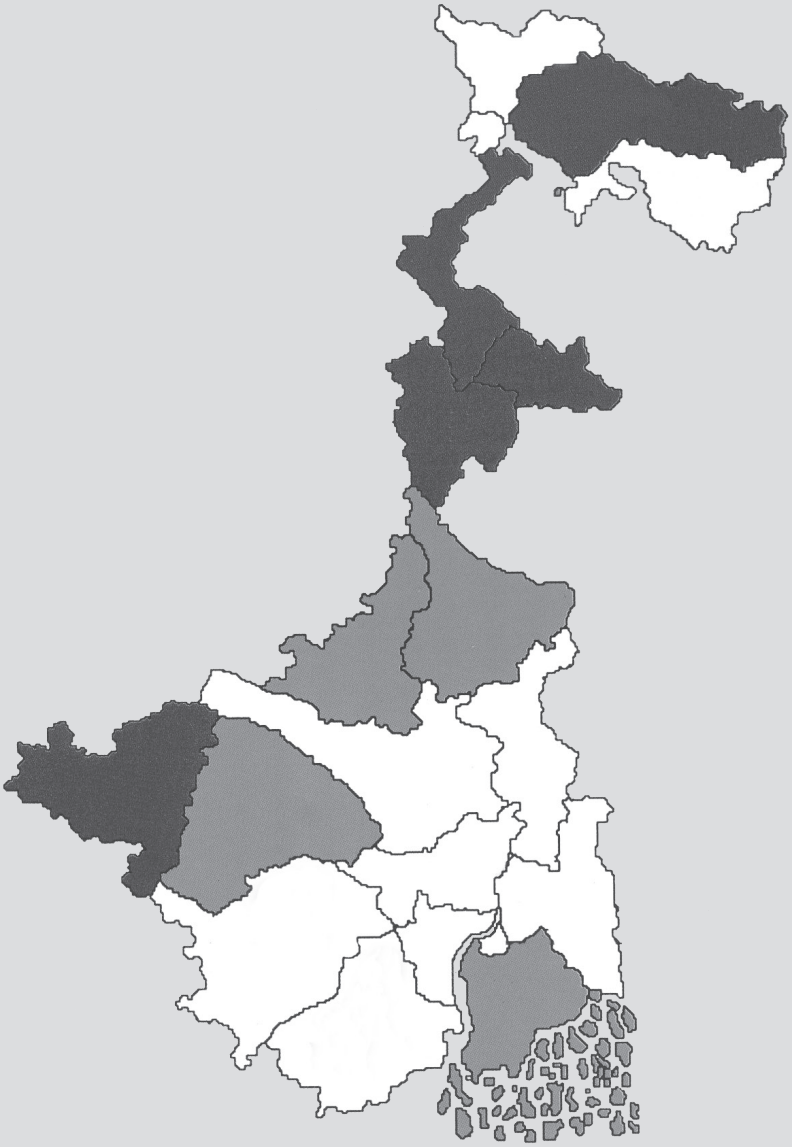
CONCLUSION

The NHRC and SHRCs in India are currently in a grave state of disarray. The hopes of the millions of people who were advocating for these commissions have been turned into despair. While many have already given up the hope of any improvement in the functioning of these commissions and do not want to engage with these institutions, there are yet a large number of activists, lawyers and social workers who for years have constantly engaged themselves with the commissions in an attempt to seek justice, work and campaign towards streamline their functioning and to help make them more effective.

The idea of the IPT has been the same; to monitor and strengthen the functioning of the commissions. These IPTs clearly depict a representative sample from each state of the voices of victims of human rights violation and the responses of the commissions. Examining the testimonies of victims from each state will give a clear idea of the functioning of these commissions. The jury reports are also indicative of the fact that reforms are needed in the functioning of these commissions by the way of amendment to the Act and by the way of proper compliance with the current provisions in the Act.

With this attempt, we are hopeful that the idea of a strong commission is possible, whereby the commissions take strong cognisance of their current state of affairs and take necessary actions to protect and promote human rights effectively and efficiently.

WEST BENGAL
ASSAM
KARNATAKA
KERALA
ANDHRA PRADESH
UTTAR PRADESH



WEST BENGAL

Ursula Urdillo | Shreya Bhattacharya
Nivedita Guhathakurta | Kevin Clarke

SL.No	01	**City**	Kolkata
Total Cases before Jury	30	**Date**	July 31, 2011
Jury: Justice Malay Sengupta – Retd. Acting Chief Justice Sikkim High Court; Adv. Sadhan Roy Choudhry - Advocate Kolkata High Court; Mr. Sarfaraz Ahmed Khan - Assistant Professor, West Bengal National University of Juridical Sciences, Kolkata; Mr. Sujato Bhadra – Eminent Social Activist			
Networking Groups Banglar Manabadhikar Suraksha Mancha; Amreswar Jana Seva Sangha; All India Anti Corruption Organisation; Bamunia Janokolyan Samity; Basanti Border Dospanchal Suraksha Samity; Bhangore Sankhya Laghu Mahila o Shishu Unayan Samity; Bidhan Sarani Integrated Disable Welfare Society; Care Home; Childline (East Midnapur); New Alipur Prajak Development Society; International Organisation for Human Rights Protection; Lodha Shabar Kalyan Samity; Praajak Malda; Right Track; Sruti Disability Centre; Narikel Bariya Vivekananda Seva Sangha			
Note: In West Bengal due to a court order, whereby it is prohibited to hold 'Tribunal', we called the proceedings as a 'Fact-Finding Meeting' on the functioning of West Bengal State Human Rights Commission.			

THE FACT FINDING MEETING ON THE FUNCTIONING OF
WEST BENGAL STATE HUMAN RIGHTS COMMISSION

EXECUTIVE SUMMARY

ESTABLISHMENT OF HUMAN RIGHTS COMMISSIONS

The West Bengal Commission was the first State Human Rights Commission (SHRC) to be established in India. Established on January 31, 1995, by the State of West Bengal via notification No. 42 HS/HRC, it has the power to perform the functions set forth in Chapter V of the national wide Protection of Human Rights Act of 1993. The functions of the commissions are: "to inquire, on its own motion or on a petition presented to it by a victim or any person on his behalf into the complaint of – violation of human rights or abetment; or negligence in the prevention of such violation by a public servant..."[1] The commission begins this process by starting an investigation on its own (*suo moto*), following a petition submitted by a victim or any person on the victim's behalf or following a direction or court order. If evidence of abuse is found, the commission may recommend actions to the state government to redress the issue. Most redress granted comes in the form of monetary compensation for the victim or victim's family. Generally, the State Government in West Bengal accepts the recommendations given by the commission. In this sense, the commission constitutes an efficient instrument of redress.

Although the birth of the commission brought about a resource for victims of human rights violation, it faced a lot of opposition from the government and law enforcement agencies. For example, the Chief Minister Buddhadeb Bhattacharjee, in 1997, instructed the police to use the guns provided by the government to combat crime and not to inconvenience themselves by worrying about criticisms by the commission, which he would 'handle'. This hostile reaction by the executive highlights the importance for commissions to hold sufficient powers to function independently from the government. Due to the ineptitude of the commissions, NGOs have brought claims against the commissions before the courts. Following one of these petitions, the Calcutta High Court ordered in 2010 the establishment of a committee to ascertain the actions taken by the commissions on cases of torture previously submitted before them and which had not received any response. This committee is allowed to make recommendations to the commissions. Unfortunately, to date no action has been recorded by the committee.

1. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12 (a)

FACT-FINDING MEETING

Due to the overwhelming inefficiency of the commission in West Bengal, it was evident that the role of the commission needed to be significantly improved. For example, many complaints submitted by NGOs before the commission remained in a stalemate. This resulted in NGOs submitting RTIs and writ petitions before the Calcutta High Court, however nothing resulted from this action. For these reasons, many NGOs started to resort to other human rights commissions, in their plea to improve the situation of human rights in West Bengal. Due to the overwhelming frustration with the national and state commissions, a Fact-Finding Meeting (FFM) was held on July 31, 2011, in Calcutta. The main objective of this event was to streamline and strengthen the commission to function as an effective, efficient, transparent, and accountable institution that addresses human rights violations. In so doing, twenty-one cases, which include torture, rape, fake encounters, extrajudicial killings, and inaction by authorities, were deposed by victims in front of a panel of four members. All the cases show negative aspects of the commission's operation. For example, many cases describe incidents where complaints or petitions were filed, but there was no response or update regarding the matter. In addition, some cases describe incidents where the WBSHRC closed a matter due to ongoing investigations occurring in other departments. This was disturbing because the department that was investigating the matter was the same department that was being accused for the human rights violations in question; therefore, an independent investigation was not possible. Thus, the selection of cases reflects the lack of clarity in the commission's operations, which favours political interference.

INDEPENDENCE

First, the legitimacy and credibility of a commission is strongly related to its independence from the government. Although the commission is limited by legislation, these limits should not hamper the commissions to efficiently carry out their mandate. However, the commission is dependent upon the state government for its funds and the personnel needed to accomplish its aims. This dependency has allowed the commission to become inefficient in protecting human rights. Therefore, the independence of the commission is non-existent.

JURISDICTION AND ADEQUATE POWER

A defined jurisdiction that clearly establishes the scope of an institution facilitates an effective functioning and prevents overlapping with other bodies. Although, the commission is granted with the power to investigate into complaints on allegations of human rights violations or abetment or negligence in the prevention of such violation, there are four restrictions limiting whether the commission can investigate a matter or not. First, it can only investigate cases involving violations, abetment, or negligence by civil servants.[2] Second, the commission may only investigate in a matter one year from its execution.[3] Third, the commission cannot investigate allegations against the armed forces.[4] Fourth, the commission

2. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(a).
3. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter VIII, Section 36(2)
4. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No.

may not investigate cases pending before another human rights commission.[5] In regards to the one-year time limitation, this allows offenders to avoid the action of the commission.

Furthermore, the commission has not fulfilled many of its functions under Section 12 of the Act. Although the commission does investigate allegations of human rights, there are no records of any activity aiming at monitoring and enhancing the fulfillment of international standards by domestic law and its implementation.[6] Therefore, the commission is losing an opportunity to enhance human rights protection.

Also, Section 36 in Chapter VIII of the Act prevents the commission from inquiring into complaints under investigation by other human rights commissions. The Act recognises the similarities between the national and state commissions, however, the Act does not provide avenues or protocols to ensure complementarity among human rights agencies. A better-defined jurisdiction or the establishment of committees with representation from all commissions to discuss jurisdictional matters could simplify overlapping related issues and help lessen the commissions' workload.

In addition, adequate power is necessary for the commission to fulfill its goal and mission. The commission has the capacity to make recommendations to the state government on different issues for the protection of human rights, such as punitive actions against perpetrators of violations, granting compensation to victims or monitoring conditions of jails.[7] However, these recommendations made by the commission to the high courts are not binding on the state. This inevitably limits the ability of commissions to transfer their work into real actions, and the ability of victims to see their rights fulfilled.

ACCESSIBILITY

Accessibility to the commission is essential to provide a resource to victims who have suffered violations of their human rights. An institution cannot be accessed if the citizenry do not know of its existence or is ill-informed on its functioning. The public not being informed on the commission's functions adds to the amount of complaints that are filed with the commission that may not be within its jurisdiction. This adds to the frustration of the public when they see their claims are unattended, and thus, undermines the commission's credibility.

In addition, physical accessibility is a huge issue. There is only one office, which is located in Bhabani Bhavan in Calcutta. The commission is located in an urban area, which adds to the hardship of individuals who must give testimony or obtain advice there, in terms of transportation and costs.

COOPERATION

Cooperation with NGOs working to protect and promote human rights is fundamental for the commission to increase its visibility and to reach the most vulnerable population in terms of human right

43 of 2006, Chapter IV, Section 19 and WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 29.

5. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter VIII, Section 36(1).

6. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(d) and (f)

7. WBSHRC, 'The PHRA,1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12

abuses. Unfortunately, in West Bengal there are no avenues facilitating any collaboration or promoting NGOs' efforts. The statement made by the Acting Chairperson Justice Shri Narayan Chandra Sil, when asked to participate in the FFM by HRLN, is one prime example of the West Bengal attitude toward collaborating with NGOs. Acting Chairperson Justice Shri Narayan Chandra Sil said that joining civil society efforts was not included in the commission's mandate.[8]

OPERATIONAL EFFICIENCY

Operational efficiency is an incredibly important factor in determining the effectiveness of the commission's fight against human rights violations. Three factors are important when discussing operational efficiency: 1) adequate resources, 2) working methods, and 3) appropriate staff. First, adequate resources are dependent on the funding the commission receives. HRLN visited the commissions on numerous occasions, and noticed that the commission suffers from lack of space, which in turn results in the case files being kept in the corridors. In addition, one problem with the working method of the commission is its power to dismiss complaints *in limine*.[9] This means that the chairperson independently take the decision of dismissing a petition without providing any justification for doing so. From its annual reports, it transpires that the commission has rejected 64.7 percent of the submitted cases *in limine*.[10] Lastly, appropriate staff are necessary to help the commission reach its mission and goals. Staffs are transferred from other state agencies in order to compose the commission's personnel. Therefore, their knowledge of human rights is generally poor. In addition, the members of the commission have no human rights background contrary to the requirements of the Act.

ACCOUNTABILITY

The commission is accountable to the state government through the submission of an annual report. The reports are informative, listing things such as statistics on complaints received and processed, recommendations sent to the state government and a description of the case. However the reports lack any notice or analysis of the commission's aims. As a result, they are purely informative but not substantive in nature.

PATTERN OF HUMAN RIGHTS VIOLATIONS IN WEST BENGAL

The commission investigates human rights violations regarding the state. Their jurisdiction encompasses abuses inflicted by any public servant in the form of acts of commission, abetment, or dereliction of duties. When looking into the patterns of human rights abuses in West Bengal, the widespread political interference existing in the public institutions is palpable, including in the security forces. One area of particular interest is policing. Policing is backed with legislation (the Police Act) that allows policing to be politically interfered with. Although West Bengal is in the process of drafting a new Police Act, according to the police, 'the framework provided by the Act of 1861 popularly called the Police Act

8. In an interview with the Acting Chairperson of WBSHRC on July 12, 2011
9. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations.
10. WBSHRC Annual Reports (from 1998 to 2009)

remains the main platform on which the police administration of West Bengal stands.'[11] Similarly, Section 7 of the Police Act grants the superintendent of police and officials over this rank with the power to appoint, dismiss, suspend, reduce or punish any police officer of the subordinate ranks for acts of negligence; thus leaving space for political interference to flourish. Many of the cases pertaining to the police deal with torture and ill-treatment, custodial death, illegal arrest, extrajudicial killings and fake encounters, police inaction, excessive use of force by the police. As a result of their political backing, police officers are not held accountable for their wrongful actions.

TORTURE

The prohibition of torture is expressed in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which India is a party to. It categorically prohibits the use of torture or ill treatment, not allowing for the possibility of derogation. At the national level, a Supreme Court decision from 1996 found that Article 21 of the Indian Constitution, on the 'protection of life and personal liberty',[12] protects individuals from any form of torture and ill treatment. [13] Despite the international obligations and the judiciary efforts, the Indian law does not provide sufficient mechanisms to effectively punish and prevent the act of torture. One factor is the State's failure to enforce the requirements to prevent custodial violence. This reflects the government's unwillingness to effectively prosecute perpetrators of acts of torture.

Furthermore, consultation with human rights organisations operating in West Bengal reveals that the use of torture and ill treatment by police is systematic in this state. Police often see torture as an effective way for combating and preventing criminality.[14] The commission noted that it 'felt shocked when on occasions custodial violence was sought to be justified on the specious plea that a certain degree of torture was essential and inevitable for investigation of crime in the larger interest of the society.'[15] Torture is used for various reasons, for example it is employed as a tool for extortion. Instances are recorded in which police officers require monetary amounts in exchange for the ceasing of torture and mistreatment of individuals under their custody. This can be seen in one of the cases in the FFM put together by HRLN. One example is Mr. Mridul Roy's case. At one point, he was held in the police station and kept in inhumane and unhygienic conditions. Due to this treatment, the jail warden demanded money from Mr. Roy's sister for better living quarters. This is a prime example of how police officers use torture and ill treatment for their own personal benefit. In addition, officers are susceptible by third parties in exchange of money or favours; therefore, acting as mercenaries in the interest of those who pay for their services. As expressed by the WBSHRC Chairperson in an interview to *The Telegraph*

11. West Bengal Police, 'Organisation functions and duties of West Bengal Police', at http://policewb.gov.in/wbp/RTA/Overview.pdf
12."No person shall be deprived of his life or personal liberty except according to procedure established by law"- Article 21 of the Constitution of India.
13. D.K. Basu v. State of West Bengal, SC Judgment (18 December 1996) reads that "[a]ny form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution." This decision established 11 requirements to be followed in all cases of arrest or detention to ensure detainees' rights protection
14. Assault on Sajib Soren and Mantu Baidya, WBSHRC Annual Report 2000-2001, p. 220-224 and 'Lady suicide after cop 'torture' at night – Woman and son confined at police station', *The Telegraph* (August 6, 2011), http://www.telegraphindia.com/1110806/jsp/bengal/story_14343582.jsp.
15. WBSHRC Annual Report 1996-97, p. 6.

in 1999, '[t[here are instances of the police being used as henchmen of moneyed people. Anyone influential can force the police to arbitrarily pick up a man and torture him in police custody in the name of gathering evidence.'[16]

Section 12 of the Act states: "[t]he commission shall perform all or any of the following functions, namely: (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant." However, the cases featured in the fact-finding by HRLN demonstrate that the WBSHRC is not initiating investigations into the complaints presented by victims. For example, Mr. Juwek Sheikh filed a petition with the WBSHRC on July 21, 2009. To date, there has been no communication received from the commission. Mr. Mridul Roy filed a complaint with WBSHRC on May 17, 2010. However, Mr. Roy has not received any response. The WBSHRC has many options to determine who will inquire into a matter and how such an inquiry will be conducted when they first receive a complaint or petition. For Mr. Sheikh it has been three years and yet there is no response from the commission. In addition, Mr. Roy has been waiting for two years. This is evidence that despite the WBSHRC's power to call for a report from the central or state government or any other authority with a specific time limit[17], the WBSHRC has not taken the necessary steps to comprehensively investigate these matters.

CUSTODIAL DEATH

Another police activity which violates human rights is custodial death. The national and state commissions have set up a procedure by which the magistrates and police agencies have to report to the commissions within 24 hours of every case of custodial death, both in police and judicial custody.[18] Although the implementation of this procedure has made many improvements, scepticism remains over deaths which have occurred under police custody where the manipulation of records is a common practice employed to circumvent criminal liability. There are instances in which police officers hide the corpses in a public place fabricating a release before the death of the detainee, or declare that the detainee was accidentally injured while evading police during the arrest.[19] In addition, memos and police reports are frequently manipulated. This pattern is acknowledged in the commission's reports. For instance, in relation to the inconsistencies found in the police documents while investigating the custodial death of Mr. Ajay Pal, the commission stated, "[t]he interpolation is so hazy that it cannot be deciphered. Sometimes it appears to be February 28, 2001 and then it appears to be February 23,

16. 'Inhuman bondage' *The Telegraph* (June 23, 1999) in Amnesty International, INDIA: Time to act to stop impunity in West Bengal
17. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 17(i)
18. WBSHRC Annual Report 1995-96, Annexure IV 'Letter No. 244/WBSHRC/58/95 to Government of West Bengal' (August 2, 1995) and NHRC 'Letter to all Chief Secretaries on reporting custodial deaths within 24 hours' No. 66/GS/NHRC/93 (December 14, 1994).
19. Cases are recorded by the commission in which police allege injuries and death produced by the arrestee jumping from the police vehicle. Suppression of fact and manipulation of record by Police Officials of Burdwan Police Station in the matter of custodial death of Ajay Pal. WBSHRC, Annual Report 2006-2007, p. 12-21; Custodial death of S. K. Khatib @ Khalif, WBSHRC. Annual Report 2003-2004, p. 265-275 and Custodial death of Dulal Ghorai, WBSHRC Annual Report 2005-2006, p. 57-61.

2001..."[20] Also, this type of behaviour is consistent with the results found in the FFM. In particular, one case discussed an incident where the police of Binapur Police Station and Jambani Police Station, along with the personnel of the 'Joint Forces', raided the village of Chonsara under the pretext of searching for alleged Maoists. In this raid, Mr. Sashadhar Mahato was shot and killed in his home without warning, as the security forces assumed that he was a member of the Maoists. The brother of the deceased stated "[m]y family believes that members of the 'Joint Forces' murdered my brother in cold-blood and that they have fabricated the story that he was found in the possession of an AK-47 rifle." These are just some examples of the manipulation and fabrication that occurs in police reports. Although the State remains the guard of prisoners and has the obligation to maintain the security of the inmates as well as their adequate living conditions, the Indian regulatory framework is extremely deficient in this sense. One huge factor in this regard is the custodial deaths committed by the Border Security Forces (BSF). There have been cases on the border of West Bengal and Bangladesh where custodial death is due to severe torture upon detainees[21] or due to a lack of medical treatment in BSF's outpost.

ILLEGAL ARREST

Illegal arrest is another avenue police officers use to violate human rights. Article 9 of the ICCPR prohibits the exercise of arbitrary detentions. In addition, Article 22 of the Indian Constitution states that detainees have to be produced before a magistrate within 24 hours of their arrest. It also establishes that no one shall be detained in custody without being informed promptly of the reasons for their arrest. However, the reality in West Bengal shows that police officers loosely adhere to these principles and individuals are frequently arbitrarily deprived of their liberties, often on a basis unjustified by law. For example, one case from the fact-finding by HRLN describes this type of incident. Mr. Tushar Mondal states, "On 22nd December 2006, the police of Sandeshkali Police Station detained me without any case pending against me whatsoever and I was later detained in Dum Dum Central Jail. I was granted bail after twelve days following the arrest."

There are cases that demonstrate extortion, the abuse of power by executing arrests to serve the officer's personal interest, and using an illegal arrest as a way to intervene in private matters. Documents pertaining to these cases such as general diaries are often falsely registered and manipulated and the information is altered serving the police officers' convenience. As acknowledged by the commission, "when custodial crime came to notice, the initial tendency was to hush up the case, and when that it was not feasible, to justify the same by inventing a surrogate story reinforced by manipulation and interpolation of records".

Section 12 of the Act states: "[t]he commission shall perform all or any of the following functions, namely: (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant." In addition, Chapter IV, Section 17, states: "[t]he commission while inquiring into the complaints of violations of human rights may (1) call for the information or report from the central government or any state government or any other authority or organisation subordinate thereto within such time as may be specified by it: (a) if the information or report is not

20. Suppression of fact and manipulation of record by Police Officials of Burdwan Police Station in the matter of custodial death of Ajay Pal, WBSHRC Annual Report 2006-2007, p. 16.

21. For an account of these allegations, see *Human Rights Watch*, 'Trigger happy' Excessive Use of Force by Indian Troops at the Bangladesh Border (December 2010).

received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own...."

However, numerous cases in the FFM demonstrated that the WBSHRC has not initiated any investigation after receiving a petition from a victim, for example, in the case of Mr. Rameswar Murmu, a disabled person who was placed under police custody. On June 18, 2010, a petition was filed with the WBSHRC. To date, there has been no acknowledgement or reply in relation to this matter. Another case that portrays this inaction is that of Mr. Tusher Mondal. Mr. Mondal states that the Sandeshkali Police Station detained him without any case pending against him. He was granted bail after twelve days following his arrest. Furthermore, Mr. Mondal filed a complaint with the WBSHRC, but they did not take any action. With regards to Mr. Murmu, it's been two years since he filed a petition with the WBSHRC. Although the commission is granted with the power to set time limits to receive reports by the concerned authorities, the WBSHRC have displayed that they are not effectively using this power. In addition, the commission is granted the power to refer to the Supreme Court or high court to grant an order as it may deem necessary. Again, this avenue is not taken by the WBSHRC.

EXTRAJUDICIAL KILLINGS AND FAKE ENCOUNTERS

Another avenue taken by police officials to violate human rights is extrajudicial killings and fake encounters. Article 21 of the Indian Constitution establishes that "[n]o person shall be deprived of his life or personal liberty except according to the procedure established by law." Due to the unwillingness of state governments to follow the revised guidelines by the NHRC, and the non-existence of a similar procedure for the killings that have occurred during armed forces action, there is no reliable data on extrajudicial killings. For example, from 2002-2008, the number of encounter deaths carried out by the police as declared by the West Bengal Government was ten, which represents an average of less than two cases per year. On the contrary, human rights organisations and the media show that the number of occasions in which individuals are arbitrarily deprived of life by police and armed forces is much higher.

INACTION

One of the methods police officers use to violate human rights is through inaction. As a party to the ICCPR, the Indian Government has the obligation to ensure without discrimination that individuals have 'accessible and effective remedies' to claim the rights included in the convention. In order to provide effective remedies to victims of human rights violations, the ICCPR requires States to investigate allegations of violations, to bring perpetrators to justice, to deliver reparations to victims and to implement measures to prevent recurrence of violations. At the domestic level, failure to register claims of violations constitutes an offence. In West Bengal, police officers adhere to neither the international nor the national level laws. There are numerous instances where police officers will not register claims and delay investigations. This can be seen in one of the cases deposed at the FFM organised by HRLN. On March 13, 2009, a 16-year-old student was killed in the middle of the street. At the meeting the mother of the 16-year-old student stated, "I went to the Contai Police Station to lodge a diary for the death of my son however the Investigation Officer Rabindra Das refused to lodge the diary..."

Chapter III, Section 12 of the Act grants the commission the power to inquire into a petition presented to it by a victim. Although the WBSHRC has this power, many cases heard during the FFM or-

ganised by HRLN demonstrate the WBSHRC's unwillingness to initiate an investigation. In the aforementioned case involving the 16-year-old boy who was killed in the middle of the street, *Childline* filed a complaint on his family's behalf before the WBSHRC on September 2, 2009, but they have not yet received a response. In another case involving the rape of a 4-year-old girl, the father filed a complaint with the NHRC. The father received a letter dated May 30, 2011, stating that the NHRC had referred the case to the WBSHRC. Although, the case falls under the WBSHRC's jurisdiction, the father has not received any information from the WBSHRC. The mother of the deceased 16-year-old boy has been waiting for a response for three years. The father of the rape victim has been waiting over a year. This inaction by the WBSHRC demonstrates their failure to initiate an investigation in these matters. The WBSHRC has been bestowed with numerous procedures that may be performed during an inquiry. For example, the WBSHRC has the authority to approach the Supreme Court or the Calcutta High Court for such directions, orders or writs as that court may deem necessary.[22] Furthermore, the WBSHRC can call for a report or information from other agencies with a deadline to respond. Despite these functions, the WBSHRC has failed to effectively use its powers and it continues to ignore victims' complaints.

EXCESSIVE USE OF FORCE

Another human rights violation practiced in West Bengal is excessive use of force by police. For example, as reported by media and NGOs on December 10, 2008, the International Human Rights Day, the Director General of Police (DGP) requested police to "launch *lathicharge* with the definite motive of breaking the bones of targeted persons. He [also] said that the police should fire so that maximum damage may be inflicted upon the criminals."[23] This type of attitude shows a total disregard for domestic law. According to Section 49 of the Code of Criminal Procedure "[t]he person arrested shall not be subjected to more restraint than is necessary to prevent his escape."

Section 12(a) of the Act states "the Commission shall perform all or any of the following functions; namely: inquire, *suo motu*…" However, numerous cases from the FFM hosted by HRLN demonstrated the WBSHRC's failure to inquire into publicised cases of human rights violations. One example is the case of Mrs. Haimabati concerning violence by police officers towards village people. At a *puja*, attended by most people from the neighbourhood, police officers started shooting and throwing tear gas. Mrs. Haimabati was shot four times. Three bullets went into her back and exited through her abdomen and one bullet was lodged in her body. Although representatives from the NHRC and the West Bengal Women's Commission attended a civil enquiry, no representative from the WBSHRC attended the inquiry. In addition, the WBSHRC did not visit the scene of the incident. Furthermore, the CBI was directed by the high court to conduct an investigation into the incident. The CBI listed 169 people that were injured by the police. Although this was a case that involved a court order and 169 victims, the WBSHRC did not even acknowledge the incident, even the commission has the power to inquire into a matter independently without receiving a petition from a victim. This negligence displays the inaction by the WBSHRC despite having the power to initiate an inquiry.

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22. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 18(b)
23. West Bengal DGP in trouble for advocating torture (12 December 2008) at http://www.merinews.com/article/west-bengal-dgp-in-trouble-for-advocating-torture/152865.shtml

FAILURE TO PREVENT AND ADDRESS STARVATION DEATHS

In a landmark decision in 2001, the Supreme Court held that Article 21 "protects for every citizen a right to live with human dignity. Would the very existence of life of those families who are below the poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families?"[24] Although this is a huge step forward in Indian law, there is consistent failure by authorities to prevent and address starvation deaths. The Indian Government, in trying to fulfill this obligation set forth by the Supreme Court has approved a wide array of food-based programs to combat hunger. One example is the distribution system of food from areas of grain surplus to low-income families. However, in such a program, there are reports that 36 per cent of the food grains distributed were diverted into the black market.[25] These flaws occur in West Bengal. In 2010, a report by Mrs. Anuradhna Talwar, the adviser to the Commissioners of the Supreme Court, uncovered grave flaws in the implementation of food-based schemes in West Bengal. Shockingly, despite allegations of acute hunger and starvation deaths in West Bengal, this report revealed that the number of ration cards in March 2010 was higher than the projected population of the state.[26] In addition, *Transparency International*, in a corruption survey carried out in West Bengal in 2008, found that 16 percent of the surveyed households in urban areas and 35 percent in rural areas did not hold ration cards despite being eligible for them. This can be seen in one of the cases discussed in the FFM. Mrs. Shyamali Halder stated "[a]lthough I applied for a ration card and BPL card we were not included in any list so we could benefit from any government scheme." Due to this horrific disaster, Mrs. Shyamali Halder lost her two-year-old daughter to starvation.

Furthermore, the state government and police officials exacerbate the problem of starvation. In 2004, two years after starvation deaths were recorded in the tea plantations in North West Bengal, the state government, in an affidavit submitted to the Supreme Court, denied that starvation related deaths were real.[27] In addition, public officials often claim diseases, as opposed to starvation, as the cause of these deaths. These figures unveil rampant and cruel corruption at the expense of the starving and impoverished Bengalis.

As discussed earlier in this section, Mrs. Shyamali Hali's case demonstrates the failure to initiate an investigation by the WBSHRC. In this case, an order was issued by the court directing the WBSHRC to inquire into the incidents of starvation deaths in the area. However, Ms. Hali has not received any confirmation or response regarding this order. The WBSHRC has the power to call for information from organisations with a set deadline as the commission sees fit. The failure to respond to Mrs. Hali demonstrates the WBSHRC's failure to initiate an investigation despite empowered to do so under the Act.

CONCLUSION

Although the Act of 1993 created a new resource for victims of human rights, the WBSHRC has failed to accomplish its goals and missions. As can be seen from the fact-finding carried out by HRLN, one of

24. PUCL v. Union of India, Supreme Court Judgement of May 2001
25. UN Report of the Special Rapporteur on the Right to Food, Jean Ziegler: Mission to India (March 20, 2006)
26. Shiv Sahay Singh, PDS a lesson in corruption, finds report, Express India (August 24, 2010) http://www.expressindia.com/latest-news/pds-a-lesson-in-corruption-finds-report/664144/
27. Supreme Court Commissioners, Response to the Government of West Bengal's Affidavit on Hunger in West Bengal Tea Plantations (March-April 2004)

the major issues complained of by victims is the inaction of the commission. Numerous cases describe the same problem whereby a petition or complaint is filed but the petitioner receives no response or confirmation. Many of the misfortunes and inefficiencies of the the WBSHRC are due to political interference and its structural organisation. This clearly indicates that the WBSHRC needs to be independent from government control in order to be effective. Until there is a drastic change within the functions and operational structures of the WBSHRC, victims of human rights will continue to receive no justice, and offenders will continue to commit human rights violations without any consequences.

THE FACT FINDING MEETING JURY PANEL

SOCIAL AUDIT REPORT

CHAPTER-I

Patterns of Violations and Functioning of WBSHRC

INTRODUCTION

The contours of state-sponsored abuses[1] in West Bengal are shaped by the legacy of the totalitarian colonial laws and structures of government which persisted and were perpetuated in the post-colonial period. Since 1977 the State of West Bengal has had a government lead by Left Front. By the time it lost power in May 2011 it was the longest democratically elected communist government in the world. One would have expected a strong and resilient human rights legal and institutional regime to have taken root in such a state. Alas! That is hardly the case.

In West Bengal torture, rape, custodial deaths, fake encounters and inaction by the responsible authorities usually go unpunished. With both federal and provincial laws designed to protect civil servants, particularly police and armed forces, from any consequences against their wrongdoing, a climate of impunity is pervasive. This not only undermines the rule of law and the public trust in state institutions but it also leaves victims defenceless in their encounter with the state's machinery.

In this context, the enactment of the Protection of Human Rights Act 1993 that provided for the establishment of national and state human rights commissions, was seen to have opened new avenues for the onward march of human rights in India. These Commissions were entrusted with the role of protecting human rights bestowed on the citizenry of the country through the Constitution of India as well as by various international conventions. To this end, the commissions have the power to advance recommendations to the government to redress the grievances of the victims. They might recommend criminal investigations, disciplinary proceedings if the violations are by state actors, and also compensations to victims. They also evolved procedures and protocols to be followed by state institutions for reducing the potential violations of human rights and to prompt redresses if a violation occurs. For instance, the

1. State-sponsored abuses we mean those abuses committed by civil servants including acts of commission and omission or abetment thereof. This includes torture, rape, custodial death, fake encounters and inaction.

NHRC have enacted nationwide protocols aiming at reducing the incidence of unlawful killings and custodial rape.

The WBSHRC, was constituted in 1995, and was the first SHRC to be established in India. In the sixteen years of its existence it has proved to be ineffective in fulfilling its mandate. The lack of economic independence and autonomy of action written into the founding legislation have significantly undermined the commission from the very beginning. In practice, insufficient power and jurisdiction ties the hands of the commission to act effectively. The inefficacy of the commission has been brought to the notice of the courts by NGOs, following which the Calcutta High Court ordered the establishment of a committee in 2010, which was to ascertain the actions taken by the commission on cases of torture previously submitted before them which had not received any response. This committee is directed to recommend actions to be taken by the commission. Unfortunately, to date, no action has been recorded by this committee.

It is evident from the testimonies of victims of rights abuses presented before the panel in the Fact Finding Meeting (FFM), that use of violence against individuals in West Bengal by law enforcement agencies is rampant, and it usually goes unpunished. Any one seeking justice is harassed and confronted with corruption. The existence of a rich jurisprudence at the national and state levels in human rights law has often proven to be useless in the face of a lack of political will and an absence of institutional mechanisms to enforce court orders. There is something fundamentally wrong with a political order that seeks to protect the perpetrators against the victims.

WEST BENGAL HUMAN RIGHTS COMMISSION: FROM HOPE TO DISAPPOINTMENT

The commission was the first SHRC to be constituted in India. It was established on the January 31, 1995 by the State of West Bengal via notification No. 42 HS/HRC, with powers to perform the functions set forth in Chapter V of the nation wide Protection of Human Rights Act of 1993. Accordingly, the commission has the powers to inquire into complaints of "violation of human rights or abetment" or "negligence in prevention of such violation" by public servants.[2] To this end, the commission could start an investigation on its own (*suo moto*), following a petition submitted by a victim or any person on the victim's behalf, or following a direction or an order of any court.[3] When evidence of abuse is found, the commission might recommend actions to the state government. These might be in the form of disciplinary or criminal proceedings against the public officials respon-

2. WBSHRC, 'The PHRA Act, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12 (a).
3. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12 (a).

sible, preventative measures to avoid the repetition of human rights violations, and the provision of immediate compensations to victims.[4] In performing these functions the commission was expected to bring accountability to the State in those matters pertaining to human rights, and to improve its human rights record.

> **"When an individual is wronged and his/her rights taken away by an organ of the State, he/she fells terribly distressed and forsaken. He/She is alone and his/her fight against the system is quite uphill. Nothing can be more unequal than an individual pitted against the might of the State. The commission's endeavour has been to rectify and remedy this imbalance to the best of its capacity by providing institutional support to the individuals wronged."**
>
> ***—WBSHRC, Annual Report 1997-1998, p. 43-4***

Between 1998 and 2009, the commission received 6,620 complaints per year, on average.[5] To an extent, the commission's work has uncovered grave abuses by state officials, particularly those committed under police or judicial custody such as custodial deaths and torture. Following the NHRC guidelines, deaths that have occurred in police and judicial custody have to be reported to the national and state commissions within twenty-four hours.[6] In West Bengal, the commission regularly investigates custodial deaths and issues recommendations to the concerned authorities and the state government if evidence of negligence or mistreatment is found.[7] Unfortunately, due to police malpractice, reliable figures of custodial deaths do not exist. Consequently, it is impossible to measure the impact of the commission's work in decreasing the incidence of custodial deaths.

> **"The commission felt shocked when on occasions custodial violence was sought to be justified on the specious plea that a certain degree of torture was essential and inevitable for investigation of crime in the larger interest of the society. The commission made it clear, time and time again, on different fora that custodial violence could never be an effective instrument of investigation. It was resorted to often as a shortcut to painstaking investigation; it, however, produced results exactly other than what was intended. In any case, any act of brutality during custody is an assault on the constitutional rights of the citizens and any public servant doing this must expose himself fully to its consequences."**
>
> ***—WBSHRC, Annual Report 1996-1997, p. 6***

Following the commission's recommendations, the state government has implemented measures aimed at eradicating malpractices in jails and improving the resources allocated to custodial facilities.[8] Through its recommendations, the commission occasionally granted compensations to victims and/or initiated criminal investigations or disciplinary procedures.[9] Generally, the State Government of West Bengal accepts the recommendations by the commission.

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4. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 18(a) and (b).
5. WBSHRC Annual Reports (1998-2009)
6. Letter to all Chief Secretaries on the reporting of custodial deaths within 24 hours. Letter No. 66/SG/NHRC/93. NHRC Sardar Patel Bhavan New Delhi (December 14, 1993)
7. WBSHRC, Annual Report 2003-2004, Death of UTP MD. Saukat due to negligence of officials of Sub-Correctional Home and Sub-divisional Hospital of Uluberia, p. 142-50
8. WBSHRC, Annual Report 1995-1996, p. 1-2
9. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 18

There are two fundamental advantages to seeking relief from the commission. Its procedures are less cumbersome compared to those of the courts, thus its orders can be obtained faster. Secondly, the costs of approaching the commission are much less, compared to those incurred by going to a court.[10] According to the commission's procedure it is sufficient to send a written petition addressed to the WBSHRC's Chairperson by fax, email or post, for action to be initiated and this is free of charge. In a country where free legal aid is but notional and plagued by insufficient funds and deficient quality, human rights commissions opened a new era for the advancement of human rights. It may be noted here that, while the Act promised that the establishment of human rights courts would provide "speedy trial of offences arising out of the violation of human rights,"[11] this provision, regrettably, has yet to be implemented.

The birth of the commission was greeted with enthusiasm laced with a little scepticism by human rights NGOs. Their apprehensions were proven correct by the resistance the commission faced from the government and law enforcement agencies. They often tend to portray protection of human rights as an obstacle to the fight against criminality, as consideration of rights hinders the extra-judicial methods used by police officials. That this mindset permeates the entire political and bureaucratic establishment is illustrated by an exhortation by the then Chief Minister Buddhadeb Bhattacharjee in 1997 to the police, whom he told to use the guns provided by the government to combat crime and not to be bothered about criticisms by the commission which he would 'handle'.[12]

FUNCTIONING OF THE WEST BENGAL STATE HUMAN RIGHTS COMMISSION

The Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, published by the United Nations Centre for Human Rights in 1995, establishes six 'effectiveness factors' essential for the functioning of national human rights institutions.[13] These are: 1) independence, 2) defined jurisdiction and adequate powers, 3) accessibility, 4) cooperation, 5) operational efficiency and 6) accountability. In the following pages we use these six indices, and a few additional factors like 'adequacy and quality of recommendations', to assess the functioning of the commission.

Independence

The legitimacy and credibility of a commission is strongly related to its independence from the government. Whilst the independence of public institutions is unavoidably restricted by their constitutive legislation, limits on their independence should not hamper their ability to effectively undertake their functions. For instance, although according to the Act the state government is responsible for sanctioning the funds and personnel needed by the commission,[14] these resources should be reasonable in quan-

10. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations
11. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter VI, Section 30
12. 'INDIA time to act to stop torture and impunity in West Bengal', Amnesty International Document, August 2001, p. 5
13. UN Centre for Human Rights, National Human Rights Institutions, Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4 (1995), p 10
14. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No.

tity and quality to allow this institution to fulfil its mandate. Clearly, by providing the commission with insufficient and/or inadequate resources, its ability to perform its duties is hampered. Further, the commission's independence is crucially dependent on it having competent and independently minded people in its decision-making positions, who can resist external influences and extraneous considerations.

Independence through legal and operational autonomy

The legal status of the commission should allow it to perform its functions without interference or obstruction from any external institution or from the government itself. By being accountable to the Parliament, commissions in India enjoy (from an important guarantor that can strengthen their capacity to be protected,) protection against executive intervention.[15] Still, the independence of the commission is impossible to attain if other prerequisites are not met. Legally guaranteed autonomy will never be realised if other institutions, such as the police, indulge in systematic non-cooperation.

Independence through financial autonomy

Financial autonomy is essential for the commission to be able to fulfil its mandate. Any institution that lacks control over its finances and is externally dependent for its budget has its autonomy seriously compromised. Considering that budgetary resources are scarce, institutions dedicated to overseeing the state's performance such as human rights commissions are low on the allocation lists of state government. A guaranteed source of funding in the founding legislation would have ensured autonomy for the commission. However, Section 33 of the Act makes it a prerogative of any state government to make grants as it 'may think fit for being utilised for the purposes of this Act'. Consequently, it is up to a state government to act unilaterally in the allocation of funds. Thus, today, budgetary constraints are one of the main obstacles to the commission's performance in its basic functions, by its own admission.[16] Its manpower 'is still inadequate and below the minimum requirement'[17] to tackle the amount of cases it receives. Its infrastructure is less than adequate.[18] The commission repeatedly stressed these shortcomings in its annual reports.

Independence through appointment procedure and selection of staff

Institutional autonomy is contingent upon the integrity of the commission's members. Ideally they should not hold ties with the government, political parties or any other actor who might have an interest in influencing the commission's work. Independence of the members is usually ensured in the legislation by defining the terms and conditions of their appointment and termination. These usually include the method of appointment, criteria for appointment, duration of appointment, conditions for reappointment, dismissal, and privileges and immunities.[19]

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43 of 2006, Chapter VII, Section 33 and Chapter V, Section 27

15. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 20 (2)

16. In interview with the Acting Chairperson of WBSHRC on July 12, 2011

17. WBSHRC Annual Reports (Annual Report 1997-1998 p. 5, Annual Report 1999-2000 p. 3; Annual Report 2000-2001 p. 2; Annual Report 2001-2002 p. 2; Annual Report 2002-2003 p 2; Annual Report 2003-2004 p. 2; Annual Report 2004-2005 p. 2; Annual Report 2005-2006 p. 2; Annual Report 2006-2007 p. 2)

18. WBSHRC Annual Report 1998-1999 p. 4

19. UN Centre for Human Rights, National Human Rights Institutions, Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4 (1995)

The method of appointment is particularly critical in ensuring that individuals capable of sustaining independent action are selected. According to the Act, the Governor appoints the chairperson and members of the commission. These appointments are made following the recommendation of a committee chaired by the chief minister, and composed of the minister in-charge of the department of home, speaker of the Legislative Assembly and leader of the opposition.[20] Usually, by ensuring the participation of only one member of the opposition in the appointing committee, the political party in the power/office ensures the appointment of candidates of its choice. Although the Act ordains that the chairperson of the commission should be a former chief justice of a high court, one member a former judge of a high court or a district judge, and another member has to be a figure with substantial experience in human rights, there is no obligation to hold an open and transparent process based on merits.[21] Nor is the chairperson required to possess any human rights experience. Thus, the control of the executive in the appointment of commission members is complete, and the conditions it has to adhere to in making appointments are minimal.

Even with this kind of attitude the government does not always succeed in finding a 'suitable candidate', nor does it appear keen to fill up the vacancies in the commission. For instance, they have failed to find a chairperson for the commission since December 2008.[22] The government repeatedly failed in convening the committee meetings necessary to appoint a new chairperson and members.[23] At present, Justice Shri Narayan Chandra Sil, a former member of the commission, holds the position of acting chairperson as the Act authorises the Governor to empower members as acting chairperson until a new chairperson is appointed.[24] However, this prolonged absence of full time leadership for the commission has seriously undermined its legitimacy and credibility. It also has palpable consequences for the efficacy of the commission.

Waiting for the appointment of its chairperson since December 2008, the WBSHRC is functioning with just an acting chairperson and one member. In addition, according to the Act, the chairperson shall be a chief justice of a high court. The current acting chairperson does not satisfy this requirement.

Further, although it is a statutory obligation that one of the members has a human rights background, this requirement is generally disregarded. Rather, the appointees are selected after years of service in the government and lack any field experience in the defence and protection of human rights. This has a major bearing on the institution. This is replicated at all levels of the institution, as the commission does not have any powers to select its own staff and it is for the state government to make these resources available as 'necessary for the efficient performance of the functions of the state commission.'[25] Thus, the majority of the commission's personnel are transferred from other state agencies. This *de facto*

20. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 22
21. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 21(2)
22. "Justice Shyamal Kumer Sen retired on December 31, 2008. Since Justice Naranyan Chandra Sil, being the senior-most member assumed the charge as the Acting Chairperson." WBSHRC, Annual Report 2007-2008, p 1.
23. Sabyasachi Bandopadhyay, 'Rights panel in Bengal totters as govt drags its feet' (Oct 2, 2010) <http://www.indianexpress.com/news/rights-panel-in-bengal-totters-as-govt-drags/691445/> accessed August 12, 2011
24. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 25(1)
25. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 27

reduces the commission to another organ of the State. This practice has serious consequences for the commission's investigation personnel. Although the commission posseses its own investigative wing to perform its own inquiries,[26] by leaving the appointment of the staff of this department to the state government, the independence of these inquiries is seriously compromised.[27]

Independence through composition

It is imperative for an institution that works to protect human rights that it reflect the diversity of the society, in terms of ethnicity, gender and other significant social identities that it works with, in order to have legitimacy and independence. The Paris Principles enshrine this pluralistic philosophy.[28] The fourth principle emphasises the need to ensure representation from 'NGOs' involved in human rights, 'trade unions', 'concerned social and professional organisations, such as associations of lawyers, doctors, journalists and eminent scientists', 'trends in philosophical or religious thought', 'universities and qualified experts', 'Parliament' and 'government departments'.[29] Unfortunately, there is no provision in the Act allowing for the participation of organisations or ensuring the representation of ethnic and religious diversity.

Section 12 of the Act indicates that one of the functions of the commission is to 'encourage the efforts of non-governmental organisations and institutions working in the field of human rights'. However this is vague and provides no clear basis to include NGOs in the activities or decision making of the commission. The Act nevertheless establishes that the Chairpersons of the National Commissions for Minorities, Scheduled Castes, Scheduled Tribes and Women should be automatically included as *ex officio* members of the NHRC.[30] Although this provision does not allow for collaboration in the investigation into complaints, it does to an extent reinforce the pluralistic approach of the NHRC and provides an effective measure to avoid duplication in the work of the different commissions. Unfortunately, this provision has not been extended to state commissions. The effects are palpable. In West Bengal, for instance, since its inception no woman has held the position of chairperson or member.

DEFINED JURISDICTION AND ADEQUATE POWERS

The ability of an institution to effectively execute its mandate is severely hampered if its jurisdiction is ill-defined and/or its powers are inadequate. A human rights commission needs a clearly defined jurisdiction that complements other institutions with similar aims and powers, and that compels third parties to cooperate and to enforce its orders.

Subject-matter jurisdiction

A defined jurisdiction clearly establishes the scope of an institution and facilitates its effective functioning by preventing overlap with other bodies. Spreading awareness among the citizenry regarding

26. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations
27. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations
28. UN General Assembly Resolution 48/134, 1993
29. Governmental representatives should participate in an advisory capacity. Paris Principles, Principles related to the status of National Institutions (1993), Principle 4
30. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter II, Section 3(3)

the commission's jurisdiction is fundamental to ensure that the public approaches the institution with appropriate complaints. Section 12 of the Act states the functions of the commission, which include nvestigating complaints on allegations of human rights violations or abetment or "negligence in the prevention of such violation"[31]. It can also open an investigation on its own.[32]

However, there are four restrictions that limit the commission's jurisdiction. Firstly, it has jurisdiction on cases involving violations, abetment or negligence by civil servants only.[33] Secondly, investigations into alleged violations are limited to one year from their commencement.[34] Thirdly, it is not allowed to investigate allegations against the armed forces.[35] Finally, it is not allowed to investigate into cases pending before another human rights commission.[36] The public, and even several human rights organisations, are not aware of these limitations on the jurisdiction of the commission.[37] This usually results in a lot of complaints being filed that are not within its jurisdiction, increasing the non-productive workload of the commission.

These restrictions also often prove to be counterproductive to the commission carrying out its substantive mission. Time limitations often let perpetrators of gross human rights violations slip from the grasp of the commission. In view of this, a committee set up by the NHRC in 1999 to review the Act, proposed to empower the commission with the ability to decide whether a case is to be investigated after that one-year period.[38] It concluded that '[t]his proviso is deemed necessary to do justice in deserving cases where for any reason the one year limiting stipulation could not be adhered to.'[39] Unfortunately, this proposal was not incorporated in the Act in the amendment of 2006.

One of the most important lacunae in the Act is that it prevents any inquiry into allegations of human rights violations by the armed forces. Although the Act vests the NHRC with the jurisdiction to call for reports in allegations against armed forces, its jurisdiction is seriously restricted by a special procedure where by central government is entrusted with these investigations. Therefore, the NHRC can only deliver recommendations based on the reports referred to it by the central government.[40] Thus, the Act precludes the possibility of any independent investigation into alleged wrongs by the armed forces. Hence, it provides the opportunity to shield perpetrators against the consequences of their unlawful acts.

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31. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(a)(ii)
32. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(a)
33. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(a)
34. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter VIII, Section 36(2)
35. As opposed to State Commissions, the NHRC is granted the jurisdiction over armed forces, although in a limited manner which is discussed in the text later on. See WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 19 and WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 29
36. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter VIII, Section 36(1).
37. In interview to the Acting Chairperson on July 12, 2011
38. NHRC, Annual Report 2001-2002, Annexure I, p 262
39. Ibid
40. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 19

Although the commission does investigate allegations of human rights violations and visits detention centres such as jails, its activities in relation to the rest of the functions established in Section 12 of the Act are quite limited. For instance, the commission is authorised to review domestic and international law dedicated to the protection of human rights and recommend measures for their effective implementation.[41] However, there are no records of any activity aimed at monitoring and enhancing the fulfilment of international standards by domestic law and its implementation. Thus the commission registers no activity in one of the important areas that has great potential to enhance the protection of human rights, which is engaging in the processes of legislation drafting. Thus, a range of key governance measures that have significant impact on human rights, such as policing reforms through the amendment of the Police Act and the Prevention of Torture Bill, see no input from the commission. Similarly, it seems that no efforts have been undertaken to promote research on human rights[42] and with the exception of the celebration of Human Rights Day, there are no significant activities promoting human rights literacy.[43]

Avoiding conflicts of jurisdiction

To ensure the efficient functioning of an institution it is fundamental that its activities are complementary to other institutions and that unhealthy competition is avoided. Section 36 in Chapter VIII of the Act prevents the commission from inquiring into complaints under investigation by other human rights commissions. This section acknowledges the jurisdictional similarities among different human rights institutions such as the national and state commissions themselves, the commissions for minorities and the commissions for women. However, the Act does not provide for avenues or protocols to ensure complementarity among human rights agencies. A better defined jurisdiction or the establishment of committees with representation from all commissions to discuss jurisdictional matters could simplify overlapping related issues and help to lighten the commissions' workload. A good communication protocol and even a system of inter-agency referral of petitions[44] are mechanisms that could enhance complementarity.

Conflicts of jurisdiction arise not only from an insufficient definition in the legislation, but sometimes occur from a misuse of the legislation itself. For instance, a flagrant malpractice by the NHRC has been documented in relation to petitions against the armed forces. Although it is clear in the commissions' founding legislation that only the NHRC has jurisdiction over armed forces,[45] there are instances wherein the NHRC has transferred complaints against Border Security Forces (BSF) to the WBSHRC which is forced to dispose of them without any action due to the absence of jurisdiction.[46]

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41. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(d) and (f)
42. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(g)
43. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(h)
44. UN Centre for Human Rights, National Human Rights Institutions, Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4 (1995), [94]
45. Protection of Human Rights (Amendement) Act, 2006 No. 43 of 2006, Chapter IV, Section 19
46. Mr. Sentu Sarkar complaint dated November 10, 2010

Adequate powers

The commission needs powers to carry out inquiries as well as to enforce its recommendations. The commission often advances recommendations to the state government such as punitive action against perpetrators of human rights violations, granting compensation to victims or monitoring conditions of jails.[47] These recommendations are not binding. However, the commission may apply to the high court for further directions.[48] Although the commission claims that the state government accepts more than 98 percent of its recommendations, it is not clear how and when these recommendations are executed.[49] In particular, the implementation of disciplinary action recommended for civil servants, and criminal investigations into the conduct of the police, never seem to be forthcoming.[50] The state government is more prompt in giving out monetary compensations as directed by the commission. But compensations alone should not be confused with the delivery of justice. As noted by Mr. Tusher Mondal, a victim of illegal detention and torture by the police, in his testimony *"I want the police who harassed and tortured me to be punished. The compensation is just material for me, I want justice through punishment of the perpetrators."*[51]

> **Mr. Hedai Mali died in police lockup after three days of detention because of the torture inflicted on him by police officials of Canning PS. He was not produced before the court within the established 24 hours period. Nor was a memo of arrest issued. The commission inquired into his custodial death and torture and instructed the state government to sanction Rs. 40,000 compensation to the nearest of the kin of the deceased. Nevertheless, the state granted half of this amount to the victim's relatives.**

The commission has all the powers of a civil court under the Code of Civil Procedure of 1908, however it cannot enforce it requests of cooperation from other institutions and individuals.[52] The commission itself, in its annual reports, has made note of this fact.[53] For instance, it is reported in one of the commission's annual report that in seventeen cases of violations committed between 2007 and 2009, the commission had to wait an average of nine and half months to receive reports from the superintendents of the police. In five of the cases, this period was over one year and in one case over two and a half years! In no case, was this period less than four months.

ACCESSIBILITY

Awareness of the commission

Awareness is a precondition for accessibility to an institution. Awareness of the commission is minimal among those sections of society that are most vulnerable to human rights violations: the illiterate and economically burdened. Further, they tend to mistrust public officials, which further complicates the

47. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12
48. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 18(b)
49. <http://WBSHRC.nic.in/> (accessed August 4, 2011)
50. Interview with former WBSHRC Chairperson Justice Chittatosh Mukherjee (August 11, 2011)
51. Mr. Tusher Mondal testimony
52. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 13 (1)-(3)
53. WBSHRC Annual Report 1999-2000 p. 12

capacity of the commission to reach out to them. Cooperation between the commission and NGOs can be very productive in this respect for several human rights organisations work in close association with rural communities and sectors of society that are difficult to reach.

Physical accessibility

There is only one office for the commission in the state, located in Bhabani Bhavan, Calcutta. It is fairly accessible as complaints need not be submitted personally; an email, post or fax is sufficient to lodge a complaint. However, individuals might have to approach the commission's office seeking information, advice or to obtain a status update on their complaint. Public hearings might also require the attendance of individuals who have to testify. The real issue with physical accessibility to the commission is its centralisation. It lacks any organisational spread across the vast territory of West Bengal. Existence of regional offices or district offices might vastly improve its accessibility. A more cost effective way of achieving the same would be to have field officers who could monitor the human rights situation in designated regions.[54]

As far as the accessibility to the commission's premises in Calcutta goes, it is surprising that it is not disabled-friendly. The office is on the second floor of a building without a lift or ramp.

COOPERATION

Cooperation with NGOs

As pointed out previously, cooperation with NGOs working to protect and promote human rights is vital for the commission to increase its visibility and to reach the most vulnerable population. These organisations also accumulate a large technical and practical expertise from which the commission could benefit immensely. In West Bengal, NGOs submit a significant number of complaints before the commission on behalf of victims. This facilitates the access of victims to the commission as well as bringing to the attention of the commission various human rights violations that would have gone unrecorded otherwise.

Further, according to the Act, the commission has a statutory obligation to promote efforts by NGOs working in the field of human rights.[55] The international standards enshrined in the Paris Principles go even further in recognising the role of NGOs in expanding the commission's work and promoting its independence and credibility. They envisage a role for NGOs in the appointment of the commissions' members, and NGO personnel are to be members themselves.[56] The Paris Principles also outline the benefits of developing close ties with NGOs.[57] Unfortunately, in West Bengal there is no effort afoot in that direction.

The commission's stance towards civil society efforts was made evident when the commission was invited to participate in the FFM that resulted in this report by HRLN. The Acting Chairperson Justice Shri Narayan Chandra Sil responded that taking part in civil society's efforts is not included in

54. UN Centre for Human Rights, National Human Rights Institutions, Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4 (1995)
55. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter III, Section 12(i)
56. Paris Principles, Principles related to the status of National Institutions (1993), Principle 4 (a)
57. Paris Principles, Principles related to the status of National Institutions (1993), Principle 7 (g)

the commission's mandate. He went on to add that numbers of NGOs are misusing the name of the commission to profit from victims.[58]

Clearly there is a great chasm between the founding vision and current mindset at the commission. For instance, the annual report for 1996-1997 states: "[i]nteraction with the NGOs is essential to discharge the responsibilities entrusted to the commission. The commission received a number of complaints sponsored by the NGOs relating to the violation of human rights. ...The initiative by the NGOs helped the commission in unfolding some of the most glaring instances of infringement of human rights. The commission also utilised the services of NGOs in improving legal aids and in the rehabilitation of some of the victim girls. The commission would like to build up its relationship with NGOs in a more meaningful manner in the months to come."[59] The NHRC went a step ahead and constituted a core group of NGOs to enhance mutual efforts in the protection and promotion of human rights.[60] It also organises regular conferences with NGOs. For instance a two-day conference was held in 2007 on the "Role of NGOs in Support of NHRC for Better Promotion and Protection of Human Rights".[61] In spite of this example, the commission often cold shoulders NGOs.

> **The promotion and protection of human rights cannot gather momentum without the full cooperation between the commission and NGOs. Encouraging the efforts of NGOs working in the field of human rights is a statutory responsibility of the commission.**
>
> ***—NHRC, Annual Report 2007–2008, p. 139***

Cooperation between national institutions

Cooperation between the NHRC and various SHRCs has the potential to enhance the effectiveness of the commission's activities. Maintaining consultation with other agencies devoted to the promotion and the protection of human rights was emphasised a great deal in the Paris Principles.[62] The existence of various commissions that look into the issues of women, minorities, Scheduled Caste and Scheduled Tribe, at the national and state level make cooperation even more necessary. Unfortunately, it is not obligatory by law for the commission to engage in any such consultative process.

The establishment of regular avenues where human rights commissions at national and state level could coordinate their actions and exchange their expertise, might provide them with a significant potential to enhance their operations. In recent years, the NHRC has convened some coordination meetings with state commissions. Although initially these meetings were supposed to be held annually this intention has not been actualised.[63]

58. In interview with WBSHRC Acting Chairperson on July 12, 2011
59. WBSHRC Annual Report 1996-1997, p. 21
60. NHRC Annual Report 2007-2008, p. 139
61. NHRC Annual Report 2007-2008, p. 10
62. Paris Principles, Principles related to the status of National Institutions (1993), Principle 7 (f)
63. Coordination meetings have been held on 30/01/2004, 15/05/2005, 19/11/07, 04/03/08 and 17/08/11 (NHRC, Annual Report, 2007-2008 [13.3] and [13.4]; NHRC, Annual Report, 2007-2005 [16.3] and NHRC, 'NHRC Chairperson says State Governments need to take effective steps to strengthen Human Rights Commissions <http://nhrc.nic.in/disparchive.asp?fno=2107> accessed 8 September 2011)

Adequate resources

As previously mentioned, according to the founding legislation it is for the state government to unilaterally decide on the funds to be granted to the commission with which it can then carry out its functions.[64] The insufficiency of these allocations to sustain an adequate staff and facilities has been a constant concern for the commission.[65] HRLN, in its visits to the commission, has observed that the physical space available for the commission is grossly inadequate and files have accumulated in the corridors. This scarcity of resources results in an extremely low number of cases receiving recommendations, an average of twenty-five per year. This constitutes one percent of the cases admitted yearly.[66] Furthermore, an average of 27 percent of the cases processed by the commission each year are actually cases carried from preceding years.[67] Therefore, quantitative indicators clearly paint a picture of a commission that is unable to cope with the complaints it receives.

> **"We have experienced that registration of complaints with the WBSHRC could take as long as eight months, not to speak of any relief to the tortured victim. Even if the investigating agency works in the right manner, after six months, the evidence of torture is wiped away usually. Even both the victim and perpetrators can hardly be detected. Procedural and functional delay has defeated the very purpose of the constitution of the human rights commission."**
>
> ***—Kirity Roy, Secretary MASUM***

In addition to this poor performance due to a lack of resources, the commission is further dwindling. For instance, the 2006 amendment of the Act reduced the amount of state commissions' members from four to two, excluding the chairperson. Surprisingly, this was done at the behest of a committee set up by the NHRC to propose changes to improve the Act, after consultations with the state commissions.[68] The rationale behind this, was to make state commissions 'more compact, and further also keeping in view the need to lower the financial burden on the states.'[69] This is a way of legitimising the grossly unprincipled conduct of state governments,[70] and it weakens the existing commissions.[71] The salaries of two commission members seem to represent a significant burden on the total budget of a state!

Not only did the amendment to the Act decrease the number of members of the commission, it also increased the amount of complaints placed before them through Section 13(6) of Chapter III which empowers the NHRC to transfer complaints pending before it to the state commissions that have jurisdiction over those cases. Between 2007 and 2008, the NHRC transferred about 1,000 complaints

64. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter VII, Section 33
65. WBSHRC Annual Reports (Annual Report 1997-1998 p. 5, Annual Report 1999-2000 p. 3; Annual Report 2000-2001 p. 2; Annual Report 2001-2002 p. 2; Annual Report 2002-2003 p. 2; Annual Report 2003-2004 p. 2; Annual Report 2004-2005 p. 2; Annual Report 2005-2006 p. 2; Annual Report 2006-2007 p. 2 and Annual Report 1998-1999 p. 4)
66. WBSHRC Annual Reports from 1995 to 2009
67. WBSHRC Annual Reports
68. NHRC Annual Report 2001-2002, Annexure I
69. NHRC Annual Report 2001-2002, Annexure I, p 250
70. NHRC Annual Report 2006-2007, [16.7]
71. A total of 15 State Commissions already established in India (NHRC, Annual Report 2005-2006), [16.1]

to the state commissions.[72] The NHRC plans to help state commissions by implementing a system of complaint management to release some of their overload. This was implemented in Maharashtra State in 2007.[73] However this system has not yet been put in place in West Bengal.

WORKING METHODS

Section 10 (2) of the Act enables the commission to lay down its own procedure. One of the main issues of concern regarding the commission's working procedures is that they allow the commission to dismiss complaints *in limine*.[74] This means that the chairperson can take the decision of dismissing a petition without providing any justification for doing so. From its annual reports, it is evident that the commission has rejected 64.7 percent of the cases *in limine*.[75] Whereas even the NHRC dismissed only 48.2 percent of cases summarily between 2001 and 2008.[76] HRLN's research reveals that in most of these cases the petitions are dismissed as they have not been properly addressed or the application procedure has not been properly followed, or because the matter brought up is private in nature. These high figures suggest that a large number of petitioners are unaware of the proper procedure to submit their complaints and that the commission is too rigid in interpreting its mandate. Public and clear admissibility criteria together with adequate plans to raise awareness of this criterion would enhance the quality of the petitions received and therefore the effectiveness of the commission.

Once a complaint is admitted, it is the practice of the commission to request a report from the superintendent of the police (SP) of the district in which the alleged violation took place.[77] This SP will generally demand a report from an officer of a lower rank, from the same police station against which the allegations were made. According to the commission' guidelines, inquiry reports have to be elaborated upon by 'a responsible officer well above the level of the officers that are being complained against'.[78] Nevertheless, doubts remain as to whether this condition is sufficient to maintain the investigation's independence and whether it is fully respected in practice. Regrettably, the Act and the commission's procedure fail to guarantee that inquiries into allegations are carried out in an independent manner.

> **On January 13, 2010, Dr. Sankar Das sent a complaint to the commission in relation to the negligence and misconduct of police officers in Serampore Police Station. On January 22, 2010, the commission directed the SP of Hoogly to make an inquiry and submit a report. The sub-divisional police officer in Serampore ultimately investigated the matter.**

In ascertaining the evidence of a case, the commission regularly holds hearings.[79] Testimonies at these hearings determine whether the commission proceeds with or dismisses a case. At such a crucial

72. NHRC Annual Report 2006-2007, p 240 and 244
73. NHRC Annual Report 2006-2007, [13.6]
74. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations
75. WBSHRC Annual Reports (1998 to 2009)
76. NHRC Annual Reports
77. As per power granted in Chapter III, Section 14 (4) of the PHRA
78. WBSHRC, Annexure VI, Letter No. 509(150)-WBSHRC/161/Com/95 'Inquiry and submission of report to the WBSHRC in connection with the complaints regarding the violation of Human Rights'
79. As per powers established in Chapter III, Section 14 (2)a of the PHRA. The commission holds hearings three days a week. Each day an average of 3-4 cases are heard

event, only in 9 percent of the thirty hearings that took place in June 2011, were victims represented. In the remaining 91 percent of the cases, the decision on whether to continue the investigation or dismiss it is was taken relying exclusively on the testimonies of state actors. Often, police officers called to the hearings were the same individuals against whom the allegations were made. Misrepresentation of victims in the commission's proceedings by these entities undermines the right of victims to a fair investigation. It violates the basic element of natural justice according to which both sides of a case shall be heard before taking a decision. Moreover, it seriously compromises the quality of the investigation. By relying exclusively on the testimonies of state actors in taking the decision over a case, the independence of the procedure adopted by the commission and its credibility is greatly undermined.

> **On November 1, 2009 Abdul Wahid Kureshi was detained by police officers from Chitpore Police Station. In the late night at 1:00 am, Abdul Wahid Kureshi died in police custody. The WBSHRC investigated this case in 2010 and 2011 as per protocol on custodial deaths. This protocol establishes that DMs and SPs shall inform human rights commissions of custodial deaths within 24 hours. The investigation by the commission held no liability on the police officers of Chitpore Police Station and the case was filed. The commission dropped the case, based on a written testimony of the doctor who signed the post-mortem report. In his statement, the doctor stated that the victim 'had a heart disease' and 'hypertension' as a result of which there was an intra cerebral haemorrhage due to which he fell to the ground and sustained a head injury which was the cause of the death. This statement contradicts the magisterial report, which establishes that on examination of the dead body on the evening of the victim's death, no external injuries on the body were discovered. This investigation failed to include the testimonies of the relatives of the deceased. As declared by Kureshis' family to HRLN, Abdul Wahid Kureshi was in perfect health on the day of the detention and that he was not suffering from any previous heart illness.**

The rules of procedure require the commission to furnish the copies of the final orders and inquiry reports related to a case to the petitioners.[80] The commission also has an obligation to inform complainants when it decides not to continue with an inquiry, once initiated.[81] However, there is no obligation to inform the petitioners if the cases are dismissed *in limine*.

In practice, absence of prompt communication on the status and outcome of the complaints to the petitioners constitutes one of the major sources of frustration for complainants as well as for NGOs. It also generates a perception of lack of transparency in the commission's procedures and undermines its credibility. For instance from 2007 to 2010, an NGO sent over 60 petitions to the commission regarding human rights violations committed by state actors. It received communications for only 17 percent of the cases. Although RTIs requesting information regarding the rest of the cases were filed, the commission has not been forthcoming with any information regarding the rest. For the same period, the rate of communications received on the cases lodged before the NHRC is 70 percent. The letters received included letters of acknowledgement, investigation reports by the police and first intimations asking for reports. This greatly enhances the possibility of victims and organisations contesting

80. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations

81. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV Section 17(b).

the claims advanced by state actors at the commissions' proceedings. This attitude of the commission is systematically discouraging victims and NGOs from approaching it, and so they now approach the NHRC instead.

APPROPRIATE STAFF

As noted earlier the commission's personnel is essentially drawn from the state government, therefore their knowledge of human rights is generally poor. Nor do the members, who according to the Act have to have some human rights background, and experience. This results in a certain degree of apathy in the institution towards the victims. For instance, in 2007, Mr. Tusher Mondol visited the commission's offices with a relative, in order to get information on the status of his petition submitted during the previous year. This petition referred to his illegal detention and torture by police. His testimony in the FFM stated: *"I went to the commission office. Even as I was filling out the form they gave me, two officers entered the room I was sitting in. One of the officers was the secretary and the other 'Sabhapati.' In the office, they humiliated me by referring to my sister and me as terrorists, they asked me to leave West Bengal immediately or else I will be in danger. Then, they asked me to go to the CID, so I went. The officers in the department did not entertain my case and asked me to come on Monday. When I went back to the CID office on Monday they asked me to leave West Bengal."*

ACCOUNTABILITY

The commission is held accountable through the annual reports it submits to the state government.[82] Once the annual report is submitted, the state government is required to present this report together with an 'action taken report' before the State Legislative Assembly.[83] In addition to these annual reports, the commission can submit special reports on any matter falling in its ambit that it deems fit.[84] The content of the reports is not specified in its founding legislation, therefore it is the commission's prerogative to decide upon the content. Generally, these reports include statistics on the complaints received and processed, classified by type of alleged violation and by district. They also list the recommendations sent to the state government and their status with a brief description of the case and the inquiry outcomes. However, these reports are not known for their analytical content. As a result, they are purely informative and not substantive in nature.

Accountability to the citizenry is essential for the credibility of the commission. Informing the public about the aims and achievements of the commission is crucial to its well being. This could be done easily by making its annual reports more easily available. Unfortunately, this is not the case. These reports are not available to the public on the commission's website, and the distribution of their printed copies is very limited.

Further, the commission is not complying with the provisions of the Right to Information Act that

82. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 28 (1) and WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, (Procedure) Regulations.
83. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 28 (2).
84. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter V, Section 28 (1)

came into existence in 2005. Article 7 of the RTI Act ordains that a public information officer shall reply to all queries within thirty days. However, months passed since filing of a RTI application (on June 27, 2011) with the commission, of which no reply was received, HRLN filled a second RTI application requesting access to the commissions annual reports and other information regarding its functioning. Even then no reply was received. Further, the commission has not even made basic information, like the budget allocated to their activities, proposed expenditures and the reports on the disbursements, etc., public.

ADEQUATE RECOMMENDATIONS

Finally, the commission's work cannot be effective if the recommendations it issues to the state government are ill-defined. Recommendations would be effective if they are well-defined and made clear as to how to implement them. Otherwise, the possibility that the government could circumvent these recommendations is very high. For instance, from 2006, the commission stopped specifying the quantum of monetary compensations to be awarded to the victims and merely started recommending 'adequate compensation'.[85] This gave the state undue flexibility to say that it had complied with the commission's recommendations by paying only a token sum as compensation. Another issue of concern is that since 2004, the commission has started directing the state government to deduct victim's compensations from the public servants' salaries.[86] Although it is indisputable that this action may have a deterrence effect on individuals to commit future abuses, it also releases the responsibility of public institutions in ensuring that crimes are not committed.

Further, over the years, the commission has become more of a grievance redressal agency, and it is not giving recommendations on structural issues like improving conditions at various detention facilities or hospitals. It has not paid any attention to training various elements of the judicial machinery in human rights issues either.

HUMAN RIGHTS VIOLATIONS IN WEST BENGAL

The commission has jurisdiction over human rights violations committed by the state, within the State of West Bengal. These include abuses inflicted by any civil servant in the form of acts of commission, abetment or dereliction of duties. The commission admits cases of negligence

85. WBSHRC Annual Report 2007-2008, p. 20, 36, 42, 44 and 50.
86. WBSHRC Annual Report 2004-2005, p. 6, 25; WBSHRC Annual Report 2005-2006, p. 18, 29, 34, 70, 77 and 80; WBSHRC Annual Report 2006-2007, p. 36, 44, 50 and 67.

or abuses by medical practitioners,[87] government officials,[88] police officers[89]and jail administration officers.[90] The violations include torture, custodial deaths, illegal detention and police firing. Generally, the cases receiving more attention, and therefore recommendations, are those related to police inaction, negligence and illegal detention.[91] However, there is a significant range of violations in West Bengal that are not paid enough attention to by the commission. These relate to violations perpetrated by the armed forces, which includes the central police forces deployed to combat Maoists, and the security forces entrusted with the guarding of international borders that the state shares with neighbouring countries. As already noted, the commission does not hold jurisdiction over any acts committed by members of the armed services.[92]

The commission is very cautious in pursuing cases that the executive deems sensitive. It uses its discretional powers in a way that won't rock the boat of governance too much. For instance, there was a wave of deaths from starvation in West Bengal from 2002 to 2007, and serious human rights violations in police firings against protesters in Singur and Nandigram in 2006 and 2007 respectively, yet the commission trod very carefully on both issues.

Patterns of human rights abuses in West Bengal smack of widespread political interference in public institutions, including the security forces. Scholars and NGOs generally attribute this to the political particularities of West Bengal and the persistence of colonial models of policing.[93] By May 2011, when the Left Front lost power, West Bengal had had the longest elected communist government in the world. The initial period of these thirty-four years of uninterrupted rule was marked by hostility with the central government. In order to hold onto the power, CPI-M (Marxist), the dominant member of the front, quickly put together a recipe of capturing institutions of governance to perpetuate its rule.

The most significant component of this was the revolutionary decentralisation of governance, through rural panchayats in 1977, soon after the party acquired power in the state. This was the origin of politicisation of governance in West Bengal. The panchayat system was then used as a mechanism to execute the land reform of the 70s and 80s, and continues to be the prime implementing agency for most government schemes and any *ad hoc* distribution of funds to date. The CPI-M (Marxist) made use of these schemes and funds to reinforce and retain its influence in the rural areas, by rewarding political loyalty in the elections in exchange for certain privileges. Thus the panchayats became an essential instrument of the party in consolidating its power, instead of being a true system of self-governance.[94]

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87. WBSHRC, Annual Report 2003-2004, Amputation of left arm of a new born baby due to improper treatment and negligence of the staff nurse of Chitta Ranjan Sevan Sadan Hospital, p. 94-8
88. WBSHRC, Annual Report 2003-2004, Death of hidden Murmu on account of electrocution due to illegal hooking, p. 150-2
89. WBSHRC, Annual Report 2003-2004, Illegal detention of Banamali Mondal by a police officer of Beliatore PS, p. 158-60
90. WBSHRC, Annual Report 2003-2004, Death of under trial prisoner due to lack of proper treatment, p. 14-7
91. WBSHRC Annual Reports
92. WBSHRC, 'The PHRA, 1993', as amended by the Protection of Human Rights (Amendment) Act, 2006 No. 43 of 2006, Chapter IV, Section 19. The Act exclusively grants jurisdiction over allegations against armed forces to the NHRC. It is worth noting that this jurisdiction is limited as the NHRC is only allow to request reports to the Central Government and base its investigation on the said reports. Accordingly, any possibility to undertake an independent investigation in relation to armed forces is impracticable
93. See the work of Olivier Rubin in The Politics of Deaths in West Bengal: Evidence from the village of Amlashol, Journal of South Asian Development, 6(1) 43-65 and Commonwealth Human Rights Initiative, G.P. Joshi, 'Police Accountability in India'
94. See the work of Olivier Rubin in The Politics of Deaths in West Bengal: Evidence from the village of

This, coupled with the legacy of colonial governance culture, proved to be deadly for human rights in the state.

The colonial model of policing was essentially geared towards ensuring that security forces are permeable to illegitimate political interference as a tool to preserve state power. The British philosophy of policing was to impose an authoritarian police force which was subservient to the executive, in order to maintain the colonial rule. This was articulated by the Police Act of 1861. This Act continues to be the founding Act of policing even in modern day independent India. The Supreme Court and the National Police Commission have repeatedly urged for police reform. Yet all such reform is resisted by state governments which are responsible for police matters. Following the Supreme Court decision of 2006 in *Prakash Singh and Others Vs. Union of India* case, some states have enacted new Police Acts. Unfortunately, the changes introduced by these Acts are cosmetic and the 1861 Police Act lives on.[95] In West Bengal too, although a new Police Act is in the process of being drafted, according to the police "the framework provided by the Police Act of 1861 remains the basic framework on which the police administration of West Bengal stands."[96]

Section 3 of the Police Act states that the SPs are under the control of state government, and Section 7 grants the SP and officials over this rank power to appoint, dismiss, suspend, reduce or punish any police officer of the subordinate ranks for acts of negligence. This opens the floodgates for political interference and arbitrary actions. Thus, the *Commonwealth Human Rights Initiative (CHRI)*, in a report on police accountability concluded that, "the authority of police leadership in India has been eroded over time by political interference, leading to loss of discipline in the force and the promotion of a tendency at different levels within the police to seek outside patronage for rewards and to be shielded against punishment."[97]

Lack of accountability and training has lead to an acute and widespread corruption in the police. For instance, police officials regularly request bribes to file complaints or to initiate or conclude investigations. In this scenario, the role of the commission is fundamental in pushing for a police reform that would effectively lead to an independent police which would respect and protect human rights. Unfortunately, the commission has failed so far in making any contribution to the drafting of the new Police Act, or in addressing the structural problems that result in police-sponsored violations of human rights.

Similarly, executive interference is also noticeable in relation to the armed forces, where there are legislative obstacles to holding armed forces personnel accountable to civil institutions. The Code of Criminal Procedure prevents armed forces being investigated by civilian courts without previous authorisation by the central government.[98] Instead, alleged violations by army personnel are dealt with in internal courts behind closed doors,[99] which shield them against independent investigations. The possibility for human rights commissions to intervene in these cases is also restricted. Only the NHRC has jurisdiction over complaints involving the armed forces.[100]

Amlashol, Journal of South Asian Development, 6(1) 43-65

95. Commonwealth Human Rights Initiative, Feudal Forces: Democratic Nations, Police accountability in Commonwealth South Asia (2007), p. 18

96. West Bengal Police, 'Organisation, functions & duties of West Bengal Police' [2] at <http://policewb.gov.in/wbp/RTA/Overview.pdf> accessed September 4, 2011

97. Commonwealth Human Rights Initiative, G.P. Joshi, 'Police Accountability in India', p. 11

98. The Code of Criminal Procedure (1973), Act No. 2 of 1974, Section 45

99. Border Security Force Act (1967), Chapter VI

100. Protection of Human Rights (Amended) Act, 2006-No. 43 of 2006, Chapter IV, Section 19

TORTURE AND ILL-TREATMENT

'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

—Article 7, International Covenant on Civil and Political Rights

Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, prohibits torture. It obliges states to "ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation."[101] At the national level, a Supreme Court decision from 1996[102] found that Article 21 of the Indian Constitution, on the 'protection of life and personal liberty',[103] protects individuals from any form of torture and ill-treatment.[104]This landmark decision, established the requirements to be followed in case of arrest in order to prevent custodial violence. Although this decision acknowledged the powers of arrest and interrogation also vested in the armed forces, it failed to extend this protocol to them.[105] Despite the international obligations and the judiciary efforts, Indian law is not fully equipped with effective mechanisms to prevent torture and punish its perpetrators.

The Indian Penal Code (IPC) proscribes voluntarily causing 'hurt' or 'grievous hurt' to extort confessions as an act of torture, however, it does not define torture[106]. This prevents effective prosecution of the crime. More importantly, Indian law does not allow for the prosecution of police and armed forces personnel until prior sanction by the executive is granted.[107] This shields even the worst perpetrators. In trying to upgrade the domestic law to ratify the United Nations Convention Against Torture, the union government has worked on the Prevention of Torture Bill, which was passed by the Lower House (Lok Sabha) in Parliament in 2010. Currently under the review of a Parliamentary Standing Committee, even this bill does not do away with the executive sanction clause.[108] Thus, the so-called anti-torture law that is still *in limbo*, effectively continues the age-old practices that have protected the perpetrators all along!

TORTURE AND ILL-TREATMENT BY POLICE

Human rights organisations active in West Bengal reveal that the use of torture and ill-treatment by police is systematic in this State. It affects all sections of the population and the most vulnerable are the weaker sections of society, i.e. women, children, the elderly and people with disabilities. It is often used

101. CCPR, General Comment No. 07: Torture or cruel, inhuman or degrading treatment or punishment (Article 7) (May 30, 1982) [1]
102. D.K. Basu Vs. State of West Bengal, SC Judgment (December 18, 1996)
103. "No person shall be deprived of his life or personal liberty except according to procedure established by law." The Constitution of India, Article 21 (As modified up to the December 1, 2007)
104. D.K. Basu Vs. State of West Bengal, SC Judgment (December 18, 1996) [22] reads that "[a]ny form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution." This decision established 11 requirements to be followed in all cases of arrest or detention to ensure detainees' rights protection.
105. D.K. Basu Vs. State of West Bengal, SC Judgment (December 18, 1996) [31]
106. Indian Penal Code (1860) Sections 330 and 331
107. The Code of Criminal Procedure (1973), Act No. 2 of 1974, Section 197 and Section 45
108. Prevention of Torture Bill 2010, Article 6

as a mechanism to extract confessions or as a way of combating and preventing criminality.[109] Even the commission, which is otherwise circumspect, felt obliged to observe that it "felt shocked when on occasions custodial violence was sought to be justified on the specious plea that a certain degree of torture was essential and inevitable for investigation of crime in the larger interest of the society."[110] This philosophy is particularly applied when law enforcement personnel deal with suspected terrorists, as torture is peddled as an essential instrument in order to save lives. The coming into being of various special laws to 'prevent terrorism' gave a fillip to torture by creating conditions like 90 day custody without judicial review. [111] The state has also been instrumental in creating facilities where these heinous activities could go on, as revealed by an investigative report of the magazine, *The Week* in 2008. [112]

Since torture is now part of the established police culture in the state, it is routinely used for extortion. There are several instances on record, in which police officers demanded money to cease torture and mistreatment of individuals in their custody.[113] It is also inflicted in case of failure of victims to pay bribes to police personnel.[114] It is very common that police act as mercenaries in the interests of those who pay for their services and resort to torture.[115] As noted by the WBSHRC Chairperson in an interview with *The Telegraph* in 1999 "[t]here are instances of the police being used as henchmen of moneyed people. Anyone influential can force the police to arbitrarily pick up a man and torture him in police custody in the name of gathering evidence."[116] For instance, Mr. Mridul Roy, who had an unfriendly encounter with an influential individual, was picked up by the police and *"abused, beaten, tortured and thrashed without making any attempt to enquire into the facts of the incident. They did not issue a 'Memo of Arrest' at the time of arrest. In addition, he was produced at the Behrampore Chief Judicial Magistrate's Court..., after two days of arrest."*[117]

Further, custodial rape and sexual molestation of women are among the chief methods of torture, frequently used by police personnel.[118] Incidents of custodial rape have to be referred to the national and state commissions within 24 hours.[119] Between 2004 and 2008 there were twenty-two cases of custodial rape reported in India, none of them in West Bengal.[120] However, we know from grassroots

109. Assaoult on Sajib Soren and Mantu Baidya. WBSHRC, Annual Report 200-2001, p. 220-224 and The Telegraph, 'Lady suicide after cop 'torture' at night – Woman and son confined at police station' (August 6, 2011) <http://www.telegraphindia.com/1110806/jsp/bengal/story_14343582.jsp> accessed August 14, 2011
110. WBSHRC, Annual Report 1996-97, p. 6
111. The Unlawful Activities Prevention Amendment Act (2008), Section 43D (2)a
112. Syed Nazakat, 'India's secret torture chambers', The Week (July 12, 2009) in Asian Centre for Human Rights, Torture in India 2010 (April 2010) p. 44, at <http://syednazakat.wordpress.com/2011/02/04/indias-secret-torture-chambers/> accessed August 14, 2011
113. Illegal detention of and inhuman torture on Tapan Banerjee by O/C, Belur G.R.P.S., WBSHRC Annual Report 2002-2003, p. 130-5
114. Ibid
115. Illegal detention an inhuman torture of police personnel of Falta PS, WBSHRC Annual Report 2005-2006, p. 25-29
116. 'Inhuman Bondage' *The Telegraph* (June 23, 1999); Time to act to stop impunity in West Bengal, Amnesty International, India (2001)
117. Mrs. Shampa Karmakar and Mrs. Pinky Mondal testimony on behalf of Mr. Mridul Roy testimony.
118. Illegal detention of and inhuman torture on a woman by a police official of Roydighi PS, WBSHRC, Annual Report 2005-2006, p. 78-80
119. WBSHRC, Annual Report 1995-1996, Annexure IV 'Letter No. 244/WBSHRC/58/95 to Government of West Bengal' (August 2, 1995) and NHRC 'Letter to all Chief Secretaries on reporting custodial deaths within 24 hours' No. 66/GS/NHRC/93 (December 14, 1994)
120. NHRC Annual Reports (Annual Report 2007-2008 p. 179; Annual Report 2006-2007 p. 215; Annual

organisations that the figure of zero custodial rapes in the State for four consecutive years is far from the truth. So, it is clear that the protocols are not being followed.

Custodial torture in judicial custody is also widespread in West Bengal. The NHRC registered 1,996 cases of torture of prisoners in 2006-2007, 2,481 cases in 2007-2008 and 1,596 cases in 2008-2009.[121] On occasions the torture inflicted upon the detainees is so severe that it results in death while still in custody or soon after their release.[122] Torture is also inflicted upon those in judicial custody. This is facilitated by the colonial Prisons Act, which legitimises the use of corporal punishment on the prisoners.[123] Real figures of torture cases are difficult to ascertain. Victims often choose not to report cases of torture as they are afraid of the consequences. National and state commissions do not help much as they fail to provide a breakdown of complaints related to torture, despite repeated requests by NGOs such as *Amnesty International*.[124]

Finally, verbal and physical abuse committed by the police and the armed forces for no apparent reason outside of police and judicial premises is one of the most common forms of torture and ill-treatment that is frequently inflicted on entire populations. This misconduct has been extensively documented, especially during raids.[125] Incidents are also recorded in which police will arbitrarily attack villagers as a form of retaliation.[126] A testimony of one such occurrence in the village of Char Bathanpara has been narrated by Mr. Abdul Akhtar in the FFM, who paints a rather bleak picture of this kind of atrocity: *"[w]hen police officers could not find any male person in the house, a police officer told RAF officers to do whatever they wanted with the rest of my relatives. They started mistreating my two daughters of 25 and 15 years old and eventually they raped the eldest in the presence of the youngest. I saw three police officers repeatedly and brutally raping my daughter. Many other women and girls were raped on that day, men were tortured and killed by the police."*[127] The commission has acknowledged the occurrence of these episodes in the course of its investigations.

TORTURE AND ILL-TREATMENT BY ARMED FORCES– BORDER SECURITY FORCE

The use of torture by BSF forces on Indian and Bangladeshi populations on and around the Indo-Bangladesh border has also been extensively documented. In times of peace the mission of these 'Special Forces' is to promote security, prevent transborder crimes, unauthorised immigration, smuggling and any other illegal activity.[128] However, a fact-finding mission by *Human Rights Watch* to this area in 2010, found evidence of grave abuses, including indiscriminate killing and torture, by the forces.[129]

Report 2005-2006 p. 240 and Annual Report 2004-2005 p. 211)

121. 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 (December 16, 2008) in Asian Centre for Human Rights, Torture in India 2010 (April 2010), p. 44

122. Custodial death of Bhola Rahaman. WBSHRC, Annual Report 1998-1999, p. 261-270.

123. Government of India, Ministry of Law, Prisons Act 1894 (Act IX of 1894), Section 46, Clause 12

124. Amnesty International, INDIA: Time to act to stop impunity in West Bengal (2001), 'Recommendations to the WBSHRC', p. 46

125. Gross negligence and dereliction of duty on the part of police officers of Pingla PS & SDPO, Kharagpur p. 29-34

126. Atrocities and torture by police force. WBSHRC, Annual Report 2000-2001, p. 112-6

127. Testimony of Mr. Abdul Akhtar

128. See Border Security Force, <http://sb.bsf.gov.in/history.htm> accessed on August 16, 2011

129. 'Trigger Happy' Excessive Use of Force by Indian Troops at the Bangladesh Border, *Human Rights Watch* Report (December 2010)

They resort to these crimes in the name of curbing illegal trade and for crossing into Indian Territory.[130] They harass population living at both sides of the border.[131] The situation is not helped by the fact that the border between the two countries is not clearly demarcated with the exception of those areas where the Indian Government has already built part of the sanctioned 1,500 km fence.[132] As a consequence, farmers often cross the border accidentally and they are dealt an excessive and unlawful reaction by the BSF in return.

In some cases BSF officers just arbitrarily torture villagers living in this area. For instance, Mr. Ajbar Ali Seikh testifies: *"I went to visit my agricultural land alone. Suddenly, three constables of 90 Battalion BSF and DIB of 10 point camp approached me. They assumed that I was a smuggler and tied me up using rope and tortured me severely. I was kicked mercilessly and beaten with bamboo sticks for a long time. Under this relentless attack, I lost consciousness and also began to urinate blood. I was then scalded with boiling water."*[133] Officers routinely threaten the detainees and prevent them from letting magistrates know of the torture when they are produced in front of them. The magistrate too turns a blind eye to the physical state of the victim. As Mr. Ajbar Ali Seikh testifies, *"[d]espite the fact that the signs of torture were visible on my body, the duty officer asked me whether I had been tortured or not. As I had been previously threatened about disclosing the incidents of torture to the police, I declined to answer the question. I was then compelled to sign a document where it was written that I was not tortured by the BSF and was put into lockup. ...I was sent to the magistrate court... , six days after my arrest."*[134]

One major problem is that despite this force being embedded in civilian communities, it lacks the training to deal with civilian populations. As Mr. Kirity Roy noted at the FFM *"[t]he biggest problem in this area is that the military forces are staying in the villages unlike other border forces. They are all Hindi speaking. ...Since the inhabitants of the village speak colloquial Bangla the military does not understand their language nor do the villagers understand the language of the military. ...They come directly from Kashmir where they were trained to 'shoot at sight.' And now they still use the same training here. They are suspicious all the time and kill anytime."*

NGOs operating in the border area denounce the constant harassment and torture of civilians, including women, the elderly, children and people with disabilities in the BSF's outposts. Their harrassment includes verbal abuse, beatings, sexual harassment and rape. The father of one of the victims narrates: *"one BSF jawan was present inside the BSF outpost and he requested that he be left alone with her. The BSF jawan began to use sexually intimidating language towards my daughter and forcibly provoked her to indulge in sexual activity. Although she made several requests and pleas but the BSF jawan did not pay any attention to it. He forcibly dragged her to a nearby grass field and raped her clutching her mouth. ...After committing the crime, the said BSF jawan threatened my daughter with her life and told her not to disclose the incident to others."*[135]

There are instances of raids by these forces that is used to terrorise entire populations.[136] As previ-

130. Custodial torture of Uttam Saha by BSF personnel in West Bengal (Case No. 529/25/2000-2001-PF), NHRC, Annual Report 2007-2008, p. 49

131. Cases documented by *Human Rights Watch* in 'Trigger Happy' Excessive Use of Force by Indian Troops at the Bangladesh Border (December 2010), p. 45-58

132. 'Total of 1,200 km fencing already completed', As per Government of India, Ministry of Home Affairs, Annual Report 2010-11, p. 39

133. Testimony of Mr. Jugol Sarkar on behalf of Mrs. Beauty Sarkar.

134. Ibid

135. Testimony of Mr. Jugol Sarkar on behalf of Mrs. Beauty Sarkar.

136. Such is MASUM's case of torture by BSF, deposed in the FFM by Mr. Rahul Sheikh and Mr. Tajul Islam.

ously mentioned, the legislations' jurisdictional limitations, and the commission's apathy have protected them from any consequence for the crimes they commit.

CUSTODIAL DEATH

Custodial death by police

According to the procedures setup by the national and state commissions, in cases of custodial deaths, magistrates and police agencies have to report such instances to the commissions within 24 hours.[137] This mechanism has successfully contributed to the unveiling of deaths for which civil servants were responsible.[138] It has also contributed to the generation of more reliable figures of custodial deaths, especially when these deaths occur in judicial custody. However there is still some manipulation of records taking place to avoid criminal liability. There are instances where police officers hide the corpses in a public place and fabricate a release before the death of the detainee. At times they declare that the detainee was accidentally injured while evading police during arrest.[139] Memos of arrest and entries in the case diaries are frequently manipulated to cover-up custodial deaths. This pattern is noted in the commission's reports.

For instance, in relation to the inconsistencies found in the police documents while investigating the custodial death of Mr. Ajay Pal, the commission noted that "[t]he interpolation is so hazy that it cannot be deciphered. Sometimes it appears to be 28/02/2001 and at other times it appears to be 23/02/2001. The 'Arresting Officer' signed his name as Samaresh Dey, police sub-inspector, putting his signature with the date as 22/02/2001. No time is mentioned there. As regards the 'Memo of Arrest', it is not clear as to why it contains the reference of G.D. No. 2132 dated August 22, 2001 and why there is interpolation as regards the date mentioned under the purported seal."[140]

According to West Bengal's Minister for Prisons, from January 1, 2007 to March 31, 2008, there were 97 custodial deaths in West Bengal. Of these, 86 deaths resulted from illness and 14 were "unnatural" deaths.[141] Unnatural deaths are generally caused by police torture, disputes between jail inmates and accidents due to the overcrowding in most prisons. In 2003 West Bengal jails housed 25.88 percent more prisoners than they had capacity for.[142] Even when death is due to 'natural causes', it is due to negligence on the part of the authorities concerning either sanitary or medical matters, and it

137. WBSHRC, Annual Report 1995-1996, Annexure IV, 'Letter No. 244/WBSHRC/58/95 to Government of West Bengal' (August 2, 1995) and NHRC 'Letter to all Chief Secretaries on reporting custodial deaths within 24 hours' Letter No. 66/GS/NHRC/93 (December 14, 1994).

138. For instance illegal detention and custodial torture by police officials leading to the death of Kanai Santra in the Alipore Court lockup. WBSHRC, Annual Report 2006-2007, p. 21-34. In this case, the commission started a investigation as per a telegram message from I/C Jadavpore PS intimating about the death of Kanai Santra. As a result of the commission's investigation three police personnel from the Alipore Court lockup were found responsible for the death for Kanai Santra.

139. Cases are recorded by the commission in which police allege injuries and death of the arrestee by jumping from the police vehicle are there. Suppression of fact and manipulation of record by police officials of Burdwan PS in the matter of custodial death of Ajay Pal. WBSHRC, Annual Report 2006-2007, p. 12-21; Custodial death of S K Khatib *alias* Khalif, WBSHRC. Annual Report 2003-2004, p. 265-275 and Custodial death of Dulal Ghorai, WBSHRC, Annual Report 2005-2006, p. 57-61.

140. Suppression of fact and manipulation of record by Police Officials of Burdwan PS in the matter of custodial death of Ajay Pal. WBSHRC, Annual Report 2006-2007, [11] p. 16

141. Asian Centre for Human Rights, Torture in India 2009 (June 2009) p. 50

142. NHRC, Annual Report 2003-2004, p. 257

still counts as a human rights violation. The commission repeatedly noted that avoidable deaths are still taking place "in jail custody due to non-availability of expert medical advice"[143], and asked the government to improve conditions in jails.[144]Although the state remains the guardian of the prisoners and has the obligation to maintain the security of the inmates and their adequate living conditions, the Indian regulatory framework is extremely deficient due to the colonial era Prisons Act. In 1997 the Supreme Court recognised the necessity to update prisons legislation.[145] Still, no serious attempt has been made to update and reinforce the legal framework to protect the rights of prisoners and detainees.

Custodial death by Armed Forces: Border Security Force

Custodial deaths at the hands of BSF's personnel are a class unto themselves. The above-mentioned procedure of communication of custodial deaths and rapes to the national and states commissions are not applicable to the BSF. Thus, it is impossible to keep a credible record of the actual custodial deaths at the hands of the armed forces. The commission's records show no custodial deaths at the hands of these entities in spite of reports to the contrary by NGOs operating in the border area of West Bengal and Bangladesh.[146] In most of the cases, custodial death is due to severe torture upon detainees[147] or due to lack of medical treatment in BSF's outpost.[148] NGOs from both sides of the border lay bare the alleged different strategies by BSF officials to cover up these crimes. They claim custodial suicides[149] or that the victims were beaten up before detention by non-BSF individuals[150] or they summarily make corpses disappear.[151]

ILLEGAL ARREST

> **"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."**
>
> ***—Article 9(1), ICCPR***

Article 9 of the ICCPR prohibits the exercise of arbitrary detentions. This article makes it mandatory that the reasons for the arrest and the charges against the accused be notified before every arrest. All arrested individuals should be promptly brought to court. These provisions are reflected in Article 22 of the Indian Constitution and the Code of Criminal Procedure of 1973.[152] Clause 2 of this Article states

143. WBSHRC, Annual Report 1995-1996, p. 20
144. WBSHRC, Annual Report 2004-2005 [1.12.1] and Annual Report 2005-2006 p. 3-4.
145. Rama Murthy Vs. State of Karnataka, SC Judgment (1997).
146. For an account of these allegations, see *Human Rights Watch*, 'Trigger Happy' Excessive Use of Force by Indian Troops at the Bangladesh Border (December 2010).
147. OMCT, India: Death in Custody of Mr. Jabed Ali Mahaldar_Risk of impunity (May 22, 2009) at <http://www.omct.org/urgent-campaigns/urgent-interventions/india/2009/05/d20001/> accessed on August 22, 2011.
148. *Asian Human Rights Commission*, India: An ailing man died in the custody of Border Security Force (BSF) due to lack of medical help (May 11, 2007) <http://www.humanrights.asia/news/urgent-appeals/UA-157-2007> accessed August 22, 2011.
149. Odhikar Bangladesh Six month's Human Rights Monitoring Report (July 1, 2011) [4]
150.OMCT, India: Death in Custody of Mr. Jabed Ali Mahaldar-Risk of Impunity (May 22, 2009) at <http://www.omct.org/urgent-campaigns/urgent-interventions/india/2009/05/d20001/> accessed on August 22, 2011.
151. OMCT, Death in Custody at <http://www.masum.org.in/Sentu%20Mondal.pdf> accessed on August 22, 2011.
152. Sections 50 and 57 of The Code of Criminal Procedure (1973), Act No. 2 of 1974

that detainees have to be produced before a magistrate within 24 hours of their arrest.[153]

However, in West Bengal armed forces and police personnel routinely deprive people of their liberties. There are well-documented cases where officials abuse their power[154] by executing arrests to serve their personal interests.[155] Failing to bribe an officer is one of the most common reasons for illegal detention.[156] Officers also use illegal arrest as a way to intervene in private matters.[157] In these cases they fabricate false accusations after the arrest.

According to the guidelines for arrest, police personnel have to prepare a 'Memo of Arrest' at the time of arrest and to issue an entry in the diary containing the names of the police personnel in whose custody the arrestee is being held.[158] In reality, not all the arrests appear in police records, neither are the Memos of Arrest produced.[159] General diaries are often falsely registered and manipulated and the information is altered at the police officers' convenience.[160] In fact, manipulation of records can be very useful in concealing misconduct, particularly in relation to the rule by which arrestees must be presented before a magistrate within 24 hours. By disregarding the time limit, police officers increase the likelihood that detainees will accede to extortion over the period under police custody without judiciary oversight. Such behaviour may also conceal any evidence of mistreatment.[161]Another recorded practice seeking to hide officers' misconduct is to falsely implicate arrestees in cases already under investigation by the police.[162] As observed by the commission "when custodial crimes came to the notice of a higher authority, the initial tendency was to hush up the case, and if it that was not found to be feasible, to justify the same by inventing a surrogate story reinforced by manipulation and interpolation of records."[163]

Illegal detention, torture and harassment are also used to intimidate human rights defenders and journalists.[164] As Mr. Gopen Sharma testifies, *"[t]he attending police officer, Pradip Biswas, informed MAS-*

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153. It is worth noting that two exceptions do exist in the Indian Constitution allowing for flexibility in the case of communicating the grounds for the arrest and extending this 24 hours period to submit detainees before a magistrate: if the arrestee is an "enemy alien" and if the individual is arrested and detained under any law providing for preventive detention. In any case, this period of detention is limited to three months. These clauses have been highly controversial as grant extraordinary powers to the security forces to arrest and detain individuals without the judiciary oversight. Examples of these laws are the Prevention of Terrorist Act (POTA) (2002) and the Terrorist and Disruptive Activities (Prevention) Act (TADA) {**POTA & TADA- these Acts recently repealed**}

154. Illegal arrest and detention of the complainant by a Police Officer of Behala P.S. WBSHRC, Annual Report 2006-2007, p. 58-60

155. Illegal detention by a police officer of Golabari P.S. WBSHRC, Annual Report 2006-2007, p. 9-11

156. Illegal detention of Subhagata Das at Uluberia P.S. WBSHRC, Annual Report 2002-2003, p. 159-162

157. Negligence of duties and inaction on the part of O/C. Deganga P.S. WBSHRC, Annual Report 2005-2006, p. 70-5

158. Ibid, requirements (2) and (6)

159. Illegal arrest by a police officer of Arambag P.S. WBSHRC, Annual Report 2005-2006, p. 75-7

160. Illegal detention and manipulation of record on the part of Officers of Habra P.S. WBSHRC, Annual Report 2006-2007, p. 45-50 and Suppression of fact and manipulation of record by Police Officials of Burdwan P.S. in the matter of custodial death of Ajay Pal. WBSHRC, Annual Report 2006-2007, p. 12-21.

161. Testimony of Mr. Jugol Sarkar on behalf of Mrs. Beauty Sarkar.

162. Mr. Hanai Mondal case, *Asian Human Rights Commission (AHRC)*, 'India: Yet another human rights defender at risk in West Bengal' (September 8, 2010) at <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-159-2011> accessed September 15, 2011

163. WBSHRC Annual Report 1997-1998, p. 60

164. Illegal arrest by a police officer of Arambag P.S., WBSHRC, Annual Report 2005-2006, p. 75-7 and AHRC, India: Human Rights defender physically assaulted, threatened and detained by government officials (September 15, 2005) <http://www.humanrights.asia/news/urgent-appeals/UA-161-2005> accessed August 23, 2011.

UM that I had been put into police lockup. This was despite the fact that no case had been registered against me. The said officer abused me and treated me with disrespect when it was clear that I was a human rights activist. He made a mockery of me, calling me a 'cheater'."[165] Commissions have historically neglected the ill-treatment of human rights defenders in West Bengal. Nevertheless, in an attempt to catch up on international standards on human rights defenders,[166] it has recently taken steps to engage in this issue. As a result, in 2010 it appointed a 'Focal Point' for human rights defenders,[167] to be accessible for immediate support. Still, there have not been significant changes in the situation of human rights defenders in West Bengal. Moreover, the NHRC is better known in West Bengal for missing opportunities to protect human rights defenders rather than for effectively protecting them. For instance, in 2008 Mr. Kirity Roy was illegally detained as a reprisal for his involvement in the organisation of an Independent People's Tribunal. Although he submitted a complaint to the NHRC, the investigation was closed on the basis that the police investigation was going on.[168]

EXTRAJUDICIAL KILLINGS AND FAKE ENCOUNTERS

> **"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."**
>
> ***—Article 6 International Covenant on Civil and Political Rights***

According to the United Nations Human Rights Committee, States that are parties to the ICCPR "should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."[169] Article 21 of the Indian Constitution establishes that "[n]o person shall be deprived of his life or personal liberty except according to the procedure established by law." According to the Indian law, it is lawful to cause death in the course of police actions in self-defence or in the process of arresting an individual accused of an offence amounting to the death penalty or life imprisonment.[170] In this regard, the NHRC is clear that "[w]hether the causing of death in the encounter in a particular case was justified as falling under any one of the two conditions can only be ascertained by proper investigation and not otherwise."[171] This clearly falls short of the standards of international law, which holds that regardless of the type of crime an individual is accused of and whether in self-defence, the use of lethal force is allowed only when it is strictly unavoidable in order to protect life.[172]

> **"The police do not have a right to take away the life of a person. If, by his act, the policeman kills a person, he commits an offence of culpable homicide amounting to murder, unless it is established that such killing was not an offence under the**

165. Mr. Gopen Sharma testimony.
166. UNGA Declaration on Human Rights Defenders (December 9, 1998).
167. Mr. A.K. Parashar at <http://nhrc.nic.in/ContactUs.htm> accessed August 23, 2011.
168. 2010 ANNI Report on the Performance and establishment of National Human Rights Institutions in Asia (2010), p. 16
169. CCPR General Comment No. 06: The Right to Life (Article 6) (April 30, 1982) [3]
170. The Code of Criminal Procedure (1973), Act No. 2 of 1974, Section 46
171. Letter to Chief Ministers regarding the Procedure to be followed in the cases of deaths in police encounters (March 29, 1997) at <http://www.nhrc.nic.in/>
172. United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [9]

law. […] Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide."

The NHRC, in its revised guidelines to deal with encounter deaths in the course of police action, demands that state governments shall inform the commission of these events and that these cases shall be investigated by an independent agency such as the CBCID.[173] Due to the unwillingness of state governments to follow this procedure, and the non-existence of a similar procedure for the killings that occur during action by armed forces, there is no reliable data on extrajudicial killings. For instance, from 2002 to 2008, the West Bengal Government declared that there had been ten encounter deaths at the hands of the police, which represents an average of less than two cases per year.[174] Human rights organisations and the media estimate these numbers to be much higher. These numbers are clearly unrealistic when one compares them with the fact that since 2010, ten alleged Maoists were killed in encounters by police and 'Joint Forces' in Lalgarh.[175]

Extrajudicial killings by Border Security Forces

According to the BSF, since 2006, a total of 164 Indian nationals have been killed in BSF firing in the Indo–Bangladesh border.[176] Bangladeshi NGOs have also repeatedly denounced violations of the human rights of Bangladeshi citizens at both sides of the Indo-Bangladesh border by BSF. *Odhikar* claims that during the first half of 2011 itself, the BSF allegedly killed 17 Bangladeshis on the border.[177] Most of the victims are villagers who live near the border, sometimes killed as a result of stray bullets, whilst others are intentionally killed when they are seen 'smuggling' goods through the border or are just suspected of being smugglers. The justification provided by the BSF on theses killings is that they were preventing smuggling through the border, and that they fired in self-defence.[178] However, *Human Rights Watch* claims that in the cases it investigated in this area, the alleged criminals were unarmed and on occasions were shot in the back or at close range.[179] As already noted, the crime of smuggling does not lie under the exceptions established in Indian law that allow for the use of lethal force, nor is the claim of self-defence a lawful justification for this kind of force in the eyes of international law. Despite obvious discrepancies between BSF's behaviour and domestic and international law, the deficiencies lies

173. Letter from the Chairperson of the Commission dates December 2, 2003 to the Chief Ministers of States and Administrators of Union Territories on modified procedure/guidelines to be followed by the State Govts in all cases of deaths in the course of police action. NHRC, Annual Report 2002-2003, p. 246 – 9

174. NHRC Annual Reports (Annual Report 2002-2003 p. 261; Annual Report 2003-2004 p. 313; Annual Report 2004-2005 p. 211; Annual Report 2005-2006 p. 240; Annual Report 2006-2007 p. 215; Annual Report 2007-2008 p. 178)

175. 'Top Maoist leader killed in West Midnapore encounter', One India (11 March 2011) at <http://news.oneindia.in/2011/03/11/topmaoist-leader-killed-in-west-midnaporeencounter-aid0121.html> accessed 15 August 2010; Caesar Mandal, '8 Maoist killed in police encounter in Bengal', Times of India (June 17, 2010) at <http://articles.timesofindia.indiatimes.com/2010-06-17/india/28313658_1_joint-forces-west-midnapore-maoists> accessed August 15, 2011 and 'Give copy of petition, HC tells Umakanta's wife', Indian Express (July 15, 2011) at <http://www.indianexpress.com/story-print/817749/> accessed September 15, 2011

176. *Human Rights Watch*, 'Trigger Happy' Excessive Use of Force by Indian Troops at the Bangladesh Border (December 2010), p. 12

177. *Odhikar's* (Bangladesh) Six months' Human Rights Monitoring Report (July 1, 2011) [40].

178. Human Rights Watch, "Trigger Happy" Excessive Use of Force by Indian Troops at the Bangladesh Border (December 2010) p. 21

179. *Human Rights Watch*, "Trigger Happy" Excessive Use of Force by Indian Troops at the Bangladesh Border (December 2010) p. 5

in the system of accountability applicable to this force to uphold their conduct. Although in a recent statement the BSF Director General Raman Srivastav declared that 'non-lethal weapons will be given to the border guards at the sensitive areas of the India-Bangladesh frontiers',[180] tangible actions aimed at a decrease in the use of lethal force by BSF are still to be actualised. A common practice undertaken in order to hide unlawful killings is to portray them as encounters by leaving weapons with the bodies of those that have been assassinated. In the case of the killing of the unarmed 19 year old boy, Akbar Seikh, his father claimed that the BSF officers left "a wooden stick and a sharp weapon just beside his son's body to fabricate the case as that of an encounter due to the firing of the [BSF], and also so they could falsely claim that they were attacked by [the boy] and therefore fired at him in self-defence."[181] Even if these individuals were armed with sharp weapons, a question remains as to whether a well-equipped and trained force has no choice but to kill suspects in order to seize them?

Extrajudicial killings by Central Reserve Police Force

In 2009, in an effort aimed at containing Maoists, the central governmental paramilitary force CRPF was deployed in the so-called 'Maoist-infested' areas of West Bengal, namely Bankura, Purulia and West Midnapore. In December 2010, West Bengal Chief Minister stated that "[b]ecause of sustained joint operations by 35 companies of the Central Reserve Police Force, six companies of Nagaland Police and 51 companies of State Police, the situation ... has greatly improved... [But] till the situation improves in Jharkhand and Orissa, it would be difficult to keep West Bengal unaffected. Till such time, the paramilitary forces should be there."[182] Recognising developmental issues as the main reason underpinning the conflict, the central government claims to have adopted a strategy that couples "proactive and sustained operations against the extremists" with "development and governance issues".[183]

So far, the brutal counter-insurgency policy being waged against Maoist groups and individuals does not appear to be a success, and in the assessment of the central home minister it was described as a military situation of stalemate.[184] Meanwhile, central paramilitary forces, in joint operations with the state police, routinely use excessive force against villagers and individuals suspected of engaging in or supporting Maoist activities. Allegations of torture, illegal detentions, extrajudicial killings and fake encounters are frequent, particularly in West Midnapore, where the Maoist movement is currently stronger in comparison to other areas in West Bengal.[185] Everyone, including women, children and people with disabilities are the objects of these violations.

In a further movement to control insurgency, in June 2009 the Indian Government banned the

180. New Delhi correspondent, The daily *Prothom Alo*, (March 13, 2011), p. 1 in *Odhikar's* (Bangladesh) Six month's Human Rights Monitoring Report (July 1, 2011) [39]
181. Application before the Court of Chief Judicial Magistrate, Beharampur, Murshidabad, Memo Case No. 4/9/2008 [10].
182. Chief Minister Buddhadeb Bhattacharjee in a reply to a question in the State Assembly on December 23, 2010; Fakir Mahan Pradhan, 'Maoist terror in West Bengal', *The Pioneer* (June 22, 2011) at <http://www.dailypioneer.com/307761/Maoist-terror-in-West-Bengal.html> accessed August 25, 2011.
183. Government of India, Ministry of Home Affairs, Annual Report 2010-2011, [2.7.5]
184. Intervention in Chief's Ministers Conference 2011 in Vivekanda International Foundation, Assessment of Left Wing Extremism, 2010 at <http://www.vifindia.org/article/2011/april/8/Assessment-of-Left-Wing-Extremism-2010> accessed August 25, 2011.
185. *ACHR*, India Human Rights Report: Quarterly, Issue – 02, October to December 2010, West Bengal at <http://www.achrweb.org/ihrrq/issue2/wb.html> accessed August 24, 2011 and West Bengal villagers complain of torture by security forces, *Asian News International* (June 27, 2010) at <http://www.thefreelibrary.com/West+Bengal+villagers+complain+of+torture+by+security+forces.-a0229958874> accessed August 24, 2011.

CPI-M (Maoist) and named it a terrorist organisation.[186] Thus, the Unlawful Activities Prevention Act (UAPA) of 2008, which extends police powers allowing them to investigate terrorist-related activities, could be invoked to handle suspected Maoists. For instance, it increases the period of detention without judicial oversight, from 24 hours to 90 days.[187] The most disturbing aspect of involving paramilitary forces is that they are granted immunity from prosecution unless instructed by the central government.[188]

Both the national and state government celebrated the success of their counter-insurgency joint operations. Arrests and killings of Maoist leaders are claimed to be at the core of this triumph.[189] Nevertheless, a closer look into the 'Left Wing Extremist violence' data provided by the Minister of Home Affairs, Govt. of India shows an increment of 900 percent on the number of incidents and of 880 percent on the number of deaths since 2008.[190] These figures do not leave much room for arguments supporting the fact that governmental efforts have so far been fruitful in decreasing the violence. The absence of official figures on victims from these incidents highlights the governmental unwillingness to assume any responsibility for casualties. *The Pioneer* claims that "425 people, including 328 civilians, 36 security forces personnel and 61 Maoists, including cadres of the Maoist-backed *People's Committee Against Police Atrocities*, were killed in West Bengal in 2010 until December 26."[191] Appallingly, the figure of civilian casualties is much higher. Despite allegations of atrocities and the high number of civilian fatalities, the commission has not taken any measure to redress the victims of these wrongs, whether by a *suo moto* investigation, or following an individual complaint concerning any of these allegations.

The increased powers granted through counter-terrorism legislation to the state and central forces is reflected in the widespread use of extrajudicial killings of suspected Maoists. The level of violence in these areas between 'Joint Forces' and Maoist supporters is reflected in the frequent account of encounters, which leaves causalities on both sides.[192] These extrajudicial killings are generally depicted by the Joint Forces as encounters, by alleging that the suspect was armed and the incident took place in self-defence.[193] In practice, a number of these encounter killings reveal a tactic of concealing cold-blooded targeted killings of unarmed Maoist leaders. By leaving weapons beside the deceased after the crime, these fake encounters are passed off as real.

According to the testimony of Mr. Anil Mahato about the killing of his brother Mr. Sashadhar Mahato, *"[w]hen I saw the bullet marks in his body, it did not appear that there was any kind of struggle. He was shot at a very short distance. It looked like he was held and shot point blank in a brutal manner… [m]y family believes that members of the 'Joint Forces' murdered my brother in cold blood and that they have fabricated the*

186. Government of India, Ministry of Home Affairs, Annual Report 2009-2010, [2.7.3].
187. The Unlawful Activities Prevention Amendment Act (2008), Section 43D (2)a. It is worth noting that the Act allows for the extension of this period to 180 days.
188. The Central Reserve Police Force Act (1949), Section 16 (1).
189. Probe agencies, joint forces taste success in Bengal in 2010, Indian Express (January 4, 2011) at <http://www.indianexpress.com/news/probe-agencies-joint-forces-taste-success-i/733011/> accessed August 24, 2011.
190. Data from 2008 to 2010, Government of India, Ministry of Home Affairs, Annual Report 2010-2011, p. 21.
191. Fakir Mahan Pradhan, 'Maoist terror in West Bengal', *The Pioneer* (June 22, 2011) at <http://www.dailypioneer.com/307761/Maoist-terror-in-West-Bengal.html> accessed August 25, 2011.
192. Caesar Mandal, 8 Maoist killed in police encounter in Bengal, The Times of India (June 17, 2010) at <http://articles.timesofindia.indiatimes.com/2010-06-17/india/28313658_1_joint-forces-west-midnapore-maoists> accessed August 24, 2011.
193. Encounter deaths or cold blooded murders? Indian Vanguard (July 20, 2011) <http://indianvanguard.wordpress.com/2011/07/20/encounter-deaths-or-cold-blooded-murders/> accessed August 23, 2011.

story that he was found in the possession of an AK-47 rifle."[194] Similarly, Mrs. Sabita Mahato declared on the death of her husband Mr. Umakanta Mahato that *"the body of my husband was dragged a few yards from the place where he was gunned down. His body was found with his trousers lowered down to his ankles and one pistol beside him."*[195]

There are few avenues to properly investigate these fake encounters, as even settled procedures are bypassed. Although, as previously mentioned, any encounter killing have to be reported by the state government to the national and state commissions and has to be investigated by an independent agency, this procedure is hardly ever followed. In the face of this inaction by the commission, litigation seems to be the only recourse. For instance, acting on a petition, the Calcutta High Court has recently ordered CBI investigations into the killing of the Maoist leader Mr. Umakanto Mahato.[196]

POLICE INACTION

> **"Each State party to the present Covenant undertakes:**
> **(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;**
> **(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;"**
>
> ***—Article 2(3), ICCPR***

As a party to the ICCPR, the Indian Government has an obligation to ensure, without discrimination,[197] that individuals have access to effective remedies to claim the rights included in the convention.[198] To this end, governments have to make available necessary mechanisms to provide these remedies. The United Nations Human Rights Committee notes the importance of independent institutions such as national human rights institutions, if "endowed with appropriate powers", in attaining this aim.[199] In order to provide effective remedies to victims of human rights violations, the ICCPR requires States to investigate allegations of violations, to bring perpetrators to justice, to deliver reparations to victims and to implement measures to prevent recurrence of violations.[200] In particular, it emphasises that "cessation of an ongoing violation is an essential element of the right to an effective remedy."[201] Consequently, the Indian Government has the obligation to ensure that all the violations included in the ICCPR, such

194. Mr. Anil Mahato testimony.
195. Mrs. Sabita Mahato testimony.
196. Give Copy of petition, HC tells Umakanta's wife, *Indian Express* at <http://www.indianexpress.com/story-print/817749/> accessed August 2, 2011.
197. "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." UN International Covenant of Civil and Political Rights, Article 2
198. UN Human Rights Committee, General Comment No. 31 on article 2 of the Covenant, U.N. Doc. CCPR/C/74/CRP.4/Rev.6 (2004), [2].
199. UN ICCPR, General Comment No. 31, [15].
200. UN ICCPR, General Comment No. 31, [15]-[19].
201. Ibid [17].

as arbitrary deprivation of life, torture and ill-treatment, arbitrary arrest and detention, are promptly investigated, perpetrators are brought before the courts, victims are granted effective remedies and reparations, and guarantees of non-repetition are settled.

Police failure to investigate allegations of human rights violations represents a clear breach of the Indian government's commitment on its international human rights obligations. Most importantly, by showing indifference on human rights violations, a climate conducive to the recurrence of violations is promoted. At the domestic level, the failure to register claims of violations itself constitutes an offence. Section 154 of the Code of Criminal Procedure requires the police to record "[e]very information relating to the commission of a cognisable offence[202] [such us murder, rape and theft]."This information is collected in the form of a First Information Report (FIR). Afterwards, the investigation begins and has to be completed "without unnecessary delay" and handed over to a magistrate.[203] However, an officer might decide to refuse initiating an investigation on two counts: whenever the officer considers that the allegations are "not of a serious nature" or are not based on "sufficient ground."[204]

The practice of police in West Bengal adheres neither to the international nor domestic law. Refusal to investigate human rights violations by denying the registration of complaints and delaying investigations is fairly routine, particularly when complainants originate from vulnerable sections of society. Police contend that rejection of complaints is to reduce the existing policing load.[205] The registration of an FIR alone obliges officers to initiate an investigation. Hence, by refusing to file the complaint they effectively avoid increasing their workload. Even if an officer decides, on lawful grounds, not to open an investigation into the allegations, that officer must still lodge a report describing the reasons for such. Therefore, the only way for police officers to circumvent their responsibility to investigate is to refuse to file a FIR.[206]

Police are also notorious for delays in the investigations. Despite court orders directing police to initiate an investigation, they are frequently dismissed[207] or delayed.[208] Corruption is a major reason behind these tactics by the police. It is not uncommon that a bribe be demanded even to register a FIR and to start an investigation. Political influence is another major reason for undue delays in investigations.[209]

Transparency International, in a study on corruption which focussed on the population Below Pov-

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202. "A cognisable offence or case is defined as the one which an officer in-charge of a police station may investigate without the order of a magistrate and affect arrest without warrant. The police has a direct responsibility to take immediate action on the receipt of a complaint or of credible information in such crimes, visit the scene of the crime, investigate the facts, apprehend the offender and arraign him before a court of law having jurisdiction over the matter. Cognisable crimes are broadly categorised as those falling either under the `Indian Penal Code (IPC)' or under the `Special and Local Laws (SLL)'." National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2009*, p. 15

203. Ibid, Article 173

204. Ibid, Article 157

205. CHRI, G.P. Joshi, 'Police Accountability in India', p. 6-7

206. Dereliction of duty on the part of police officers of Sonanpur P.S., WBSHRC, Annual Report 2004-2005, p. 26-31

207. Inaction of O.C., Ghatal P.S. in not implementing Court's Order in an abduction case. WBSHRC, Annual Report 2003-2004, p. 23-27

208. Gross negligence of duty and inaction on the part of police officers of Barasat P.S. WBSHRC, Annual Report 2005-2006 p. 86-88

209. Inaction of O.C, Galsi P.S. in the matter of alleged rape on Suparna Sarkar, a deaf and dump girl of 15 years. WBSHRC. Annual Report 2003-2004, p. 33-37

erty Line (BPL) in 2008, found out that 76 percent of individuals in West Bengal had to pay a bribe to avail the services of the police.[210] Wealth or political influence being preconditions for investigation of human rights violations puts the marginalised at a clear disadvantage. Thus, individual rights of access to effective remedies are seriously undermined.

Bribes are routinely demanded of relatives of detainees. For instance, when the wife of Mr. Mridul Roy went to Behrampore Police Station to visit her husband, *"she was refused access and when she attempted to meet him again at the court lockup, she was forced to pay Rs. 40 as a bribe to the on-duty personnel. Further, the jail warden demanded money for better living of my brother in the jail as he was kept in an inhumane and unhygienic condition."*[211] When rights become dependent upon people's social standing and political clout, that is the surest way for the decline of democratic, universal human rights in a country.[212] The usual refrain of the police officers is to deny these accusations by contending that victims did not try to lodge the complaints or that despite a FIR being lodged it was subsequently lost.[213] Claims in relation to bribes have been notoriously difficult to prove.

Harassment and mistreatment of citizens while trying to lodge a complaint are also common experiences in West Bengal. There are incidents in which individuals have been detained and/or tortured by the police when they had simply intended to lodge a FIR.[214] Ill-treatment and inaction by the police not only undermines the basic rights of victims but also endangers the credibility of law enforcement agencies as fundamental supervisory bodies, of the compliance with the rule of law.

Excessive use of force by Police

> **"[L]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when it is strictly unavoidable in order to protect life"**
>
> **—United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Art. 9**

According to the ICCPR, the right to life and the protection against torture and ill-treatment requires rigorous oversight by states over the use of force by their law enforcement agencies. Due to the supreme character of the right to life, international law establishes that "the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."[215] Accordingly, state parties have to settle in their domestic law the conditions under which it is lawful for public agents to resort to the use of force. The *Code of Conduct* for Law Enforcement Officials endorsed by the United

210. Transparency International, India Corruption Study 2008 with special focus on BPL households (2008). tables in pages 414 and 417-8.
211. Mrs. Shampa Karmakar and Mrs. Pinky Mondal testimony on behalf of Mr. Mridul Roy.
212. UN International Covenant of Civil and Political Rights, Article 2
213. Inaction on the part of the police officials of Ramnagar P.S. WBSHRC, Annual Report 2005-2006, p. 51-4. [4].
214. Undue Harassment and threatening by Police Officers of Jagatdal, WBSHRC, Annual Report 2005-2006, p. 55-7
215. UN Human Rights Committee, General Comment 6 (April 30, 1982) [3]

Nations General Assembly in 1979, states that the use of force is an exceptional measure. In particular, it establishes that law enforcement officials may resort to the use of force only when "strictly necessary" and to the "extent required" for the performance of their duties.[216] The United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials permits the use of force and firearms when their use is "unavoidable"[217] provided that restrain is exercised in such use and is acted in "proportion to the seriousness of the offence and the legitimate objective to be achieved."[218]

Despite India's international obligations, the exercise of excessive and indiscriminate use of force by police officers is openly encouraged by high ranks of the police in West Bengal. As reported by media and NGOs, on December 10, 2008, shockingly on International Human Rights day, the DGP directed the police to "launch *lathicharge* with the definite motive of breaking the bones of targeted persons. He [also] said that the police should fire so that maximum damage may be inflicted upon the criminals."[219] This irresponsible attitude does not only contravene international law but also domestic law. According to Section 49 of the Code of Criminal Procedure "[t]he person arrested shall not be subjected to more restraint than is necessary to prevent his escape."[220] Police Regulations in West Bengal establish the general rules for the use of firearms. In particular, Regulation 154 demands that "[n]o greater hurt than is unavoidable should be inflicted." According to this regulation, police officers "shall direct the firing in such a way as to secure immediate effect with a minimum of injury"[221] and they are held "responsible that no greater volume of fire is used than the circumstances demand".[222]

Unfortunately, there are regular accounts in West Bengal of excessive use of force, including firings against by-standers or individuals participating in demonstrations. Allegations of injuries and killings of by-standers who accidentally find themselves nearby an area where a police operation is conducted are common. The police are also notorious for failing to provide medical treatment to the injured during police firing.[223] The unnecessary use of firearms to seize suspects is also a routine charge against police.[224] In particular, the unlawful use of force and firearms is notable in the police management of demonstrations. Section 129 of the Code of Criminal Procedure allows police to use force to disperse any assembly "likely to cause a disturbance of the public peace." If the assembly does not disperse, a Magistrate might request the intervention of armed forces which "shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons."[225] Although Indian law clearly prohibits the use of excessive force by law enforcement agencies regardless of the legality of an assembly, the problem of holding officers accountable for their actions remains unaccounted for. For instance, Section 132 of the Code of Criminal Procedure provides immunity against prosecutions for excessive use of force when dissolving an assembly without prior approval by the Central or State Governments.

The brutal police firing on March 14, 2007, in Nandigram on supporters of anti-land acquisi-

216. Code of Conduct for Law Enforcement Officials, UNGA Res. 34/169 (December 17, 1979), Article 3
217. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (September 1990), [5].
218. Ibid, [5a]
219. West Bengal DGP in trouble for advocating torture (December 12, 2008) at <http://www.merinews.com/article/west-bengal-dgp-in-trouble-for-advocating-torture/152865.shtml> accessed August 26, 2011.
220. The Code of Criminal Procedure (1973), Act No. 2 of 1974, Section 49
221. Police Regulations of Bengal (1943), 155(b)
222. Ibid, 155(c)
223. Death of one woman due to police firing at Banshihari. WBSHRC, Annual Report 2003-2004, p. 47-53
224. Bullet injury on Nirup Sinha Roy, WBSHRC, Annual Report 2002-2003, p. 11-3
225. The Code of Criminal Procedure (1973), Act No. 2 of 1974, Section 130(3).

tion lead by *Bhumi Uchhed Pratirodh Committee*[226] highlights the effect of a longstanding climate of impunity in relation to police officials' actions in West Bengal. It also illustrates the influence exerted by the ruling party over security forces to secure their political interests. On that day, police personnel acting in league with the cadres of the ruling party, CPI-M (Marxist), shot dead 14 protesters and injured hundreds. One person disappeared and a large number of women and girls were sexually assaulted and raped. According to the testimony of Mrs. Haimabati Haldar, a 62 year-old woman injured in the firing, *"I began to vomit as a result of the tear gas and I could not see anything... I then asked for water and I tried to clean my face and eyes. Suddenly, the police started to fire at the crowd. There were many rubber bullets being fired at my direction and my son was injured from one bullet. Fortunately he managed to escape. Then, the police started to fire from the bridge and I fell down. I tried to stand up but I was unable to do so and I fell down again in a pond with water up to my neck. I was wounded from four bullets."*[227] The Calcutta High Court in its 2007 decision found police action 'unconstitutional' and 'unjustified'[228] and requested the CBI to investigate the matter. The court also directed the state government to give compensation of Rs. 500,000 to the relatives of those killed, Rs. 200,000 to each of the rape victims and Rs. 100,000 to each injured person.[229] Nevertheless, to date, no criminal prosecutions have been initiated against those individuals responsible for the tragedy.[230] The delay in the criminal investigations is partly due to a dispute over whether the CBI, a central agency, can investigate in a state matter as ordered by the high court. The state appealed the high court's decision before the Supreme Court, which has upheld the high court decision and ultimately ordered the CBI investigation in 2011.[231] In addition, compensations to victims have been delayed following the state government disagreement on granting them to all the victims. The state government, in an attempt to protect the officials involved in the incident, contended that the firing was carried out in self-defence and therefore those protesters that resisted the attack were not eligible for compensation. Although most of the victims of this incident have received compensation, irregularities exist in the list of beneficiaries. According to Mr. Ananda Mohan Mondal, a member of the *Bhumi Uchhed Pratirodh Committee*,*"[t]hrough the Supreme Court order, the families of the 14 people killed received compensation. Around 169 injured people have received compensation of Rs. 2 lakhs each and the rape victims have also received compensation. However many who were injured have not yet received any as many who were compensated were not eligible for it as they were not killed or injured during the revolt but for other reasons."*[232]

There is little doubt that the incident was primarily a political vendetta. This is made clear in a statement made by the then Chief Minister Mr. Bhattacharjee where he said that opposition parties to the CPI-M (Marxist) in Nandigram had been "paid back with their own coin."[233] The NHRC took cognisance of the incident and in 2008 delivered a set of twelve recommendations to help bring about

226. Anti-land acquisition forum formed by local farmers.
227. Testimony of Mrs. Haimabati Haldar.
228. Calcutta High Court, Constitutional Writ Jurisdiction, APDR Vs. The State of West Bengal & Ors.
229. High Court at Calcutta, Constitutional Writ Jurisdiction, APDR Vs. The State of West Bengal & Ors.
230. Samanwaya Rautray, SC seeks report on Nandi[gram] firing, *The Telegraph* (February 24, 2011) at <http://www.telegraphindia.com/1110225/jsp/bengal/story_13631480.jsp> accessed August 27, 2011.
231. Nandigram wants CBI probe report, *Indian Express* (February 25, 2011) at <http://www.indianexpress.com/news/nandigram-sc-wants-cbi-probe-report/754597/> accessed August 27, 2011
232. Mr. Ananda Mohan Mondal testimony
233. CRPF begins clean-up operation in Nandigram (November 14, 2007) at <http://www.expressindia.com/latest-news/CRPF-begins-cleanup-operation-in-Nandigram/239063/> accessed August 13, 2011.

the issuance of compensation to victims, which were disregarded by the State.[234] In West Bengal, although the commission regularly directs recommendations to the state government on police firing incidents,[235] no action was taken over this brutal attack on the fundamental rights of impoverished farmers. According to Advocate Joydeep Mukharjee, Secretary General of *All India Legal Aid Forum*, on 2008 he filed over 100 petitions before the commission on violations committed in Nandigram from 2007 and 2008, including the aforementioned firing. Although the commission itself opened a *suo moto* investigation into the firing of March 14, 2007, this investigation was closed as soon as a Supreme Court investigation on the firing was initiated.[236] As declared by the acting chairperson 'an investigation instructed by a court is always more effective than one initiated by the commission as our decisions are not binding to the state.'[237] Nevertheless, the violations committed in Nandigram were not reduced to this single incident. Attacks on protesters by police and ruling party CPI-M (Marxist) cadres, took place from the beginning of 2007 through 2008. Nor have all the victims from the March 14, firing received compensations, as claimed by the *Bhumi Uchhad Pratiraksha Committee* and evidenced by HRLN in a field visit conducted in July 2011. Thus, instances of violations outside the framework of the Supreme Court's investigations existed for the commission to inquire into. Yet the commission choose to stop all its action citing the SC ordered investigation. As a result, a startling instance of state repression that stirred the consciences of people in the State of West Bengal and the whole country went without any response from the commission.

AUTHORITIES FAILURE TO PREVENT AND ADDRESS STARVATION DEATHS

> **"The States parties to the present Covenant, recognis[e] the fundamental right of everyone to be free from hunger …"**
>
> **— Article 11, ICESCRw**

The international regulatory framework of the right to food is contained in Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR) ratified by the Indian government. According to the authoritative interpretation of the United Nations Human Rights Committee, this right "is realised when every man, woman and child alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement."[238] It implies the obligation of the Indian Government to progressively realise this right using all the resources at its command[239] "to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger."[240] This obligation also implies guaranteeing a non-discriminatory access to food, which includes preferential treatment or

234. Villagers killed and injured during police firing in Nandigram, West Bengal (Case No. 725/25/12/2007-2008). NHRC Annual Report 2007-2008, p. 55-8.
235. Death of Indrajit Bishwal due to police firing. WBSHRC Annual Report 2002-2003, p. 80-3.
236. 'Nandigram: Apex Court retains the order of Calcutta High Court', (December 12, 2007) at <http://www.newstrackindia.com/newsdetails/1777> accessed August 6, 2011.
237. In interview with WBSHRC Acting Chairperson on July 12, 2011.
238. UN, Committee on Economic, Social and Cultural Rights, General Comment 12 (May 12, 1999), [6].
239. See, UN Report of the Special Rapporteur on the Right to Food, Jean Ziegler: Mission to India (March 20, 2006) UN Doc. E/CN.4/2006/44/Add.2 [18].
240. UN, Committee on Economic, Social and Cultural Rights, General Comment 12 (May 12, 1999), Ibid, [14].

omission based on political grounds.[241] The ICESCR also imposes on India the responsibility to provide food to those who, due to circumstances beyond their control, cannot feed themselves.[242] In the likelihood of a violation of this right, victims are entitled to access effective remedies, including access to justice, to claim their right and to be granted reparations.[243]

According to the United Nations, 25 percent of the world's hungry people live in India. Governmental figures acknowledge that 43 percent of children under five years old are malnourished.[244] To reduce these figures, Indian law and jurisprudence has brought in revolutionary mechanisms to make the right to food justiciable and to eradicate hunger in the country. However, a lack of political will remains a major obstacle to achieving this aim.[245] The Indian Constitution considers economic, social and cultural rights as 'Directive Principles of State Policy'.[246] In particular Article 47 states that "[t]he State shall regard the raising of the level of nutrition and the standard of living of its people … as among its primary duties." By considering the 'right to food' a directive principle to guide the interpretation of fundamental rights, the Supreme Court has created a very interesting jurisprudence on the legal significance of the right to food. Thus, the Supreme Court has expanded the frontiers of the right to life, protected under Article 21 of the Constitution, to include the right to food.[247] In a landmark decision in 2001 it held that Article 21 "protects for every citizen a right to live with human dignity. Would the very existence of life of those families who are below the poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families?".[248] Consequently, according to domestic law, the right to food is a constitutional obligation at both central and state level.[249] In fulfilling this obligation, the Indian Government has approved a wide array of food-based schemes to combat hunger such as distribution systems of food from areas with grain surplus to low-income families, employment programmes and provision of meals to school children.[250] The Targeted Public Food Distribution System, in force since 1997, grants to Below Poverty Line (BPL) families 35 kg[251] of rice or wheat at subsidised prices. About 40 percent of these households receive an additional subsidy under the *Antodaya Anna Yojana* (AAY) scheme under which they are entitled to receive grain at half the normal price.[252] The state government, together with local authorities or panchayats, is responsible for the identification of the households eligible for these schemes.[253] Subsequently, these families receive ration cards through which they gain access to the "fair price shops"[254]

241. Ibid, [18].
242. Ibid, [15].
243. Ibid [32].
244. United Nations World Food Programme at <http://www.wfp.org/countries/india> accessed August 29, 2011.
245. For an account of governmental schemes for the right to food and their status, see HRLN, Right to Food, Fourth Edition (July 2009).
246. Government of India, Ministry of Law and Justice. The Constitution of India, Part IV, Directive Principles of State Policy, Articles 43-48A.
247. Supreme Court Judgement, Chameli Singh & Others v. State of Uttar Pradesh (1996)
248. Supreme Court Judgement, PUCL v. Union of India, Order of May 2, 2001.
249. Ibid.
250. HRLN, Right to Food, Fourth Edition (July 2009), p. 9-19
251. Supreme Court Judgement, PUCL Vs. Union of India (January 10, 2008)
252. Dr. N.C. Saxena and Harsh Mander, Supreme Court Commissioners, CWP 196/2001, Ninth Report of the Commissioners, Office of the Commissioners to the Supreme Court (September 2009), p. 25
253. Public Distribution System (Control) Order (2001)
254. As named in the Public Distribution System (Control) Order 2011.

where the subsidised grain is sold. Violations on the selection of beneficiaries are punished under Section 7 of the Essential Commodities Act of 1955, with imprisonment of upto seven years or a fine. In a mission to India in 2005, the United Nations Special Rapporteur on the Right to Food found serious irregularities in these schemes and observed that they are very much prone to corruption. In his report he noted that according to official sources, "approximately 36 per cent of the food grains distributed were diverted into the black market."[255]According to a study by the World Bank in 2011, 59 percent of the grain allocated for public distribution does not reach poor households.[256] He also provided an account of the irregularities in fair price shops where he detected over-charging, irregular opening hours, and an insufficient amount of grain to cover the demand.[257] Most disturbingly, he documented cases where some of the poorest families were without ration cards, while families over the poverty line had them.[258] Food distribution in West Bengal is also inflicted by all these ills.

In 2010, a report by Mrs. Anuradhna Talwar, the adviser to the commissioners of the Supreme Court,[259] uncovered grave flaws in the implementation of food-based schemes in West Bengal. Shockingly, despite allegations of acute hunger and starvation deaths in this State, this report revealed that the number of ration cards in March 2010 was higher than the projected population of the state.[260] It also found that 97 percent of fair price shops are privately-owned, a paradox for a state with the longest democratically elected communist government in the world! *Transparency International*, in a corruption survey carried out in West Bengal in 2008, found that 16 percent of the surveyed households in urban areas and 35 percent in rural areas did not hold ration cards despite being eligible for them.[261] These figures unveil rampant corruption at the expense of the starving and impoverished population.

Despite the availability of food in the markets and the existence of several food schemes, enforced by law and through the Supreme Court's orders, a wave of severe hunger causing hundreds of deaths by starvation stalked West Bengal from 2002 to 2007. These starvation deaths occurred in families that already belong to segments of the population with high levels of food insecurity. These were unemployed workers from abandoned tea plantations in Jalpaiguri, ignored and stigmatised (the so-called Maoists) *Sarbar Tribals* in West Midnapore, and families displaced by land erosion by the Padma River in Malda and Murshidabad. In the three cases, the state government failed to acknowledge the situation, as if responding to the already existing crisis would undermine the pride and external image of the pro-poor communist regime lead by the Left Front. In 2004, two years after starvation deaths were first recorded in the tea plantations in North West Bengal, the state government, in an affidavit submitted

255. UN Report of the Special Rapporteur on the Right to Food, Jean Ziegler: Mission to India (March 20, 2006) UN Doc. E/CN.4/2006/44/Add.2 [32].
256. Heather Timmons, India's Anti-Poverty Programs are big but troubled, The New York Times (May 18, 2011) <http://www.nytimes.com/2011/05/19/world/asia/19india.html> accessed August 29, 2011.
257. According to Supreme Court Judgement, PUCL v. Union of India (May 8, 2002), (o): "[t]he respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board."
258. UN Report of the Special Rapporteur on the Right to Food, Jean Ziegler: Mission to India (20 March 2006) UN Doc. E/CN.4/2006/44/Add.2 [32].
259. The Supreme Court in its interim orders created a commissioners office to monitor the implementation of all orders relating to the right to food case *PUCL vs Union of India* and others. Hence, the commissioners are responsible to oversee the implementation of the food schemes in all Indian States.
260. Shiv Sahay Singh, PDS a lesson in corruption, finds report, Express India (August 24, 2010) <http://www.expressindia.com/latest-news/pds-a-lesson-in-corruption-finds-report/664144/> accessed August 29, 2011.
261. Transparency International, India Corruption Study 2008 with special focus on BPL households (2008), p. 413

to the Supreme Court Commissioners on the right to food, denied that the alleged starvation related deaths were real.[262] This is untenable as a report had already been published by West Bengal's Adviser to the Commissioners showing solid evidence of severe malnutrition and starvation deaths in these plantations. According to this report, from 2002 to 2003, the average number of deaths in the surveyed plantations had increased by 241 percent.[263] Still, in 2007 starvation deaths were ongoing in the said plantations. In a correspondence by the special commissioners of the Supreme Court to the West Bengal Government, the commissioners documented 128 deaths from January 1, 2006 to mid March 2007.[264] Public officials often claimed diseases, as opposed to starvation, as the cause of these deaths. 'Death by starvation' being not a common medical expression to certify a death, politicians played around with figures to cover up their indifference to the deaths of deprived individuals. Meanwhile causality figures escalated exponentially.

According to media reports, on April 2, 2005, Rumpa Sharma, a 16-year-old girl from Darayampur in Murshidabad hung herself from the roof of her mud house after three days of starvation.[265] In September 2005, an Independent People's Tribunal into starvation deaths in Jalangi found that "[s]tarvation… is rampant among men, women and children everywhere. No one is sure of his or her next meal".[266] The indifference of the authorities in relation to the hunger and deaths was striking. According to the testimony of Mrs. Shyamali Halder who lost her two-year-old baby after six days of starvation *"[a]lthough I applied for a ration card and BPL card we were not included in any list so we could not benefit from any government scheme. At that time, Mejanur SK, elected member of Ghoshpara Gram Panchayat, told to me and my husband that "until you catch hold of our feet and beg for mercy, your name will never be included in the BPL, Annapurna, GR, Antyodaya, etc." and "If you register a complaint against us, you will see the result and our power."*[267]

The causes of these deaths are diverse. In the three aforementioned cases, the households were already impoverished and their livelihoods were then suddenly lost. Tea plantations in North West Bengal were closed without providing an alternative source of income for tens of thousands of families.[268] Governmental counter terrorist activities against Maoist groups in West Midnapore severely restricted the freedom of movement of hundreds of villagers affecting their means to access their livelihoods.[269] The river Padma had eroded and swallowed the lands of tens of thousands of inhabitants of Malda and Murshidabad, displacing them and depriving them from their source of sustenance.[270] In the absence of a livelihood, coupled with the lack of governmental response to provide them with alternative sustain-

262. Supreme Court Commissioners, Response to the Government of West Bengal's Affidavit on Hunger in West Bengal Tea Plantations (March-April 2004).
263. West Bengal Adviser to the Commissioners of the Supreme Court, Report on Hunger in Tea Plantations in North Bengal (January 2004), Table 3
264. Supreme Court Commissioners, Correspondence, Sub: Implementation of Food and Employment Schemes in Bharnabari, Chichula, Ramjhora, Shikarpur and Raipur Tea Estates, p. 2
265. Aditya Ghosh, Hungry and Dying in Padma's Lap, Tehelka (18 June 2008) at <http://www.tehelka.com/story_main12.asp?filename=Ne061805Hungry_and_dying.asp> accessed on August 30, 2011.
266. IPT report.
267. Mrs. Shyamali Halder testimony.
268. West Bengal Adviser to the Commissioners of the Supreme Court Report on 'Hunger in Tea Plantations in North Bengal' (January 2004).
269. Olivier Rubin, 'The Politics of Deaths in West Bengal: Evidence from the village of Amlashol', Journal of South Asian Development, 6(1) 43-65.
270. *Asian Centre for Human Rights*, INDIA: Human Rights Report 2006 (January 2007), p. 186-9 and IPT report.

able solutions, families were unable to find any means of physical survival. Another key feature that aggravated the situation was the absence of health facilities accessible to the affected populations who could not be treated for their malnutrition related diseases.[271] Appallingly, while tens of thousands of people were starving and hundreds more were dying due to starvation, the West Bengal authorities were under-spending the wages and food grains available for food-related schemes. According to the West Bengal Government 35 percent of the cash and 45 percent of the grain component of the food and cash for work scheme (*Sampoorna Gramin Rozgar Yojana*, SGRY) allocated to Jalpaiguri District from 2002 to 2003 were unutilised while the majority of the families suffering from starvation did not receive any governmental support.[272] Furthermore, they were rarely included in the BPL food schemes.[273] Those few who were given BPL ration cards claimed serious malfunctioning in the delivery of the schemes. Allegations were recorded in Murshidabad, according to which families could not access their rations as rice was not always available in the fair price shops. Beneficiaries of the food for work program did not receive the full wages. Nor did they receive the full amount of food they were entitled to as the CPI-M (Marxist) cadres deducted these amounts as contributions to the party.[274]

The reasons for the failure of various schemes to benefit the poor in the West Bengal area are to be found at the political and institutional levels. After thirty-five years in power, the CPI-M (Marxist) led government had consolidated its influence in the public institutions. In particular, the decentralised system of panchayats, set up in place of a system of self-governance, has constituted a mechanism to expand the party's supremacy at the local level. By being responsible for the selection of the beneficiaries of the government schemes, bureaucracy in the panchayats institutions has been politicised. Thus, the access to schemes in exchange for political support in the elections is rampant in West Bengal.[275]As noticed by a scholar, these dynamics explain why during the starvation crisis "villagers of Amlashol in effect forfeited their right to live by voting for the Jharkhand Party."[276]

The endemic politicisation of public programmes in West Bengal, with little transparency and accountability in public institutions, was the cause of starvation deaths. Following a Supreme Court order of 2001, "[i]n order to ensure transparency in selection of beneficiaries and their access to these schemes, the gram panchayats also had to display a list of all beneficiaries under the various schemes. Copies of the details of the schemes and the list of beneficiaries shall be made available by the gram panchayats to members of public for inspection."[277] In reality these directions are generally disregarded

271. West Bengal Adviser to the Commissioners of the Supreme Court Report on 'Hunger in Tea Plantations in North Bengal' (January 2004) and Bhaswati Chakrovorty, 'The Hunger Game - There is a law against everything, none against starving to death', *The Telegraph* (April 26, 2005) at <http://www.telegraphindia.com/1050426/asp/opinion/story_4638591.asp> accessed August 30, 2011.
272. West Bengal Adviser to the Commissioners of the Supreme Court Report on 'Hunger in Tea Plantations in North Bengal' (January 2004), Table 7.
273. West Bengal Adviser to the Commissioners of the Supreme Court Report on 'Hunger in Tea Plantations in North Bengal' (January 2004); *Asian Centre for Human Rights*, India: Human Rights Report 2006 (January 2007), p. 187 and Bhaswati Chakrovorty, 'The Hunger Game - There is a law against everything, none against starving to death', *The Telegraph* (April 26, 2005) at <http://www.telegraphindia.com/1050426/asp/opinion/story_4638591.asp> accessed August 30, 2011.
274. Zafarul-Islam Khan, Murshidabad: Nature's fury, hunger, death, apathy, The Milli Gazette (1-15 May 2005) at <http://www.milligazette.com/dailyupdate/2005/20050501.htm> accessed August 30, 2011.
275. An analysis of political dynamics can be found in Olivier Rubin, 'The Politics of Deaths in West Bengal: Evidence from the village of Amlashol', Journal of South Asian Development, 6(1) 43-65.
276. Ibid, p. 57.
277. Supreme Court Judgement, PUCL Vs. Union of India, (November 28, 2001) [8]i.

by the state. Thus, in West Bengal most of the BPL families have not even heard about these schemes. Nevertheless, the publication of this list does not constitute a solution to the problem of corruption as families will still need to receive the ration card. As Mrs. Shyamali Halder testifies, *"I had already applied for a ration card and BPL card. In 2006, the district magistrate sanctioned a list of members who are entitled to get the card. Though our names were enlisted, no card has been issued yet even after personal recommendation by the Governor of West Bengal to the district magistrate for this particular case."*[278]

In relation to accountability mechanisms, despite the existence of avenues in the Indian law, no criminal investigations have taken place and no victim has ever received any compensation. The Supreme Court has established that in the case of a persistent failure to comply with the court's orders, "concerned chief secretaries/ administrators of the states/ union territories shall be held responsible."[279] Consequently there is little doubt about the existence of a domestic legal basis with which to bring those responsible for the starvation deaths to justice. By neglecting the occurrence of the deaths,[280] the Left Front Government refused to issue compensations to the victims as requested by the Adviser to the Supreme Court Commissioners.[281] Similarly, the central government too turned a blind eye to the matter.[282] On May 10, 2005, following a PIL petition filed in front of the Supreme Court by NGOs in relation to the hunger and starvation deaths in Murshidabad, the apex court directed the commission to investigate into the allegations. In this decision the court advised the petitioner to exhaust state-level efforts before seeking its help.[283]

The commission, in turn, if indeed it ever started, did not conclude any investigation on the matter. The high court and the NHRC also did not take any action regarding starvation deaths in West Bengal. In other states, commissions did take action on starvation cases, which shows the potential of human rights institutions when the governmental apparatus fails to respond to the urgent needs of the population. For instance, in 2009, the Bihar SHRC directed the state government to pay a compensation of Rs. 2 lakhs to the wife of Mahendra Sharma who died of starvation.[284] Inaccessibility of effective remedies and reparations to the victims is a flagrant violation of India's international and domestic obligations. Failure to assume governmental responsibilities over starvation deaths encourages repetition and acceptance of an endemic corruption within the public system to the cost of people's right to life and freedom from hunger and starvation. The commission has an obligation here to intervene which it is blissfully oblivious to.

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278. Mrs. Shyamali Halder testimony.
279. Supreme Court Judgement, PUCL v. Union of India, (November 29, 2002)
280. An analysis of the political motivations behind the main actors involved in the occurrence of the starvation deaths is found in Olivier Rubin, 'Analysing the political dynamics of starvation deaths in West Bengal', Institut for Statskundskab Arbejdspapir 2008/03.
281. West Bengal Adviser to the Commissioners of the Supreme Court Report on 'Hunger in Tea Plantations in North Bengal' (January 2004)
282. Olivier Rubin, 'Analysing the political dynamics of starvation deaths in West Bengal', Institut for Statskundskab Arbejdspapir 2008/03.
283. India: Supreme Court refers Murshidabad starvation deaths case to the West Bengal Rights Commission, issue raised in Parliament, Milli Gazette (May 10, 2005) <http://www.milligazette.com/dailyupdate/2005/20050511a.htm> accessed August 30, 2011.
284. Bashi Kant Choudhary, SHRC asks govt to pay deceased's wife Rs. 2 lakhs compensation, The *Times of India* (September 11, 2009) at <http://articles.timesofindia.indiatimes.com/2009-09-11/patna/28073726_1_shrc-starvation-relief> accessed September 16, 2011.

CHAPTER-II

Testimonies

Case of Torture and Ill-treatment by Police

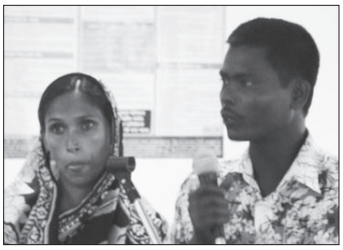
Behrampore Town, Murshidabad District

Mrs. Shampa Karmakar (Sister) and Mrs. Pinky Mondal (Niece) deposing on behalf of Mr. Mridul Roy

MRIDUL ROY

My brother was returning home at 11pm on April 17, 2010 after purchasing some baby food for his son. Suddenly, Kajal Das and Anil Das approached him in an intoxicated state along with a few accomplices and started to abuse him aggressively with filthy words. My brother protested and pushed Kajal Das, who fell to the ground. Immediately after that, all of the accomplices of Kajal Das attacked him viciously. In an act of self-defence, he picked up a piece of wood from the roadside and hit Kajal Das who suffered an injury to his head. Anil Das subsequently reported the matter to the nearest police outpost at Nimtala without lodging any FIR. A FIR was filed the next morning. However, the Officer-in-Charge of the outpost along with his personnel came to the site of the incident and took my brother into their custody at approximately 11:30pm that very night. While in custody, they abused, beat, tortured and thrashed him without attempting to enquire into the facts of the incident. They did not issue a *Memo of Arrest* at the time of arrest. Finally, he was produced at the Behrampore Chief Judicial Magistrate's Court on April 19, 2010, after two days of arrest. He had to be hospitalised due to the serious injuries he suffered during custodial torture. When his wife came to the Behrampore Police Station to meet him, she was refused access. She was forced to pay a bribe of Rs. 40 to see him in the court lockup. Further, the jail warden kept him in an inhuman and unhygienic condition and demanded money for moving him to a better location. He has been refused bail on two occasions without even being physically present in the court room. The lawyer who pleaded for him did not complain before the court against the police authority for not providing him with a *Memo of Arrest* in his own interest, or for not producing him before the mandatory 24 hours period. Due to Anil Das's proximity to the police we have no faith in the possibility of a proper investigation.

Therefore, we filed a complaint before the WBSHRC on May 17, 2010 seeking for an independent investigation and a suitable financial compensation. However, we have not received any response to date.



Case of Torture and Ill-treatment by BSF

Jalangi PS, Murshidabad District

AKBAR ALI SEIKH and LILUFA BIBI

On October 30, 2007 at approximately 7am, I went to visit my agricultural land alone. Out of the blue, three constables of the 90 Battalion BSF and DIB of 10 Point camp approached me. They assumed that I was a smuggler and tied me up using rope, and tortured me severely. I was kicked mercilessly and beaten with bamboo sticks. Under this relentless attack, I lost consciousness and also began to urinate blood. I was also scalded with boiling water. I was then taken to the Singhpara headquarters of BSF. There, I was threatened with torture if I dared to describe the incident to the police or to the hospital. The BSF personnel wanted to admit me directly to Sadhikan's Dearh Block Primary Hospital run by the government in order to suppress the torture that was inflicted upon me. The hospital authorities refused to admit me and the BSF personnel brought me to the Jalangi Customs Office and later to Jalangi Police Station. Due to the visible signs of torture, the duty officer has asked me whether I had been tortured. As I had been threatened about disclosing the incidents of torture to the police, I declined to answer the question. I was then compelled to sign a document which stated that I was not tortured by the BSF, and was put into a lockup. At this time, I was in great pain and was shouting that I was going to die. The following day at approximately 8:45am, I was admitted to Sadhikan's Dearh Hospital by the police where I stayed for nine days. I had a number of injuries on my forehead, feet and various other body parts. A case was registered in Jalangi Police Station. I was sent to the Domkal Sub Divisional Executive Magistrate Court on November 6, 2007, six days after my arrest. Police took me to the magistrate from my home after I was discharged from the hospital. Eventually, I was released from court but became very weak physically due to the brutal torture that was inflicted upon me and I am now spending time at home with my family. I am in great financial distress. I was in a dreadful condition and was bleeding profusely through stool. I could not even stand on my own feet. MASUM brought me to Belur Hospital for treatment and after thorough check ups I was sent back to my home.

On January 16, 2008, a complaint was filed by MASUM before the WBSHRC requesting initiation of immediate criminal proceedings against the concerned BSF personnel for brutally torturing me in custody. In addition, we requested that the role of the police and hospital be probed by an independent agency. We demanded free medical treatment and compensation. My wife and I are still under psychological treatment. The doctors said I am suffering from a severe case of post-traumatic stress disorder and I still suffer severe depression and sleep disorders.

Case of Torture and Ill-treatment by BSF

Jalangi, Murshidabad District

SAIFUL MONDAL

I have lost my land due to the massive land erosion by the River Padma. As a result, my family, along with three thousand other villagers, have been forced to live on the sandy lands near the Indo-Bangladesh border. In order to earn a living, I started a grocery shop at Charparaspur, Susil Colony. I used to buy grocery items from Jalangi Bazar which is situated about 17-18 km away from my village. I used to bring 50-60 kg of rice, 20-25 kg of flour and other materials from the market and sell those items to make a living. From the year 2007, the officers of the BSF have not been allowing me to bring more than two kilograms of rice per week with me. I required approximately 20 kg of rice per week for my family consisting of eight members. In these circumstances, I faced huge difficulties in running my business and earning a livelihood, which has virtually led to the starvation of my family. Due to my living conditions, I contracted tuberculosis. I have the requisite legal documents to run my business but I still found it difficult to run it properly due to the illegal acts of the BSF. In 2008 when I was trying to transport 20 kg of rice for my shop, I was mercilessly beaten by officers of the BSF. On February 21, 2008, I lodged a complaint with the District Magistrate, Murshidabad, describing my plight and all of the incidents of violations. I sent copies of this to the Superintendent of Police, Berhampore, Murshidabad; the Sub Divisional Officer, Domkal Sub Division, Domkal, Murshidabad; the Block Development Office, Jalangi, Murshidabad and the Officer-in-Charge, Jalangi Police Station, Murshidabad. In addition, I wrote a letter to the Commander of the BSF urging them to allow me to carry 50 kilograms of rice. However my efforts were in vein, and no progress has been made by any of the afore mentioned bodies.

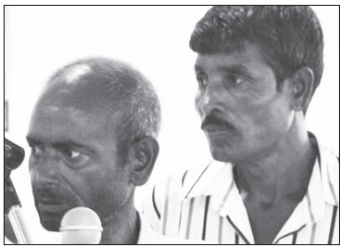
On March 25, 2008, MASUM filed a complaint before the National and the WBSHRC seeking compensation and prosecution of the perpetrators for the alleged atrocities. The NHRC directed the home ministry to investigate this case.

Case of Torture and Ill-treatment by Paramilitary Forces

Village Char Bathanpara, Murshidabad District

JUWEL SHEIKH

On May 16, 2009, when I was 11 years old, the police and the Rapid Action Force (RAF) subjected me to severe physical torture. On that day at approximately 5pm, a violent clash broke out between the supporters of two rival political parties, the Indian National Congress and the CPI-M (Marxist). A huge police contingent led by senior police officials of Raninagar Police Station arrived in the area and a confrontation between the police and the assailants began. During the incident, one police officer of Raninagar Police Station died and as a result, the RAF was deployed in the area. The male members of the village were arrested and many had to flea the village fearing harassment. Police and paramilitary forces entered our village of Char Bathanpara and proceeded to ransack and vandalise houses. At that time, only women, children and elderly people were found in the village and they were subjected to brutal police action. They were asking for the whereabouts of the male members of the village. We were mercilessly beaten with *lathis*, boots and riffle butts, leaving most of us critically injured. In addition, the perpetrators gang raped a number of women including minor school-age girls. During the incident, I was severely assaulted with *lathi* and verbally abused. They continued to beat me for approximately five or six minutes and as a result, I fractured a bone and injured my left wrist. There was also pain and swelling on both of my hands and other parts of my body. Many of the injured persons would not go to the health centres for medical treatment for fear of the police. I too didn't. I stayed for days without receiving any medical treatment until MASUM arranged for my medical treatment. Thus, on May 27, 2009 I was brought to the Berhampore New General Hospital in Murshidabad. My elbow was seriously injured and my left arm had to be casted. Babu Seikh, another victim of torture filed a petition of complaint against the perpetrators. The said criminal case is now pending in the court. On July 21, 2009, MASUM, sent a petition to the WBSHRC and the minorities commission. On August 5, 2009, the minorities commission addressed the SP of Murshidabad to open an enquiry into the allegations. On February 25, 2010, the SP forwarded a report dated August 24, 2009 to the minorities' commission. This report denied the allegations. To date, there is no conclusion on this case from the minorities' commission nor has any communication been received from the WBSHRC.

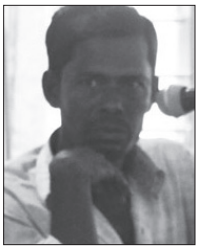


Case of Torture and Ill-treatment by BSF

Village Poroshpur, Murshidabad District

RAHUL SHEIKH and TAJUL ISLAM

We used to reside in the village of Poroshpur. In 2005, the devastating erosion of the river Padma destroyed our entire village and as a result, we began living in *char land* that had emerged on the other side of the village, namely Parashpur. In this area, there is an immense scarcity of essential facilities for all of the villagers. As a result we are forced to travel at least 4-5 km per day to purchase essential commodities. On August 6, 2009, approximately 20-25 villagers, including some women and minor girls, were returning from a ration shop owned by Golam Mostafa situated at Farajipara Village. We were present in this group, and Jabdul Sheikh, member of the local Char Parashpur Ghoshpara Gram Panchayat was also present. When we arrived near Observatory Point Number 2 under Farajipara BSF BDO Camp we were forcibly detained by two BSF jawans, one Habildar Major and the camp in-charge of the said camp. They started to beat us indiscriminately using *lathis* and using filthy language, without any sort of provocation or giving any reasons. Women were sexually intimidated and assaulted by gesture, words, fists and slaps during the incident. Several of us sustained serious injuries that resulted in chronic pain during this assault. On the same day, after being released, Jabdul Sheikh, accompanied us to the office of the BDO, Jalangi, where we narrated the entire incident to Sukanta Saha. He advised that we lodge a complaint at the Jalangi Police Station against the involved BSF personnel and also told us to give a copy of the complaint to him. We went to the Jalangi Police Station, lodged a written complaint and submitted a copy of it to BDO of Jalangi, as instructed. Later we realised that while the police accepted our complaint in hand, it was not registered and no complaint number was furnished to us. Thereafter, we were given treatment at Sadikhan Dearh Rural Village Hospital. We were discharged from the hospital on August 8, 2009 and continued regular treatment under a village doctor. Subsequently, we met with a fact-finding team from MASUM and described the incident of torture by the BSF personnel to them. On September 17, 2009 the fact-finding team talked with Somnath Singho, Assistant Sub Inspector of Jalangi Police Station and asked whether any action was taken or not in the matter, and the police officer replied that he was aware of the incident but could not say anything definite on the action taken by the police. A complaint was filed by MASUM on December 21, 2009 before the WBSHRC. On May 18, 2010 the commission called for a report from the SP of Murshidabad within 4 weeks from the date of communication. Still no action has been taken by any of the authorities.



Rape by BSF

Village Debipur, Murshidabad District

Mr. Jugol Sarkar (Father) deposing on behalf of Mrs. Beauty Sarkar

BEAUTY SARKAR

My family and I live in impoverished conditions in the village of Debipur, Murshidabad. My daughter was married to Sanjay Sarkar about five years ago and they had a daughter. On October 20, 2009, I was returning from my daughter's matrimonial home in Bangladesh with my daughter, crossing the Indo-Bangladesh border. After reaching the Char Lalkup area near the Bamnabad BSF Camp, we met two individuals, Nuju Sardar and Jiban Sheikh, who were reportedly involved in aiding persons to cross the border with the help and connivance of the BSF personnel. They told us that at that moment, it was not possible to cross the border due to restrictions placed by the BSF. They also took money from me, and took the two of us to Nuju Sardar's house. After spending two days at this house, they told us that only one of us would be allowed to cross the river Padma at a time by boat. Consequently, I was allowed to cross the river at approximately 9.30am. I was told that in approximately 2-3 hours, my daughter would also be allowed to cross the river. After crossing the river, I reached the village of Bichpara and waited for my daughter's arrival. Then, Jiban Sheikh and Nuju Sardar brought her to BSF Outpost No. 2. There was a lone jawan present inside the BSF outpost. He requested that he be left alone with her. He began to use sexually intimidating language and forcibly provoked her to partake in sex. Although she made several requests and pleas the BSF jawan did not relent. He dragged her to a nearby grassfield and raped her clutching her mouth. The incident took place at approximately at 12:00 or 12:30pm. After committing the crime, the said BSF Jawan threatened my daughter with her life and told her not to disclose the incident to others. She was then allowed to cross the river using the boat of an unknown fisherman. At about 1pm, I met her and she narrated the incident to me.

On October 22, 2009, MASUM lodged a complaint before the WBSHRC urging urgent intervention to protect my daughter's safety and security. We also tried to lodge a complaint at the local Jalangi Police Station, but they refused to register a case. When MASUM lodged a FIR before the Berampore Court, the police under pressure accepted the complaint. Soon after, the BSF personnel from the Rajanagar BSF Camp made several visits to my house and threatened my daughter and the rest of the family with dire consequences. So far, the police have not made any arrests. Nor has the WBSHRC intervened in the matter. After this heinous incident of rape, the marital life of my daughter was very badly affected. Her in-laws initially refused to accept her.

Case of Torture and Ill-treatment by Police

Village Char Bathanpara, Murshidabad District

ABDUL AKHTAR

On May 16, 2009, the day of declaration of general election results, there was a clash between the CPI-M (Marxists) and the Congress party in our village of Char Bathanpara. As a result of the confrontation, a police officer from Raninagar Police Station was killed. Later that same day a large group of police officers from Raninagar Police Station and paramilitary forces from the RAF entered the village and started committing atrocities on the people. They entered my house searching for males, so I hid myself behind the bed as soon as they entered. When the police officers could not find any male a police officer told the RAF officers to do whatever they wanted with the rest of my relatives. They started mistreating my two daughters of 25 and 15 years old and eventually they raped the eldest in the presence of the youngest. I saw three police officers repeatedly and brutally raping my daughter. Many other women and girls were raped on that day, and men were tortured and killed by the police. We went to the police to lodge a complaint but they refused to register it. Then, we tried to lodge a complaint with the chief judicial magistrate at Barhampore under Section 156(3) of Criminal Procedure Code, 1973. But they also refused to pass any order to force the police to file our petition. On May 27, 2009, soon after we heard that the magistrate had been transferred, I tried again to lodge the complaint before the court of chief judicial magistrate. This time, the Chief Judicial Magistrate Shantanu Jha, recorded the statements and requested a report from the concerned sub divisional police officer, and requested the submission of the names of the RAF officers who were on duty with the police officers of Raninagar Police Station. The court also ordered my daughter to be examined by the District New General Hospital. Based on the hospital report the court completely rejected our complaint. We have not yet received the certified copy of that order and the case record is missing. I believe it has been removed deliberately.

The WBSHRC also has not taken any action despite being approached.

Illegal Detention

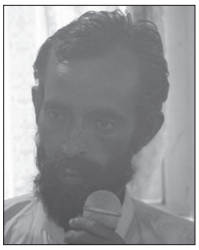
Village Salboni, Medinipur District

Mrs. Shampa Sengupta (Sruti Disability Centre, Petitioner before the WBSHRC) deposing on behalf of Mr. Rameswar Murmu

RAMESWAR MURMU

Sruti Disability Centre works for the disabled people. Whenever there is a violation of any right of a disabled person, we file complaints in the office of the disability commissioner. On June 18, 2010, we read a news report in the Times of India that a 'Maoist' mentally retarded boy was arrested and put in police custody. He was caught as a suspected Maoist after an encounter in Salboni, Medinipur, where eight Maoists were killed on June 16, 2010. At that moment I had a very important question in my mind, as to how a disabled person could be held to be a 'Maoist'? I do not know the boy personally but the photo of the boy in the newspaper showed that he is definitely living with some disability. As we work closely and on a regular basis with the disability commissioner, I called on him for help. The disability commissioner said that it was outside his purview as it involved a police custody case.

Thus, on June 18, 2010 a petition was filed with the WBSHRC. To date, we have not received any acknowledgment or reply. However, through informal sources we discovered that this case was taken up by the commission and after considering reports written by the police officers of Medinipur, the commission came to the conclusion that the boy is 'not mentally retarded' and closed the case. We are particularly concerned about this case as we learnt from the media reports that the boy is epileptic and he takes medicines which are not ordinarily available in the prisons. We also received information through unofficial sources that on March 7, 2011 the former IG Prison Mr BD Sharma had sent a letter to all the correctional homes in West Bengal directing the prison officers to prepare a list of the inmates who are mentally retarded and are of unsound mind and after contacting their family members release them immediately. This direction complied with the recent amendment made to Section 328, 329 and 330 of the Criminal Procedure Code, 1973. The prison officers complied with the direction of the IG Prison and prepared the list. The prison officers informed us that the name of Rameshwar Muru was included. Lately, we spoke to the advocates of the boy and from them we have received information that the parents of the boy are not keeping in touch with him anymore. I cannot say specifically under which section of law Rameshwar was charged, but the police arrested him as a Maoist. I would also like to state that the rights commission is meant for all but it is not exactly disabled friendly. Neither the building nor the website of the commission is accessible to them. It is high time that WBSHRC and the other commissions are made accessible to the disabled.



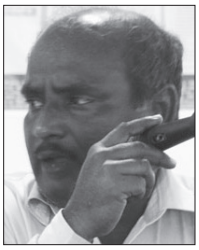
Case of Torture and Ill-treatment by Police

Sandeshkali PS, North 24 Pargana District

TUSHER MONDAL

I am Tushar Mondal, and Kamala Mondal is my sister. On December 22, 2006, the police of Sandeshkali Police Station detained me without any reason and I was later detained in Dum Dum Central Jail. I was granted bail twelve days later. During that period, they tortured me. I complained to the officer-in-charge of the Sandeshkhali Police Station, but he did not take any action. I then complained to the SDPO, the SP and the WBSHRC, but they did not take any action. I have given written complains to everyone.

The police occupied a religious place in our village for a whole year. This is where my parents and I used to worship since childhood. When we requested that the police settle the matter amicably by discussion, they started beating us and they arrested me and put me in police lockup. In the meantime, the police filed a false case against me and arrested me again. I told the police officers repeatedly that I was not responsible for the incidents they were pinning on me. The men who were arrested with me and who were related to the same incident were immediately granted bail. But I was not given bail. While I was in the jail, they verbally and mentally tortured me. Officer Shankar Choudhury slapped me. I was refused water and told to urinate and drink instead. I was finally released on bail thanks to my lawyer and my father's efforts. For this he had to sell many family assets, including part of our already meagre land and crops, to pay for the legal expenses and the trips to the court. On January 2, 2005, my sister Kamala filed a petition before the WBSHRC. I tried contacting them on the phone to know the status of the complaint. They asked me to approach the court. I tried contacting them repeatedly but they did not reply. Finally, I went to their office. When I was completing the form they gave me to fill, two officers entered the room I was sitting in. One of the officers was the Secretary and the other *Sabhapati*. In the office, they humiliated me by referring to my sister and me as terrorists, they asked me to leave West Bengal immediately or else I would be in danger. Then, they asked me to go to the CID, so I went. The officers in the department did not entertain my case and asked me to come back on Monday. When I went back to the CID office on Monday they asked me to leave West Bengal. I got angry. I had stayed in jail for no reason where I was tortured. I have not received any compensation for my illegal detention. I have not received any order from the commission either. I want the police who harassed and tortured me to be punished. The compensation is just immaterial for me. I want justice in the form of punishment of the perpetrators.

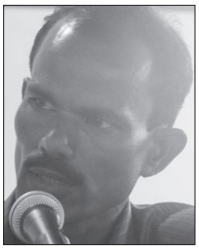


Harassment of Human Rights Defender

Murshidabad District

GOPEN SHARMA

I am a human rights defender working with the organisation MASUM. I have been reporting many human rights violations committed by BSF for a long time, which has made me an enemy and a victim of the police and the BSF. In 2005, the poor people of Jalangi Block were facing starvation and death. On September 12, 2005, after the death of her husband, Jahanara Bewa went with her brother to the BDO of Jalangi to inform them of the death and I accompanied them. The dealing clerk, Bikash Adhikary, refused to receive a written complaint. Thereafter, the BDO Mukul Chandra Mahato and the Block Relief Officer Soumen Nath called Jahanara into the chamber and interviewed her for a long time. Later, I was asked to come inside the chamber of the BDO where I was verbally abused, and the officers accused me of creating a disturbance in the locality. I was assaulted with fists and blows and was also manhandled. I was also threatened with extreme consequences. On April 11, 2006, I lodged a complaint with the WBSHRC. However, I discovered that I was falsely implicated in a case for committing the offence of cruelty towards my wife. In the hearing of that case my wife informed the commission that she never lodged such a complaint. The police of Jalangi Police Station concocted this complaint in order to harass me. The commission called for a report from the DM of Murshidabad within four weeks, however the it never received a reply. Eventually, I was honourably acquitted. At the trial it was discovered that the police had falsely filed a charge sheet. A further incident took place on February 8, 2007. I was arrested by Ranninagar Police and was put in the lockup. On that day Achinto Sarkar assaulted me. As I was being assaulted, I asked for shelter at a local BSF station. The BSF took me into custody and handed me over to Ranninagar Police Station. The attending police officer, Pradip Biswas, informed MASUM that I had been locked up. The said officer abused me and treated me with disrespect when he came to know that I was a human rights activist. He mocked me, calling me a 'cheater'. It later emerged that the mother of Achinto Sarkar had been brought to the police station in order to register a false complaint against me and this was done under the instruction of the police. It was discovered after a preliminary inquiry that I was arrested in connection with a false case for committing forgery and cheating. I had to languish in custody for 43 days until I received bail from the Calcutta High Court. The police also filed a charge sheet against me without undertaking an official investigation.



Extrajudicial Killing

Village Chonsara, Paschim Medinipur District

Mr. Anil Mahato (Brother) deposing on behalf of Mr. Sashadhar Mahato

SASHADHAR MAHATO (deceased)

On March 10, 2011 at about 5:45pm, the police of Binapur Police Station and Jambani Police Station, along with personnel of the joint forces, raided the village of Chonsara under the pretext of searching for alleged Maoists, who were wanted in connection with the Gyaneshwari train accident, and who had allegedly taken shelter in the village. These people stormed into the house of my brother Sashadhar Mahato without warning, and assuming that he was a member of the Maoists, shot him dead with their service rifles. Although my brother died on the 10th, criminal proceedings were initiated against him on the 11th at Jamboni Police Station. The post-mortem was held at Jhargram SD Hospital, however neither myself nor my other family members have been given a copy of the report to date. On March 11, 2011, a letter was addressed to me by the SP informing my family that my brother's body was being kept in the Jhargram SD Hospital morgue and we were asked to identify the body. On March 13, 2011, my brother's body was identified by another one of my brothers, Sashadhar Mahato who also submitted a written application at the Jhargram Police Station requesting the release of the body to his wife Niyati Mahoto. Thereafter, his wife took my brother's body home.When I saw the bullet marks on his body, it did not appear that there was any kind of struggle. He had been shot from a very short distance. It looked like he was held and shot at point blank in a brutal manner. On April 4, 2011 I sent a written complaint to the SP, Paschim Medinipur. I firmly believe that this is an incident of a false encounter whereby the personnel belonging to the 'Joint Forces' were not diligent enough to follow the required protocol laid down for such an encounter to be proven legal. I submit that the respondents were grossly negligent in failing to act within the authority vested in them when they shot my brother. Our family is continually struggling to get justice and to date absolutely no progress has been made in relation to the investigation of the case by the police. My family believes that members of the joint forces murdered my brother in cold blood and that they have fabricated the story that he was found in the possession of an AK-47 rifle.

We informed the NHRC and they passed an order directing the SP to investigate the matter. A writ petition has been filed before the high court which is in the initial stages.

Extrajudicial Killing

Jhargram PS, Murshidabad District

Mrs. Sabita Mahato (Wife) deposing on behalf of Mr. Umakanta Mahato

UMAKANTA MAHATO (deceased)

My husband, Umakanta Mahato was killed on August 27, 2010 while he was returning from an adjoining village at Parulia forest. He had recently joined the *Peoples' Committee Against Police Atrocities* and became a member of its central committee. My husband was falsely accused in the case related to the Gyaneshwari train accident, in which hundreds of passengers died. It was also alleged that on August 26, 2010, my husband, along with a few of his companions, killed three CPI-M (Marxist) supporters at Baghjhanpa Village after a 'Peoples Court'. It was also alleged that he tortured several people in Pathra village who were allegedly supporters of the CPI-M (Marxist). On the day of his encounter, he was returning from the village of Pathar Pata Shimul to our home on his motorbike at around 1.00am. Abani Mahato and Samir Mahato were riding along with him. On their way, at Parulia forest, they found that a rope was tied between the trees of both sides of a mud road. He stopped and asked his companions to untie the rope. When the companions got down and proceeded to untie the rope, two bullets were fired from behind. One bullet hit the back of his right ear and got stuck inside, while the other pierced through the right side of his waist and exited through his right middle abdomen. They stated that during the operation, the mercenaries of the CPI-M (Marxist) were also present along with the 'Joint Forces'. Thereafter, the body of my husband was dragged a few yards from the place where he was gunned down. His body was found with his trousers lowered down to his ankles and one pistol beside him. On June 28, 2010 at about 5am, a huge number of paramilitary personnel along with some mercenaries of CPI-M (Marxist) from adjoining areas came to my father's house. They took me and my sister from our beds and took us to a nearby primary school which was being used as camp for the Joint Forces, and inquired about the whereabouts of Umakanta. While we protested that we knew nothing of his whereabouts, one of the armed personnel hurled abuse at us. I was tortured and beaten with *lathis*. Our house was attacked and ransacked three times. On August 27, 2010, a constable from Manikpara Beat House under Jhargram Police Station came to our house and asked me to identify the dead body. The Inspector-in-Charge attested my signature for handing over the dead body after the post-mortem examination. Neither the body disposal certificate nor the Post-Mortem Report were given, despite my request. MASUM informed the NHRC, SP, DM, chief secretary, and home secretary.

Police Inaction

Contia PS, Purba Medinipur District

MOURARI MOHAN SAHU

I am Murari Mohan Sahu, my son Swarnakamal Sahu was a 16-year-old student of class X who was taking tuition in the neighbouring village at Pathar Ghata, Mitali Sangha from a tutor named Sunil Das. On March 13, 2009, he went to his tuition as usual and didn't get back. I went to the tutor and spoke to few of his friends and I discovered that he went to *Mansa Puja Fair* which was going on in a neighbouring village. I went to the fair but no one could tell me anything about the whereabouts of my son. Then a shopkeeper told us that he heard of an accident and suggested that we enquire about it. We arrived at the place and spoke to Kolan Pahadi who knew my son well. He confirmed that he saw the body of a young boy lying on the road but was not sure if it was my son as there were too many people gathered around the body. He told me that Bimol Manna helped to put the body on a rickshaw and transported it somewhere. I went to look for Bimol Manna and found him in the club. I asked him about my son and he confirmed that he did move the body of a boy on the rickshaw and sent it to the hospital. On the March 14, 2009, the police informed us that that boy had died. I reached the hospital very late at night. Once in the hospital, the death of my son was confirmed as they took my nephew to the morgue where he identified the dead body. I requested the hospital authorities to let me see the body of my son but in vain.

The next day my nephew and I went to the Contai Police Station to lodge a diary for the death of my son however the Investigation Officer Rabindra Das refused to lodge the diary and instructed us to finish the last rites and then come to lodge the diary. I, along with other relatives went to the morgue to get the body. There all of us noticed that my son's ear was partly cut in half and since his body lay uncovered we also noticed two blood clots, one on his chest and one near his abdominal area. Before we could think about any further action we were told to take the body away soon or it would decompose. Scared of this, we paid the money required for the discharge and also for the post-mortem which had been held and it stated that the cause of death was murder. Then we completed the final rites and again went to Contia Police Station to lodge the diary but still the complaint was not lodged. On March 17, 2009 I went to the police station with the members of a local political party. There a small fight broke out between the members of the political party and the officials at the police station, and a diary was lodged.

On September 2, 2009, *Childline* filed a complaint before the WBSHRC on our behalf. We have not received any response yet.

Police Inaction

Basanti Town, South 24 Pargana District

Mr. Panchanan Shau (Father) deposing on behalf of Miss Sharmistla Saha

SHARMISTLA SAHA

I am Panchanan Sahu and I run a NGO that works with *adivasis* in Basanti. On January 21, 2011 Manik Mandal, a volunteer of the said NGO, raped my 4-year-old daughter. The family of the perpetrator has a strong political influence in our community. I believe the rape of my daughter was a consequence of my refusal to establish collaboration between my NGO and influential local political parties. Since I lodged a complaint against the rapists of my daughter these same political elements have been continuously harassing my family and me. The accused asked my little daughter to come to the NGO, luring her with music, and then raped her. After that my daughter came home and told me about the whole incident. The accused person admitted the offence but his parents diluted his offence and also threatened my wife. We took my daughter to the hospital, but unfortunately the hospital authorities behaved quite rudely and did not provide my daughter with proper treatment. Thereafter I lodged a FIR at the Basanti Police Station, which had little consequence. After three days however my daughter was provided with proper treatment at the Canning Hospital. My daughter's uncle Dhananjoy Sahu was subjected to inhumane torture for lodging the FIR. I again filed a GD at the same police station about this incident. Thereafter, a political leader of the RSP party and his associates threatened me to withdraw the allegations. The said political leaders, with the help of local hooligans, demolished my residence and then on March 11, 2011, another local party member subjected me to torture. I filed another GD. Thereafter, another political leader of the CPI-M threatened me and told me to withdraw the allegations over the phone. The harassment has not stopped since.

On April 22, 2011 I sent a complaint to the NHRC. In a letter dated May 30, 2011 the NHRC referred the case to the WBSHRC as it considered that the case is a subject under the state jurisdiction. To date, I have not received any information from the said institutions nor have the police initiated an investigation into the mentioned allegations, nor have they taken any action to protect my family against this continuous harassment.

Police Inaction

RUKIA KHATOON

My husband died 14 years ago and I have two children that were born out of wedlock. I am extremely poor and I regularly suffer from starvation. My current source of income to feed my children is poultry. My husband owned many acres of land in the district and left three wills dividing the matrimonial property. However, my father-in-law has since confiscated the title deeds to the property from me. He began to cultivate the said land in the aftermath of my husband's death and although he made an income from the cultivation of the land, he does not contribute to my family maintenance. On February 5, 2010, I begged him to provide me with some of the money that he had made through the cultivation of the land for my maintenance. However, he refused to do so, and instead, he abused me with filthy language. He also tried to molest me and attempted to build up an illicit relationship with me. On the next day, I reported the matter to the police but the police personnel showed absolutely no interest in taking on my case. After repeated requests, the police finally lodged a complaint. My father-in-law upon hearing of the filing of the complaint began to threaten me through his associates. All of these individuals arrived at my residence, tried to molest me, and used filthy and abusive language against me. They also severely beat me and tried to kill me. They even threw stones at me as a method of torture. On this particular occasion, I managed to get the perpetrators out of my house and waited alone for a long period. The men told me that if I attempted to leave my home, they would murder me. After this incident, on several occasions, the perpetrators came back again and again. I then felt extremely hopeless and suffered from fear and anxiety. The hooligans also told lies about me in the locality, saying that I was not a person of good character. In the aftermath of this, the individuals made repeated attempts to evict me from my husband's land.

Due to the continued inaction of the police to protect me and my family against my in-laws, on March 21, 2010, I filed a written complaint to the WBSHRC. They sent me a letter with the final order on the case saying that the case was dropped as it was a family dispute, whereas my complaint was a request to the authorities to do their job in protecting a defenceless woman and her kids.

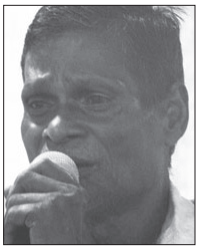
Police Inaction

Kalighat, Kolkata

ANURADAHA MANNA

I am Anuradha Manna, and I was married to Hirak Manna on June 18, 1994 at Kalighat. After four years, I came to know that he was already married to Mrs Gopa Manna, with two sons. When I mentioned this marriage to my husband, he told me not to pay much heed to the fact. On April 5, 2006, my marriage was registered. My husband had been supporting me economically. With his help I started doing some kind of stitching, to earn my livelihood. However, right from the moment my husband's first wife's family got to know about me, they started to behave very brusquely with me. Their brutality went to the extent of kicking me in my stomach when I was pregnant and trying to strangle me to death. On April 11, 2009 they told me that my husband had committed suicide by hanging himself. They did not allow me to see his corpse. I believe my husband has been murdered, because the practical conditions, which are scientifically required for a person to kill himself, were not present. A person could not hang himself to death in such a small room, unless he was killed previously and then hung. He was also found hanging with just night clothes, which is just not sufficient to strangle a person to death. I then went to the Sinthi Police Station but they refused to lodge my complaint. I went to the commissioner of police in 18 Lal Bazar Street to get the post-mortem report and the final report of the police. I accordingly submitted a petition to that effect on May 26, 2009 but they did not release the reports to me nor did they started any investigation. After my husband's death, my life has become hell. I am struggling to make ends meet as I earn a very meagre amount by doing some kind of stitching. I live in a rented house for which I have to pay a rent of Rs. 1,334 per month, and also my daughter is studying in 10th standard in Kumar Ashutosh School.

I sent a complaint to the WBSHRC on June 3, 2009 and they asked the police, on September 1, 2009, to submit an enquiry report regarding the allegations. The commission also requested a post-mortem report. That report sustains that my husband committed suicide so the commission closed the case. I believe they did not do proper investigation. I was not even questioned.



State Terrorism

Nandigram, Purba Medinipur District

Mr. Chittaranjan Mondal (Father) ***deposing on behalf of***
Mr. Bharat Mondal

BHARAT MONDAL (deceased)

In 2007, the land protection revolution started in Nandigram. On January 7, 2007, in a market place in Nandigram, there was heavy bombing. My son Bharat Mondal, who was working as an activist with the *Bhumi Uchhad Pratiraksha Committee*, along with other fellow activists in his organisation took part in a protest rally against the bombing. A large number of women, children and senior citizens carrying *hasua, jhata* and other instruments participated in the protest rally. The next day at 4am I saw the dead body of my son being carried on a cart by a large number of people to the Nandigram Hospital. He was referred by the Nandigram Hospital to the Tamluk District Hospital, Purba Medinipur, where his body was taken and the doctor declared him dead on arrival. The Post-Mortem Report recorded severe wounds on his body. I lodged a FIR after the incident but the police did not conduct any investigation. A large number of NGOs came to visit us after the tragedy but none offered any support or help. We did not receive any help from the government nor compensation for the killing of my son despite the Supreme Court order granting us compensation.

The WBSHRC has not played any role in the matter. As per our information, the commission have not even visited Nandigram, they did not start any investigation. I request the Jury to kindly look into this matter. We demand justice for the victims, compensation to the injured and the relations of the deceased. The police trapped many innocent people in false cases. Those innocent people should be provided with legal protection.

State Terrorism

Nandigram, Purba Medinipur District

HAIMABATI HALDAR

On March 14, 2007, there was a *puja* in the village and most of the people from the neighborhood were present. Suddenly the police reached the village. There were approximately 500 police at the scene and they assembled at Talpati Khal. All of the eyewitnesses noticed that there were three different types of police uniform. Many of the perpetrators were in fact members of the CPI-M (Marxists) and were not police personnel. When police started to attack the members of *Bhumi Uchhad Pratiraksha Committee*, and some of its members began to chant slogans at the police. Then, the police began to throw tear gas and many women and men were injured. Suddenly the police rushed and began to fire from their guns at the individuals that had gathered in protest. Women from the Muslim community gathered with *hasua* and *jhata* when the police attack began. In addition some men were armed with *lathis*. I began to vomit as a result of the tear gas and I could not see anything due to the irritation in my eyes. I then asked for water and I tried to clean my face and eyes. Suddenly, the police started to fire at the crowd. Then, the police started to fire from the bridge and I fell down in a pond with water up to my neck. I was wounded from four bullets. Three bullets went into my back and exited through my abdomen and one bullet was lodged into my body. When I arrived at the district hospital, they did not have the resources to deal with the extent of my injuries and as a result, I was referred to the PG Hospital in Calcutta where I remained for approximately four months. The health minister and Governor visited me in hospital and they managed to obtain VIP treatment for me. When I returned home, I experienced an extensive pain in my lower abdomen and bleeding began again. I also began urinating blood. As a result, I had to return to hospital but yet again, there was lack of appropriate resources and treatment facilities. When I informed the *Bhumi Uchhad Pratiraksha Committee*, they spoke with President Shuvendu who arranged treatment for me. At this hospital, I had an operation on my back and lower abdomen. On November 10, 1,000 people joined the peace rally, including many individuals from Nandigram. Suddenly, there was firing at them and my daughter has since disappeared.

A representative from the NHRC and the West Bengal Women's Commission attended a civil enquiry but no representative from the WBSHRC attended the inquiry nor have they visited the scene of the incident. I was not mentioned in the list, made by CBI on the directions of the Calcutta High Court, to be compensated.

State Terrorism

Nandigram, Purba Medinipur District

Mr. Ananda Mohan Mondal (Bhumi Uchhad Pratiraksha Committee representative) **deposing on behalf of** ***Mr. Pushpendu Mondal***

PUSHPENDU MONDAL

Pushpendu Mondal was a 27-year-old university student at the time of the incident in Nandigram and his subsequent death. On March 14, 2007, he was the first martyr of the Nandigram massacre. The police assembled in such a manner as to prepare to attack people and at first they attacked the members of *Bhumi Uchhad Pratiraksha Committee*. They launched tear gas, and fired rubber bullets and live ammunition against the gathering that included women, children and the elderly. One of the committee member's wives was shot and suffered an injury as a result. Pushpendu had gone to the religious ceremony purely to take part in the *puja* and had no intention of engaging in violence or retaliating to the police. When the police arrived in the area and began to march towards the villagers and fire their guns, some villagers resisted the police, but not Pushpendu - he was simply there to observe the religious ceremony. Police personnel shot him. His fellow villagers discovered his wounded body and noticed that his stomach was falling out. The villagers wanted to bring him back to the village, but the police prevented them from doing so. We searched continuously for his body for five days and they finally found the body in the District Government Hospital, Tamluk, on March 19, 2007. The body was in a horrific condition. All of the flesh on the body had decomposed. In addition, when we were conducting our desperate search for him, the hospital refused to disclose any information on his condition. In the aftermath of the massacre in 2007, we filed an FIR but the police failed to take any action whatsoever. After the massacre an investigation took place under the order of the Supreme Court. The investigation declared that he was preparing a bomb at the time of the incident and this is why he was shot dead by police personnel. In addition, the post-mortem report was manipulated; they said that he was injured from the bomb blast that he detonated. Arguing that he was attacking the police on the day of the killing, the state government refused to grant compensation to the family despite the Supreme Court and high court order. I also want to disclose the truth about the compensations. Through the Supreme Court order, the families of the 14 people killed received compensation. Around 169 injured people have received compensation of Rs. 2 lakhs each, and the rape victims have also received compensation. However, many who were injured have not yet received any compensation, as many who were compensated were not even eligible for it as they were not killed or injured during the revolt, but were paid for other reasons. There are also many people who went missing after police firing and kept in Alipore Central Jail as 'Maoists'.

Starvation Deaths

Ghoshpara Gram Panchayat, Murshidabad District

SHYAMALI HALDER

I live in Dayarampur. My husband Bikash is a daily labourer, but he is not getting regular work. For this reason we have been facing serious financial problems. We do not own any land to work. In 2005 we had two children but we lost one due to starvation. Now my family consists of three members. My family used to starve every day. On certain occasions, our neighbours provided us with something to eat, however if this did not happen, my family could otherwise go days without food. Many of my neighbour's families were also starving and therefore, it was often impossible to obtain food. At times we could go an entire week without any food. On March 10, 2005, my two-year-old daughter Bipanna died of hunger after six consecutive days without food. I could not feed her breast milk as even I was starving. I used to give her rubbish, sand, to keep her alive when I did not have any food to offer her. The day before she died, I managed to borrow two rupees from one neighbour and bought *sago* from a nearby shop. I boiled the *sago* and gave it to Bipanna. But she was very weak and with a high fever and the sustenance was too late to save her life. Although I applied for a ration card and BPL card we were not included in any list so we could not benefit from any government scheme. At that time, Mejanur Sk, elected member of Ghoshpara Gram Panchayat, told me and my husband that "until you catch hold of our feet and beg for mercy, your name will never be included in the BPL, Annapurna, GR, Antyodaya, etc." and "If you register a complaint against us, you will see the result and our power". Finally, in 2006, the DM sanctioned a list of members who are entitled to get the card. Though our names were enlisted, no card has been issued yet even after personal recommendation by the Governor of West Bengal to the DM for this particular case. As a result of the undernourishment, my son is partially blind as one of his eyes has been completely damaged due to a lack of vitamin A. He studies class 5th in a government school where no mid-day meal is provided. Nor does the school provide the students with notebooks and clothing. Occasionally books are provided to them.

A case was filed about the starvation deaths before the Supreme Court in 2005. An order was passed by the court directing the WBSHRC to inquire into the incidents of starvation deaths in the area. The WBSHRC has not investigated the case and no follow up of the court order has been undertaken.

Starvation Deaths

Village Dayarampur, Murshidabad District

MANUKA MONDAL

I am 62-years-old and I live in Dayarampur village. We lost all our land and belongings in the flooding of 2004. The land erosion by the Padma River left us with nothing and we started facing severe economic problems. We could not even afford to buy food, which was the case of most of our neighbors too. My husband could not work since he was starving for a long time and was very weak. I am the only member alive of my family and I currently work in a *bidi* factory to survive. I earn Rs. 10 a day from this job, which is my only source of income. I did not receive any support from the government. My husband Sasti Charan Mondal and my 16-year-old son Gajol Mondal died from starvation. I lost my son on December 12, 2004. We were starving, and in our room there was lime in a pot. My son mistook the limestone for curd and had it while I was at the market. When I came home, I asked my son why he had that. He said that he had thought it was food. I took my son to the well nearby and tried to get him to vomit. As he was not improving, I took him to the hospital but the doctor said that he could not do anything for him since they did not have any medicine or equipment. My husband died within a year after my son. As we lost all our documents in the flood we had problems applying for the food schemes. Now I have my BPL card but I do not get any kind of benefit from it although I am on the BPL list. According to the *panchayat pradhan*, my card is invalid, and since my husband died no benefit has been provided to me.

To date, there has not been any action from the government, the Supreme Court or any human rights commission to improve our situation.

THE FACT FINDING MEETING IN PROGRESS

Balance of 16 years of the West Bengal Human Rights Commission functioning: An interaction with Justice Chittatosh Mukherjee

Retired Chief Justice of the High Court of Bombay and the first Chairperson of the West Bengal Human Rights Commission from 1995 to 1998, Justice Chittatosh Mukherjee shared his views on the sixteen years since the commission's establishment in its residence in Calcutta.

The foundation of the commission opened a new era full of expectations over its role in lessening human rights violations committed by state agents. Not all these expectations have been fulfilled but there is some improvement on certain fronts. For instance, although numbers are not yet under acceptable levels, the situation of arrest and imprisonment of detainees has advanced since the commission started its work. Nevertheless, the commission should work more intensively in other areas in which results are not so positive, such as the health sector. Public hospitals are still poorly equipped and overloaded. The impact of the commission in relation to trafficking cases has also been poor. These cases need a quick response by the state institutions, as it is fundamental to reduce the time in which women and children are kept in custody by the trafficking networks. The efforts by the commission in relation to juvenile boards have not been very successful either. Still, there is an urgent need to efficiently protect the juvenile population under State custody. Fulfilling the right to education of children below 16 is also a pending issue in our society in which the commission can also intervene. Another deficient area in which more effort needs to be applied is in increasing the awareness within society about the special needs of the mentally-ill. Despite different orders being issued by the NHRC and Supreme Court to protect people with disabilities, their implementation by the state government is still inadequate.

The commission has obtained a very positive response by the state government on the implementation of recommendations that require monetary compensation to victims. Nevertheless, punitive recommendations are still a grey area. Following up the implementation of disciplinary proceedings or criminal investigations by the state is a complex task. Lacking the capacity to ensure the execution of this punitive measure on the perpetrators, the commission has its hands tied in this respect. Insufficient power constitutes one of the major obstacles for this institution to make its work effective. As stated in the Act, the commissions' decisions are not binding on the government. Thus, the implementation of measures to improve human rights protections depends on the willingness of the State. In addition, since 2008, the commission has not had a chairperson. The state government has systematically postponed its appointment in the last few years, thus, intervening in the ability of the commission to act as an agency that can effectively protect individuals against human rights violations committed by the state.

CHAPTER-III

Jury Report

BACKGROUND

The *Human Rights Law Network* organised a Fact-Finding Meeting (due to the court order the term 'Independent Peoples Tribunal' couldn't be used) on the West Bengal Human Rights Commission on 31 July, 2011 at Seva Kendra, Kolkata. Several victims and/or their family members deposed before the Committee comprising of:
Justice Malay Sengupta, Retired Acting Chief Justice Sikkim High Court;
Mr. Sadhan Roy Chowdhury, Advocate, Kolkata High Court;
Mr. Sujata Bhadra, Eminent Social Activist;
Mr. Sarfaraz Ahmed Khan, Assistant Professor, West Bengal National University of Juridical Sciences, Kolkata

The followings are précis of the cases and observations, and recommendations of the Committee, followed by general observations and recommendations:

CASE NO. 1

The place of occurrence in this particular case was by the side of the Jalangi River, the bank of which suffers from erosion every now and then. The allegation against the BSF is that they created walls and fences as far as possible along the river. It has been alleged by the party speaking on behalf of the deceased, that on January 26, 2008, a 22-year-old man, Akbar Sk., went to the other side of the river for certain work, during which the BSF personnel intervened and opened fire. As a result of which Akbar SK died. After the death of Akbar SK, the BSF personnel went to the local police station and lodged an FIR, which was in the form of a written complaint, on the same day (January 26, 2008). The FIR had a fabricated story in which it was mentioned that Akbar SK was a habitual smuggler and that he had tried to kill the intervening party when an attempt was made by the BSF party to arrest him. The members of the family of the victim approached the Chief Judicial Magistrate, Berhampore with an application under Section 156(3) of Cr.PC and Case No. 419 of 2008 was started.

Observation

The BSF have failed to formulate their own policy for safeguarding the security of an international border invested with a population in the country in general, and in West Bengal in particular.

CASE NO. 2

Ms. Beauty Sarkar is the victim of a case on the basis of which Criminal Case No. 587/2009 dated October 27, 2009 was started. The WBSHRC was approached but nothing concrete came of this, and the West WBSHRC maintained complete silence in the matter. The occurrence took place around the International Border of West Bengal and Bangladesh. The border is of a peculiar nature having (of both nationalities) inhabitants on both sides of the border.

Observation

Such types of incidents happened because of the peculiar nature of the locality. There are no transportation facilities on either side of the border and the population on both sides are in need of constant and frequent visits on either side, because of their daily needs. The law of this land is quite transparent in maintaining that an individual's rights are protected under Article 21 of the Indian Constitution, even though they may not be citizens of this country. The WBSHRC fails to perform its duty in a most unworthy manner. And mostly it maintains silence when approached.

Recommendation

The NGO which has initiated the hearing and dealt with the issue requested to strive for the redressal of the issue at the international level, so that the issue can be discussed at the highest administrative level of both countries under the supervision and presence of the United Nations authorities, for the formulation of a workable policy to address the issue. The right to dignity and right to life of the persons living in and around the international borders area are to be safeguarded at any cost. The WBSHRC should be approached as a right on every occasion and the commission is not to maintain silence.

CASE NO. 12

This is the case of the alleged encounter death of Sashodhar Mahato. The encounter and death took place on March 10, 2011. Anil Mahato, brother of the deceased, reported before the committee. As per his statement the 'Joint Forces', along with the police force of Binpur Police Station and Jambani Police Station, attacked the house of the deceased on March 10, 2011 at about 5:40pm and mercilessly killed Shashodhar Mahato. It was alleged that a rifle of AK-47 mark was recovered from the position of the deceased. This fact has however been denied by Anil Mahato. There is no record that the guidelines of the NHRC in case of encounter death have been followed. The WBSHRC when approached after the incident maintained their silence.

Observation

The WBSHRC should be activated by the concerned human rights organisations. The guidelines of the NHRC in such cases should be strictly adhered to.

CASE NO. 13

This is the case of the encounter death of one Uma Kanto Mahato. His widow Mrs. Sobita Mahato deposed before the committee. The incident took place at about 1am on August 27, 2010 in the forest of Purulia. The wife deposed before the committee that her husband was a social worker but he was entangled with several allegations which the wife alleged to be false. The principal allegation was that he was one of the associates in the case of the Gyanashwari explosion. He was implicated in that case because one of the main accused in the Gyaneshwari Explosive Case gave her husband a call on his mobile phone. It has also been alleged that after the massacre the deceased was made a principal accused.

The wife stated that the 'Joint Forces' along with state police had committed the brutal murder of her husband. She claimed that the story of an encounter case is false and fabricated and that the firearm allegedly recovered from the possession of the deceased, was planted by the police.

In this case also the grievance is that the WBSHRC, though approached, maintained their silence. It has also been alleged that the guidelines of the NHRC in case of encounter death have not been followed.

CASE NO. 14

Here the victim is Mr. Rameshwar Murmoo, who is said to be a mentally disabled and epileptic patient. Ms. Sampa (Sruti), a member of an NGO, deposed for Rameshwar. Early one morning the parents of Rameshwar awoke upon hearing the sound of a gun from behind their house. The parents approached the place from where the sound came. However, they took a roundabout route to avoid being hurt. On reaching the place, the mother held Rameshwar. But Rameshwar ran back towards his house. Rameshwar's mother followed him but the police intercepted and caught Rameshwar, holding a gun to his head and threatened to kill him if anyone tried to release him. The police ultimately alleged that Rameshwar and his parents had Maoist connections and that the story of mental illness was to save the boy from any legal action. Rameshwar was therefore arrested and to date he is in custody. The local NGO is pursuing the case but without any result. The NGO claims that the victim was examined in the jail hospital where the factum of the victim being a person with a disability was established. The WBSHRC, though approached, remained silent on the matter.

CASE NO. 15

A woman has complained before us that she has been sexually abused, threatened and subjected to inhumane torture by her father-in-law. The husband of the victim died in a venture to grab the property of the deceased. The property is now in the possession of the victim daughter-in-law. The father-in-law, in furtherance of his desire to grab the property, has similarly perpetrated operation, humiliation, harassment and sexual abuse upon the victim.

Observation

The role of the WBSHRC is frustrating in this case. The WBSHRC did not even find the time to keep the complaint of the victim on record and simply closed the file with the observation that the case is one of family dispute.

CASE NO. 16

This case has probably been mistakenly placed before the committee. The principal grievance of the victim was that the WBSHRC did not respond to a (prior) complaint lodged before it. The record shows that on April 15, 2011, the WBSHRC made some recommendations which are as follows:

a) That a disciplinary proceeding be initiated against SI Arindam Guha Mazumder, Sandeshkhali Police Station,
b) A disciplinary proceeding be started against SI Tushar Kanti Kar, Sandeshkhali Police Station,
c) That a disciplinary proceeding be started against ASI Sunil Kumar Ghosh, IC Barasat Court lockup,
d) A compensation of Rs. 20,000 be provided to victm Tushar Mondal, son of Srinath Mondal for his illegal detention in custody,
e) Since Mr. Subir Chatterjee of Bashirhat Court has already retired from his service, no recommendation against him has been made,
f) The government should intimate the commission within a period of two months on purpose to the action taken in this regard.

CASE NO. 17

In this case the father of the victim complains that his son had been murdered in mysterious circumstances. The father moved from pillar to post untiringly. Persuasions were also made by inhabitants of that area for appropriate action to be taken. But the authorities have showed their utter callousness, and their negligence to unearth the cause of death. The role of the WBSHRC is just frustrating. The commission has not given any information regarding the complaint.

CASE NO. 18

In this case the victim was a girl child of four-years-old; her father was a human right activist. FIR No. 5/11 was lodged describing the offence to be U/s 376 (2)(f) of IPC. In spite of the lodging of an FIR, the police have not started an investigation. The father of the victim wants to return home, but he is still scared to do so. The father alleges that the WBSHRC has not taken any action.

Observation and Recommendation in general by the committee

Some comments are required to be made over the actions or inaction of the WBSHRC. It is painful to state that for the last few years the WBSHRC has been in a morbid state. To be frank, the composition of the WBSHRC is in an undesirable state, since no chairperson worth that title has been appointed for a long period. It is now headed by a retired high court judge but the gentleman does not hold a fully fledged post as he did not hold the post of a permanent chief justice of any high court or justice of the Supreme Court. Unless a commission is composed of persons with the required status we cannot expect effective measures to be taken by such bodies.

While dealing with a number of cases we noticed that in most of the cases the complaint was lodged with the commission but no action was taken over the same. This resulted in frustration amongst the people who live with a hope of some positive action from the commission. It is needless to say that inaction results in frustration amongst the persons who need the assistance of the commission for their

redress. The people go before the commission or before the police with the honest hope of seeing some action, but they get frustrated. Unless the commission is composed in a manner as required under the law nothing tangible can be obtained by the people who are in need of some positive action from the side of the government, be it the state or the centre including bodies like the BSF, the police etc.

The procedure being adopted by the WBSHRC is ludicrous. We all know that this commission is some sort of 'paper tiger', as they cannot take any positive action, but can only make recommendations. But in this regard also the commission has taken no real action? We have been told that during the hearing of any case the complainant is left aside and they are not even given the opportunity to present their case before the commission. This procedure being adopted at present is far from satisfactory.

The cases placed before this committee are mostly of perpetration, operation, humiliation and torture by BSF personnel. Some other cases relate to atrocities committed by state police, and also one case where a mentally challenged person was put behind bars for a long time on allegedly being a suspected 'Maoist'.

The cases of atrocities, humiliation, and harassment committed by BSF personal highlight various concern which may be categoriesed as follows:

(i) Cases where BSF personnel have their camps within the territory of India.

(ii) Cases where BSF personnel are deputed on the Indo-Bangladesh border.

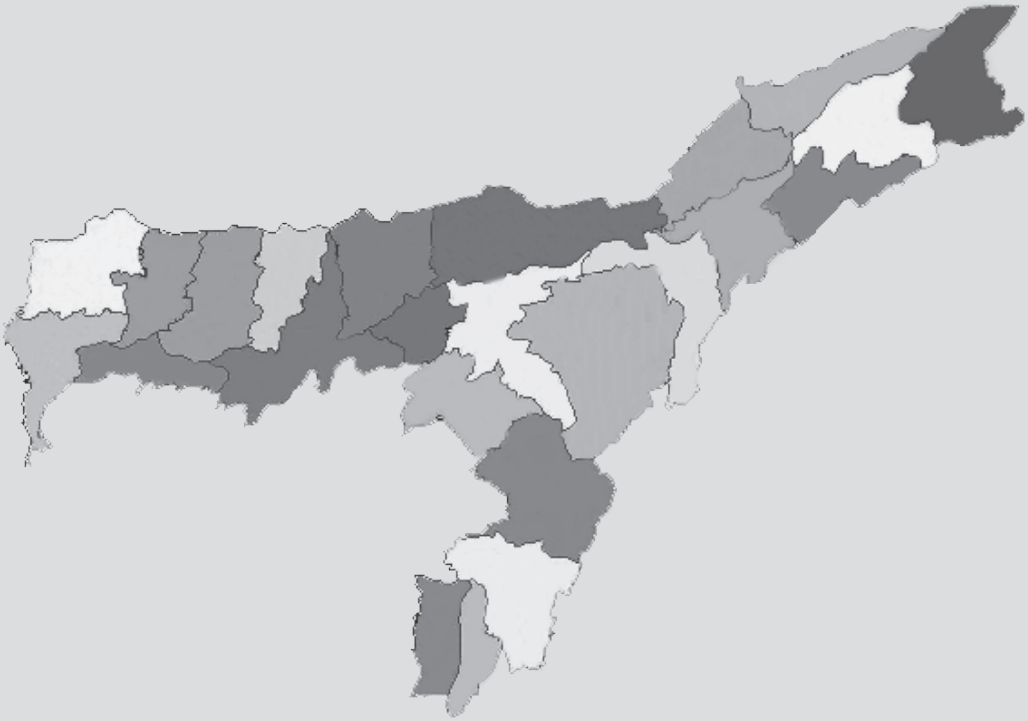
So far as the cases of the first category are concerned we may summarise that:

(I) The BSF personnel who are posted in this area are mostly hailing from up-country, and the majority of them speak Hindi. The villagers are scared of such personnel, moreover due to the atrocities of various natures being committed by the jawans of such BSF personnel. The jawans previously posted in Jammu & Kashmir, when transferred to the border area of West Bengal, came here to discharge their duty with the same mental formation, training and direction given to them while they were posted in Jammu & Kashmir. Problems in the border area in Jammu & Kashmir are not the same in the border area of Indo-Bangladesh. The high-handed attitude taken by the jawans posted on the Jammu & Kashmir border is not required in the Indo-Bangladesh border area. The jawans however do not change their behaviour pattern while dealing with people in the Indo-Bangladesh border area. Another problem which most of the members of the committee commented on was the fact that the rigour of the Foreigners Act has not been applied in West Bengal. The habitants of the Indo-Bangladesh border area are sometimes required to cross the border for the following reasons:

(a) Drastic erosion of the river Padma, culminating in the washing out of the international border line. Persons living on this border become victims of the erosion of the river Padma. Traditionally they move across the demarcated international border.

(b) The peculiar habit of human resource is distinguishable from different border area throughout the world.

(c) So far as this aspect of the matter is concerned for the purpose of addressing the issue successfully, both long-term and short-term programmes are to be initiated. Long-term programmes will include addressing the issue of the national and international border by lobbying with members of Parliament for appropriate legislation and centralisation of the highest decision making body of the military and paramilitary forces, and above all intervention of the United Nations to help both countries with the formation of a unilateral policy for the protection of basic human right of inhabitants in and around the international border of both the countries.



ASSAM

Alin Mohanta | Nita Das | Mathew Jacob | Harsh Dobhal

Sl. No.	02	**City**	Guwahati
Total Cases before Jury	22	**Date**	August 20, 2011
Jury: Justice. S.K.Kar, Retired Judge of the Guwahati High Court; Justice Meera Sharma, Retired Judge of the Guwahati High Court; Dr. Ramesh Barpatra Gohain, Academician; Dr. Walter Fernandez, Social Activist; Senior Advocate A.K Bhattacharya.			
Networking Groups Manab Adhikar Sangram Samittee; All Assam Students Union; Assam Tea Tribe Students Association; Society for Social Transmission and Economic Progress; Asian Centre for Human Rights; Women Empowerment Cell; People's Rights Forum; Childline; North East Network; Legal Assistance Forum			

THE INDEPENDENT PEOPLE'S TRIBUNAL ON THE FUNCTIONING OF
ASSAM STATE HUMAN RIGHTS COMMISSION

EXECUTIVE SUMMARY

ESTABLISHMENT OF HUMAN RIGHTS COMMISSIONS

The State of Assam, and the entire North-east of India, is a hot-bed of human rights violations. The human rights situation in the State of Assam deteriorated rapidly after the Indian Army was deployed in the state in November 1990 to fight secessionist insurgents. To contain the insurgents and to diminish the support they enjoyed, especially in the rural areas, security forces have indulged in extra-judicial executions, custodial deaths, torture and rape. On the one hand, common villagers are intimidated and terrorised to divulge information about insurgents, and on the other, insurgents are physically eliminated. The security operations, conducted under the Armed Forces Special Powers Act, 1958, which gives soldiers blanket immunity against any legal interference, have reduced the region to a killing field.

The Protection of Human Rights Act of 1993 (the Act) constituted a landmark in the Indian effort to protect human rights. In particular, 1996 saw the establishment of the Assam State Human Rights Commission (ASHRC). After fifteen years of work, victims have been able to gain access to compensation mechanisms, and the state government has initiated criminal investigations and implemented other commissions' recommendations to increase human rights protections by the state. Still, there are concerns among civil society organisations that the role of the commission has not yet developed to its full potential in bringing redress to victims of human rights violations.

Though some rights groups were apprehensive in the beginning about the way appointments to the commission were made, civil society enthusiastically responded to the governments' decision to constitute a commission, and every grievance, legitimate or flimsy, legal or welfarist, was brought before the commission. The commission seems to have expanded its purview to such an extent that serious concerns of rights have found little space before it. Litigation before the commission is becoming expensive and time-consuming. Poor victims cannot afford to travel several times to Guwahati (the office of the ASHRC) and engage lawyers to counter the arguments of state departments. Furthermore, the response of government personnel to the notices of the ASHRC seems to be tepid and indifferent. In any case, their attitude is a part of delaying tactics which makes victims become resigned to their fate. But the ASHRC is not able to whip up on them. The commission rarely responded *suo moto* on genuine and critical areas of human rights concern. The victims often feel that approaching the commission is no different from approaching a regular court.

INDEPENDENT PEOPLE'S TRIBUNAL

In the face of the increasing number of human rights violations and a shocking absence of an effective redressal mechanism, HRLN and a number of civil society organisations conducted an Independent Peoples Tribunal (IPT) to look into the functioning of the ASHRC with regard to addressing human rights issues brought to their notice by a number of victims from across the state. The State of Assam has witnessed various landmarks in terms of human rights violations over the last two decades. Protestations that the ASHRC has completely failed to discharge its duty towards the people, as the protector and safeguard of human rights, were the common echo during the meeting.

Over twenty-two victims deposed in the IPT, concerning the horrific tales of torture and atrocities by the state forces, and the inaction by the ASHRC. Tragic testimonies were presented from all parts of the state which clearly portrayed the inaction of the commission in cases of gross violation of human rights, like custodial deaths, police torture, encounter killings, false cases and arbitrary arrests. Cases pertaining to attacks on the media, HIV discrimination and harassment of Human Rights Defenders (HRDs) were also deposed. There has been hardly any action taken by the commission on such cases of violation despite their being constantly reported. The cases presented also showed that the commission, on many occasions, has failed to protect the right of the victim and succumbed to the pressure of the state. In cases of police torture and custodial death, the commission has directed the same police officers accused of the crimes to conduct the investigations.

ASSAM STATE HUMAN RIGHTS COMMISSION: A PORTRAIT

ASHRC was the second state human rights commission to be set up in India under the Protection of Human Rights Act, 1993, after the West Bengal State Human Rights Commission. The basic ideas regarding its infrastructure and composition were taken from the West Bengal Commission. Thus constituted way back in 1996, Assam is one of the earliest states to have a state human rights commission.

In exercise of the powers conferred under Section 21(1) of the Protection of Human Rights Act, 1993 (No. 10 of 1994), the Governor of Assam, vide Notification No. PLA.362/94/51 dated March 19, 1996, constituted a body to be known as the ASHRC to exercise the powers conferred upon it and to perform the functions assigned to a state commission under Chapter V of the said Act.

The Asian Centre for Human Rights evaluated the ASHRC in its 2009 Human Rights Report. The report stated that the ASHRC "continued to be ineffective". It found that the ASHRC was understaffed, lacked basic infrastructure and was plagued by poor staff morale. The report also mentions that the ASHRC's stature and efficacy further declined after Justice Sujit Barman Roy assumed office as the chairperson in April 2007. Roy's infrequent attendance adversely affected the commission's ability to address cases in a timely manner since, as per the Act, the commission cannot meet or issue any decisions without him in attendance.[1]

Civil Society Organisations (CSOs) have made a fervent appeal to all individuals and agencies dedicated to the promotion and protection of democracy and human rights all over the world to take an active interest in the present human rights situation in Assam. Further, the working of the ASHRC needs to be streamlined in order to usher in a better future for the people of Assam. In this report, the commission's functioning has been reviewed.

1. 2009 India Human Rights Report, *Asian Centre for Human Rights,* http://www.achrweb.org/reports/india/AR09/AR2009.pdf

FUNCTIONING OF THE ASSAM HUMAN RIGHTS COMMISSION

Independence

The commission is fully dependant on the government for its finances and resources. This is clearly at variance with the Paris Principles. There is no obligation on the part of the state government to provide the minimum support necessary to the commission. However, it has tirelessly sought the support of the state government in terms of physical infrastructure, monetary support and staffing requirements. Currently, the commission is getting grant-in-aid of Rs. 30 lakhs from the state government for payment of salary and other purposes of the commission. But that amount is not sufficient for carrying out its mandate. The commission has to take another Rs. 20 lakhs as a loan from the state government every month.

As there is only one annual report of the ASHRC that has been published to date, which does not mention anything of its finances, nothing can be said about its finances. However, interviews with its staff have made it clear that the current provision of Rs. 50 lakhs is not sufficient for the sustenance of the commission. Within that amount the commission has to pay the salaries of the staff, reimburse the investigation wing members and also buy all the required materials for office work including pens, pencils, file covers, paper clips etc. Thus, it is common to see the person approaching the commission with a complaint having to supply there own materials in order to get the work done.

Composition and Functioning

The office of the ASHRC was established six months after its constitution. It started functioning on September 16, 1996 from Head Office Building (IInd Floor), Medical College Road, Guwahati. It was formally inaugurated by Justice Ranganath Misra, the then Chairperson of the NHRC on November 3, 1996. The ASHRC office has been provided with almost all the required amenities for a modern office by the NHRC. The office currently has around twenty desktop computers, two servers, ten printers and two photocopier machines. Interestingly, the office also has a state of the art video conferencing system installed, but it has not been used in the two years since its installation.

The Chief Executive Officer (CEO) of the SHRC is the Secretary[2]. In the commission, there are three divisions entrusted with specific tasks, namely Administrative, Law and Investigation. The Administrative Division is headed by the secretary of the commission. The Law Division is headed by the Registrar and the Investigation Division by the Inspector General of Police (IGP). However, in the case of the ASHRC, there are only two wings, namely the Investigation wing and the 'Administration and Accounts' wing. There is no 'Law and Research' wing in the ASHRC due to the shortage of staff. The staff under the 'Administration and Accounts' wing has to manage any work which comes under the purview of the legal wing as well. This doubling up has been one of the reasons behind the degradation of the performance of the ASHRC.

In spite of a decade and a half of its existence, the employees of the commission are not properly trained. As a result, they have little idea of the demands of work in the human rights arena. This is highlighted by the fact that the commission's employees started keeping records only from the year 2001 onwards. A valuable record of the commission's work since its inception was lost due to the incompetence of its employees.

2. Section 21(3) of PHRA, 1993.

Accessibility and Dissemination of Information

Due to the non-publication of annual reports for over a decade and a half now, information related to the commission's functioning is very hard to come by. Also, the commission does not have a proper website providing reliable information. A rudimentary website about the ASHRC (www.ahrc.gov.in) was created long ago, but it has not been updated since March 2008. As per the information available, the work of uploading case information onto the server of the NHRC to create a centralised database is taking place, but at a very slow pace. This is mainly due to the lack of properly trained staff for this purpose. The website provides no information regarding recommendations made by the commission. However, it has some information regarding procedural regulations of the ASHRC, and FAQs links on how to file a complaint.[3]

As per the available information, a total of 6,546 cases were brought to the commission, of which 4,834 were disposed of, and 1712 cases were under process. The total number of recommendations from the commission was only 73, and the number of recommendations complied with was just 45, with 28 compliance reports still pending. Of these cases, 774 were registered against the police (508 of these had been disposed of, and 266 were still under process). There were also 418 registered cases of custodial death.[4]

Complaints, Investigation and Human Rights Court

In every district of Assam, the commission is required to set up an investigation department for the quick investigation of the cases registered there. This would also help minimise the travel expenses of the investigation team from the headquarters to all parts of the state. However, there are no investigation departments in any of the twenty-seven districts.

The Government of Assam, in August, 1996, with the concurrence of the Chief Justice of Guwahati High Court, under Section 30 of the Act, 1993, specified the Sessions Court at Dibrugarh, Jorhat, Nagaon, Tezpur, Dhubri and Silchar to be human rights courts of the respective districts, for the purpose of providing speedy trials of offences arising out of violations of human rights. Later, the sessions court of nine more districts were declared to be human rights courts, but sadly, none of the courts has been functioning as provided for under the Act[5].

Operational Efficiency

The persons approaching the commission, whether victims or complainants, are being forced to wait for long periods of time to have their cases dealt with and disposed of. In the period between April 2008 and March 2009, the commission registered 314 complaints, of which it has been able to dispose of only 191; 122 cases are still pending before the commission. The number of complaints registered during the period of April, 2009 to March, 2010 was 260 and from that 145 cases were disposed of, and 115 are still pending. Almost 97 complaints were disposed of in the year 2010-2011, out of a total 256 cases registered. 168 of the total cases registered during April, 2010 to February 28, 2011 are still pending.

From the above, it is clear that in the last three years the commission has barely succeeded in disposing of 50 percent of the total cases registered. The list does not include the *suo moto* cases registered by the commission over the period. The numbers of *suo moto* cases registered are not known, and the

3. http://ahrc.gov.in/pro_regu_ahrc.htm; http://ahrc.gov.in/faqs.htm
4. http://ahrc.gov.in/cate_cases.htm
5. Section 30 of PHRA, 1993

ASHRC is unwilling to part with that information, even under the RTI Act. Also, it should be noted that the government has not given any compliance reports upon the recommendations of the commission for over a decade.

Accountability

The commission is mandated to submit an annual report[6] summarising the work done over the period of the past year. The ASHRC has prepared only three reports since its inception. Out of these, only the one for the year 1996-1997 has been published. The other two reports have been submitted to the Home Department of the Assam Government but they are yet to be tabled in the legislative assembly so that they can be released into the public domain. Even the ASHRC could not give any exact details regarding the pending annual reports. They only stated us that the draft of the copies of the annual reports has been lost somewhere in the home department. As a last resort, RTIs were filed before the commission regarding the annual report information, but this response too is still being awaited. Some of the RTIs which were responded to did not provide the required information, rather, they seemed to be an attempt to sweep things under the carpet.

It is also important to mention here that the commission doesn't keep a record of its cases beyond a certain time. When the secretary of the commission was asked about certain old cases, it was stated that, as per the interim decision of the commission members, the cases were destroyed, hence there is no information available regarding them. He further stated that since the commission is an autonomous institution it doesn't need permission to carry out such action. Furthermore, the secretary expressed his helplessness, as there has been no chairperson for the past two years (pre-IPT period), and he (the secretary) does not work for the commission on a full time basis, but manages other offices' work as well. Due to the absence of a chairperson and the members' absence (who remain on leave most of the time) the commission's infrastructure is rotting and the complaints made before it are not heard. Recently, post-IPT, a full commission has been appointed.

PATTERN OF VIOLATIONS OF HUMAN RIGHTS IN ASSAM

Assam has been home to various separatist movements and violent insurgencies since India's independence, and the people of Assam have suffered severely as a by-product of this conflict; and the situation continues to worsen. Furthermore, the human rights commissions (NHRC as well as SHRC) in India are not equipped with any power to investigate complaints against the armed forces (as per Section 19 of PHRA, 1993), and this is proving to be a major hindrance in the protection of human rights. The security forces in Assam have operated in a manner which is at variance with both the local laws as well as international norms (UDHR, ICCPR etc). In 2007 alone, the National Crime Records Bureau (NCRB) recorded a total of 6,844 crimes in Assam, which accounted for nearly 3.7 percent of all crimes in India[7]. These crimes and violations have taken various forms, such as:

Human Rights Violations by the Security Forces

In the last few years, there have been various reports of atrocities inflicted on the people by Assam's police and security forces[8]. Such violations include:

6. Section 28 of PHRA, 1993
7. http://www.achrweb.org/reports/india/AR09/AR2009.pdf
8. Indeed, the *Times of India* has recently reported that Assam police officers are the 'worst human rights violators'

Rape: This form of violence generally takes place during search-and-arrest operations by the security forces where they forcibly enter the victim's homes. The immunity provided by the law to the security personnel belonging to the armed forces results in acts of rape being continuously perpetrated by them.
Torture: Torture, as a form of violence, has become quite routine as a method of summary punishment in the hands of the security forces. The majority of persons picked up for questioning, tortured for information. The most common methods used for such violence include: electric shocks, cigarette burns, pulling out of finger-nails, repeatedly submerging the victim's head under water or urine, hanging the victims upside-down for long durations etc.
Extrajudicial killings: The act of deliberate or premeditated killing of a person without the sanction of a legal process or judicial proceeding, also known as extra-judicial killing or encounter killing, is often portrayed by the security forces as being done as an act of self-defence. Encounter killings are very rampant in the State of Assam, and are being committed both by the armed forces as well as the police.

There were many cases presented in the IPT which pointed towards killings and harassment by the security forces. One such case was of January 2008, of a police encounter killing in Tezpur District, which was filed with the ASHRC. This case was closed by the commission on basis of the report of the SDPO only. The police report submitted was assumed to be true by the commission, and without citing any comments or response from the complainant i.e. the brother of the deceased Naba Saikia, Deep Saikia, the complaint was disposed of. This case clearly reflects the non-independent and biased functioning of the commission, a case which is a rule rather than an exception. This continues to happen, as the commission doesn't have an independent investigation wing of its own, and so the victims are denied justice and are made to suffer, time and again.

Police Corruption and Brutality

Incidences of arbitrary arrest, unlawful detention and torture by members of the police force have become alarmingly common in Assam. In an effort to look into the increasing number of complaints of violations committed by police personnel, the state government constituted the Assam Police Accountability Commission (APAC). Over 60 complaints were received against various police personnel by APAC as of October 16, 2008. The complaints included allegations of death in police custody, grievous hurt, molestation or rape, illegal detention or arbitrary arrest, forceful deprivation of rightful ownership or possession of property of an individual, and blackmail or extortion[9]. There were also allegations of non-registration of FIRs by police, false registration of cases against innocent civilians, and also their failure to conduct investigations properly in already registered cases. Additionally, the police were also accused of indiscriminately using firearms against unarmed civilians, during peaceful protests, resulting in the injuries and deaths of civilians[10].

This pattern of police violence was all the more evident in the cases deposed in the IPT. In one such case of the Guwahati district, the victim, Surajit Boro, was arbitrarily arrested and framed in a false case by the police, in September 2010. Later, the sessions court granted him bail, and termed the grounds of arrest as frivolous. However, so intense was the police harassment, that the people in the victims' neighboured started referring to him as 'thief'. When the victim complained to the commission citing

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in India: http://articles.timesofindia.indiatimes.com/2012-03-27/guwahati/31244480_1_rights-violation-human-rights-assam-police

9. India Human Rights Report 2009, *Asian Centre for Human Rights*, http://www.achrweb.org/reports/india/AR09/AR2009.pdf

10. http://www.achrweb.org/ihrrq/issue2/ihrrq-oct-dec-2010.pdf

such mental harassment, the commission disposed off the case saying, "…merely because the sessions judge has made certain observations, it does not mean that the human rights of the complainant have been violated. In fact, the complaint does not disclose any case of action whatsoever. Assuming that his arrest and custody was totally unjustified, it is for the court of law to do the needful whenever the accused is produced before the court. In such matters this commission has no jurisdiction to interfere…", even though the commission is empowered to do so under Section 12 (b) of PHRA, 1993.

Though the victim specifically stated in his complaint that while he was in the lockup under police custody he was subjected to inhumane torture, and that because of the fact that he had been falsely implicated in a case he had now lost all respect in his locality, the ASHRC totally overlooked the matter, and gave a partial, one-sided order, totally denying justice to the victim.

Violations Against Women

Assam is considered to be one of the most unsafe places for women in India. The majority of cases of violence against women include kidnapping, rape and domestic violence. Women suffer both at the hands of the perpetrators, and the protectors, i.e., the police, who have time and again failed to aid the victim. Additionally, the police are themselves guilty of committing violence against women, such as beating and raping women in custody. Furthermore, the police in India have treated claims of violence against women differently from other crimes due to their 'private' nature[11].

According to figures provided by the Assam Government in the State Assembly, for the period of April 2009 to January 2010, 125 women were murdered, 1430 were raped, 143 were subjected to dowry-related harassment, and the police registered 3801 domestic violence cases, as well as 40 cases related to the trafficking of women[12]. These numbers give an indication of the widespread abuse endured by women throughout the state. The violence against women doesn't stop here. Women in the state are also being victimised by so-called 'witch hunters', and are killed on the suspicion of being a 'witch'.

There was one such case of police harassment of women, which was deposed in the IPT, in which the victim, Kalpana Patar, of Kamrup district, complained to the ASHRC. The incident took place in August 2008. The commission sought the report of the police regarding this police harassment but subsequently closed the complaint on the basis of that police report only. The report described the incident as a police chase of criminals, in which the accused policeman accidentally went into the victim's house. The report further stated that harassment of a woman took place. Though in the commission's record, a copy of the police report is alleged to have been sent to the victim for comments, but the truth is that the victim never received any such letter. So, the commission continues to overlook the grievances of the victims and most of the time relying on police reports only, to pass its order. Thus, the victims continue to suffer because of the lack of an independent investigation mechanism of the commission.

Violation of the Rights of the Indigenous People

The State of Assam is a heartland of many indigenous people, as well as of marginalised communities who are at a risk of certain human rights violations. According to the National Crime Records Bureau (NCRB) data, in the year 2006, a total of 244 cases of crimes against Scheduled Tribes (STs) and a total of 282 cases of crime against Scheduled Castes (SCs) were reported in the State of Assam, including of 26 murder cases, 24 cases of rape, 24 cases of kidnapping and abduction; committed against the STs,

11. http://www.hrw.org/sites/default/files/reports/india0809web.pdf
12. http://cequinindia.org/pdf/Special_Reports/GENDER-BASED%20VIOLENCE%20IN%20CONFLICT%20ZONES%20by%20Binalakshmi_Nepram.pdf

and 5 murder cases, 11 cases of rape, 27 cases of kidnapping and abduction, among others, perpetrated against the SCs.

The two major forms of violations that indigenous people, in particular, suffer from, are land alienation and displacement, and non-implementation of affirmative action in employment. The SCs and STs in Assam are facing encroachment of their lands. There are incidences of violation of land transfer rules and regulations, and of the transferring of land reserved for tribal people to non-tribal people. These 'Tribal' lands are bought by individuals of non-tribal origin for public purposes, but are later used for commercial purposes. Also, the job reservations policies for STs and SCs are not being implemented properly by the Assam Government, and even the sanctioned funds meant for STs and SCs are not being utilised properly[13].

Attack on Human Rights Defenders and Media

The human rights scenario in Assam is so precarious that even human rights activists and the media persons are encountering attacks by the security forces. Many of them had to face arbitrary arrests and harassment at the hands of the security personnel. Thus, the press in Assam has often borne the brunt of state repression as their continuous efforts in exposing the diabolical activities of the state, especially the security forces, which has won them much contempt. In Assam, the media and the HRDs are under continuous attack.

In one such harassment case of the media persons, which was presented during the IPT, the victim Ansul Haque, an employee of NE TV, narrated his own experience of police harassment. The incidence was of April 28, 2007, when the People's Committee for Peace Initiative in Assam (PCPIA) observed a National Highway blockade in different parts of Assam, designed to put pressure on the government to initiate talks with ULFA, and to press for a political solution to the ongoing problem. At around 11am, various media groups, including NE TV, which comprised of the victims Ansul Haque and Parthajit Barman (NE TV cameraperson), went to Paikarkuchi Chowk at Nalbari to cover the aforementioned agitation for their news channel.

There, some policemen, in particular the Addl. SP of Nalbari, Mr. DR Das, and Mr. Boloram Saikia, along with 25-30 other policemen, suddenly started assaulting and beating the media people. The police personnel confiscated their cameras, tape and other belongings. Many people were injured due to the police *lathi charge*. But when the victims went to lodge an FIR in the Nalbari Police Station regarding this, the police officials simply refused to register their case. Instead, they were arrested, handcuffed and taken into police custody. While in custody they were subjected to such inhumane torture until they became unconscious. They were subsequently admitted to hospital for treatment. This harrasment took place partly in retaliation to their TV channel (NE TV), which had reported violations of wildlife protection committed by Mr. Dilip Dey, Superintendent of Police, Nalbari, and had also reported the extortion of honest truck drivers/owners by the police in Nalbari district. This was not only an attack on freedom of press, but was a gross violation of human rights too.

A complaint was sent to the ASHRC regarding this. There was no communication from the commission thereafter. Later on, when the matter was pursued further, a report was called for by the commission from the Director General of Police (DGP), Assam. Also, the commission is said to have forwarded the copy of the report to the complainant for comments, but no copy was ever received. So, without any further communication and investigation, the commission disposed of the complaint on

13. http://www.achrweb.org/reports/india/AR08/asom.html#_Toc216244161

October 11, 2010, oblivious of whether or not the victim received any relief, or whether the accused received the requisite punishment.

Additionally, it was highlighted during the IPT, that even human rights defenders (HRDs) are not spared from police abuses in Assam. In one such case of February 2008, of Guwahati district, the police arrested Mr. Lachit Bordoloi, Mr. Nekibur Zaman and Mr. Khagen Talukdar, all activists of the *Manab Adhikar Sangram Samiti* (MASS). Mr. Lachit Bordoloi's house was ransacked, and his wife and daughter were harassed by the police, on the basis of their alleged links with ULFA, and for planning a conspiracy against the State. Mr. Lachit Bordoloi filed a complaint with the ASHRC, but the commission failed to investigate the complaint on its own, and instead asked for the report of the Senior Superintendent of Police (SSP). The commission subsequently closed the complaint on the basis of the SSP report only, without seeking any response or comment from the victim. Such is the biased functioning of the commission, that the victims are gradually losing faith in this institution, as they are constantly denied justice by it.

CONCLUSION

Due to the dearth of information about the commission that is allowed into the public domain, it is very difficult to draw firm conclusions. Over the years, the commission has been known for its failure in delivering justice through its orders and judgments. Though not always, on the whole, the commission has favoured the government in its decisions. Intelligentsia has labeled the commission as a post-retirement employment opportunity for judges who have favoured the state in their previous careers. So, the symbiotic relation between the state government and members of the commission is no secret. Allegations have been leveled, that for the purpose of appointment of favoured judges, the post of chairperson is deliberately being kept vacant for long periods of time.

Secondly, the term that best applies to the commission seems to be that of a 'toothless tiger'. The commission is directly dependent on the state government for its financial sustenance. There is no provision for external aid to the commission for its sustenance. This further compromises the autonomy of the commission.

Thirdly, it would only be partially just to express regret for the ineffective functioning of the ASHRC, and its failure to deliver value based human rights justice to its victims, since the major stakeholder of this institution i.e. the Government of Assam, is not proactive in enforcing human rights values in the state. Thus, the institution is unable to hold onto the values it has been mandated with by virtue of the Paris Principles.

Of late, there has been a demand for a comprehensive review of the working of state commissions. Thus, on July 22, 2011 a committee comprising of Justice G.P. Mathur (Member), Justice S.R. Nayak Chairperson of Karnataka Human Rights Commission, and Justice S.N. Jha, Chairperson of Bihar Human Rights Commission, had its first sitting to look into issues like minimum manpower, basic structure and financial requirements of the SHRCs around the country. Altogether, it can be implied that the working of the ASHRC can only be improved if the legislation regulating it i.e. the Protection of Human Rights Act, 1993, is amended for a better understanding of the common people's solidarity. Also, efforts should be made to free the commission of its financial ties with government agencies, so that it could work in a free environment, and if that is not possible, it should at least be granted an autonomous status.

THE INDEPENDENT PEOPLE'S TRIBUNAL JURY PANEL

SOCIAL AUDIT REPORT

CHAPTER-I

Patterns of Violations and Functioning of ASHRC

INTRODUCTION

The State of Assam and the entire North-east of India is a hot-bed of human rights violations. The human rights situation in the State of Assam deteriorated rapidly after the Indian Army was deployed in the state in November 1990 to fight secessionist insurgents. To contain the insurgents and to diminish the support they enjoyed, especially in the rural areas, security forces have indulged in extrajudicial executions, custodial deaths, torture and rape. On the one hand, common villagers are intimidated and terrorised to divulge information about insurgents and on the other, insurgents are physically eliminated. The security operations, conducted under the Armed Forces Special Powers Act, 1958, which gives soldiers blanket immunity against any legal interference, have reduced the region to a killing field. Insurgency in the State of Assam rose in a political context, as has happened in the other adjoining states. But the government has chosen to view it solely as an internal-security problem in a border state, and has adopted policies to root out insurgency militarily. Not only has this approach failed to bear any fruit, it has also drastically aggravated the human rights situation. Paradoxically, even though the security actions were initiated to reverse growing insurgency, the post 1990s period saw an increase in insurgent activities and a mushrooming of insurgent outfits, taking the state human rights situation on a downward spiral. Thus, human rights violations in Assam and the adjoining region are largely due to a pre-meditated and systematic state policy to contain insurgency.

Since Independence in 1947, North-eastern India has seen continuous armed uprisings and secessionist activities. Such activities spread to Assam in the late 1980's. In particular, insurgent groups managed to increase their local support and to step up fundraising activities through extortion and intimidation of economically advanced

groups. In 1990, Surender Paul, an influential member of the tea-producing groups was killed by insurgents. Soon after, the army was deployed to flush out the militants. Army operations began with *Operation Bajrang*, and have finally been given a more institutional framework under the unified command, from the beginning of 1997.

The army operations started with extensive search-and-arrest operations in the villages. Villagers have faced various atrocities; they were made to line up in a nearby field, usually in the dead of night where they were then questioned, and some were taken to army camps for further questioning which generally included torture. Many innocents have either lost their lives or have been maimed for life. Villagers have been threatened, harassed, raped, assaulted and killed by soldiers attempting to frighten them into identifying suspected insurgents. These exercises became more intensive if insurgent activities were known to have occurred in the neighbourhood. As a result, in the villages of Assam, any insurgent activity precipitates mass exodus of villagers, for fear of army operations. Since the insurgency has an ethnic component, members of particular communities often become targets.

Repression by the State in Assam is in response to those movements asserting the right to self-determination. These movements are a consequence of the prolonged plunder of resources in this region, and the stifling of all democratic means for establishing genuine rights over these resources by the local populations. This forced the Assamese youth to establish the ULFA (United Liberation Front of Assam) and resort to a protracted armed struggle. The Indian State, on its part, failed to acknowledge these fundamental problems or to address the genuine aspirations of the people of Assam. It has considered these events only as a law and order problem created by a 'handful' of youths, who have gone astray at the behest of some foreign country in oder to destabilise the Indian State. Thus, ULFA has been declared as a terrorist organisation. As a consequence, the State imposed a number of draconian laws have proved totally anachronistic, to say the least, in a democratic polity. As a consequence, there have been innumerable incidents of murder, disappearance, rape, molestation, and harassment perpetrated by the security forces under the protection of these laws.

Interestingly, these incidents have mostly been perpetrated against innocent common people who are not directly related to any kind of extremist activities. This shows that the real intention of the Indian State is only to generate a fear psychosis among the people of Assam so that they lose all courage to assert their aspirations. This is a deliberate decision on the part of the Indian state to alienate the common people from the extremists. Thus, the mighty Indian state has shamelessly used the common people as a pawn in its fight against the insurgents, rather than tackling them head on. This makes the State an actual perpetrator of terrorism. However, even when these designs of operations did not serve its purpose, in 1997, undeclared army rule was imposed in Assam in the name of the Unified Command Structure (UCS). Under UCS army authorities have been handed unprecedented, overriding and unaccountable executive powers vis-a-vis the civil administration. With the advent of UCS, the frequency and intensity of army atrocities multiplied manifold. In this report, we shall confine ourselves only to some of the cases of Enforced or Involuntary Disappearances (EID) that have come to our notice.

Although there have been scores of cases where individuals have disappeared from the custody of the security forces, the latter summarily reject any such incidents. In fact, in the wake of cases of EID becoming so commonplace, there are grounds to feel convinced that unlawful termination of these individuals, no matter whether they are involved in any unlawful activities or not, is the result of a deliberate ploy on the part of the State. When the laws formulated to deal with the so-called anti-state activities of the people have been persistently condemned for their draconian character, it is a matter of grave concern that the security forces operating in the North-eastern States of India in general, and Assam in

particular, are involved in rampant transgression of even these authoritarian laws. But the way in which the perpetrators are permitted to go free, has generated serious concern among all democratically-minded people and organisations, about the real motive of the state. Many aspects of these facts will become evident as one examines some of the concrete cases of human rights violation by the Indian armed forces in Assam.

Many organisations, including NGOs, have been making incessant efforts through various means to attract the attention of democratically conscious individuals and organisations to the extremely atrocious character of these Acts which deprive a person of his/her minimum rights as a human being.

In brief, the "largest democracy in the world" has given a *carte blanche* to its trigger-happy armed forces. The disastrous consequences that have befallen thousands of innocent people as a result of this can never be undone. The scars that have been left in the psyches of these people can never be removed. What is even more disturbing, is the fact that even under these Acts certain provisions exist which apparently safeguard arbitrary action. 'Encounter death' has become the simplest solution to all these so-called legal hazards. It needs no deep analysis to find out that it is the Indian State which has granted this 'licence to kill' to the Indian army.

In the last few decades, Assam has virtually been turned into a military state. During this period, which will surely go down in history for the brutal oppression that has been unleashed by the Indian State on the people of Assam, hundreds of youths have lost their lives, more have been maimed, scores of youths have disappeared, hundreds of women have become victims of rape and molestation, and even octogenarians have been subjected to day-to-day insults and assaults. The chief perpetrators of all these crimes are none other than the security forces of the Indian State, engaged for the 'maintenance of law and order', and indeed the much vaunted phenomenon called 'peace'! Successive governments in the state come to power promising to end this atmosphere of terror and uncertainty, only to join hands with the diabolical designs of the Indian ruling elites sitting in New Delhi.

The human rights scenario in Assam is so precarious, that even human rights activists have not been spared from the high handedness of the security forces. NGOs in Assam have often borne the brunt of state repression. Their courageous and untiring effort in exposing the activities of the security forces has generated a lot of ire and contempt among the latter against them. As a result, several activists of these NGOs have lost their lives in army custody, and have been declared to have died in 'encounters'. Many NGO activists have also faced arbitrary arrests and harassment.

On the other hand, in the face of growing resentment among democratically-minded citizens and organisations, the Government of India constituted the NHRC (NHRC) in 1993, ostensibly to function as a sentinel of human rights in the country. It has been empowered with the authority of a civil court while enquiring into the complaints lodged before it. However, the commission is kept handicapped with regard to cases of human rights violations by the armed forces in the so-called 'disturbed areas'. Similarly, the SHRCs constituted for the states based on the model of the NHRC, have also been divested of any effective power to hold enquiries into cases of human rights violations perpetrated by the armed forces. Such a situation raises serious doubts about the role designed for the commission in a state like Assam, where most of the human rights violations are committed by the armed forces. The ASHRC is, rather conspicuously, only vocal against extremist related violence. What is more agonising is the fact that the ASHRC has not found 'substance' in many army-related cases of murder, assaults and rape which were brought before it.

Under these circumstances, the concepts of justice and fair play have disappeared from Assam. Its population is now living under constant threat, fear and uncertainty. No one is sure what is in store for

them in the face of a rampaging army. Anyone might be killed at will, anyone might be apprehended and be killed in fake encounters, anyone might be assaulted, women molested and raped, and property looted by none other than the 'peace keepers' of the Indian State. Assam is now undergoing the most blatant form of state terrorism. It has been turned into a graveyard of democracy inside the 'largest democracy in the world'.

The horrendous human rights violations taking place in Assam are not well known outside of the region. The national media, both government and privately owned, have never given the region proper coverage. In order to avoid a popular protest against the present policy by the more articulate urban population, the security operations have been confined mainly to the rural areas. The local media, which is more sensitive to the situation, has come under incessant government attack. Groups involved in human rights activities have also come under repeated attacks.

NGOs have made a fervent appeal to all individuals and agencies dedicated to the promotion and protection of democratic and human rights all over the world, to take an active interest in the present human rights situation in Assam. Furthermore, the working of the ASHRC has to be reviewed in order to usher in a better future for the people of Assam. In the following paragraphs, light has been shed on the commission and its infrastructure and working.

The *Asian Centre for Human Rights* evaluated the ASHRC in its 2009 Human Rights Report. The report stated that the ASHRC "continued to be ineffective". It found that the ASHRC was understaffed, lacked basic infrastructure and was plagued by poor staff morale. It found that the ASHRC's stature and efficacy further declined after Justice Sujit Barman Roy assumed office as the chairperson in April 2007. Roy's infrequent attendance adversely affected the commission's ability to address cases in a timely manner, since, as per the Act, the commission cannot meet or issue any decisions without him in attendance.[1]

ASSAM STATE HUMAN RIGHTS COMMISSION : A BRIEF HISTORY

The ASHRC was the second SHRC to be set up under the Act in India, after the West Bengal State Human Rights Commission. The basic ideas regarding its infrastructure and composition were taken from the West Bengal Commission. Thus constituted way back in 1996, Assam is one of the earliest states to have a SHRC.

In exercise of the powers conferred under Section 21(1) of the Protection of Human Rights Act, 1993 (No. 10 of 1994), the Governor of Assam, vide Notification No. PLA.362/94/51 dated March

1. 2009 India Human Rights Report, *Asian Centre for Human Rights*, http://www.achrweb.org/reports/india/AR09/AR2009.pdf

19, 1996, constituted a body to be known as the ASHRC to exercise the powers conferred upon it and to perform the functions assigned to a state commission under Chapter V of the said Act. Further, the Governor of Assam, vide Notification No. PLA.362/94/51 (A), constituted the ASHRC with the following:

Hon'ble Mr. Justice Surendra Nath Bhargava, Retired Chief Justice, Sikkim High Court	Chairperson
Hon'ble Mr. Justice T.C. Das, Retired Judge, Gauhati High Court	Member
Mr. Paramananda Kalita, Former District Judge, Assam, Guwahati	Member
Mr. Sheikh Chand Mohammad, Former Speaker, Assam Legislative Assembly	Member
Mr. Robindra Nath Barooah, Former Editor, The Assam Tribune	Member

The Chairperson and the Members assumed office on the dates mentioned below:
Mr. Justice Surendra Nath Bhargava, as Chairperson on March 26, 1996.
Mr. Justice Tarun Chandra Das, as Member on April 4, 1996.
Mr. Paramananda Kalita, as Member on May 1, 1996.
Mr. Sheikh Chand Mohammad, as Member on March 29, 1996.

Mr. Robindra Nath Barooah could not join the commission, as he had attained the age of seventy years old before the date of order of the constitution of the state commission, in view of Section 24(1) of the Act. Justice T.C. Das, Member of the commission ceased to hold the office from February 2, 1997, on attaining the age of seventy. Mr. Ahindra Kumar Choudhury, IAS (Retd.) continued as secretary of the state commission till August 31, 1996. Dr. Shyam Bandra Medhi, LLB, MSc. (England), Ph.D, IAS took over as secretary of the state commission on August 31, 1996. Mr. Shankar Baruah, IPS, inspector general of police (training and armed police) Assam joined on February 3, 1997, as director of investigation, in addition to his duties as IGP (T&P) Assam. The state government, after nearly one year's continuous persuasion, vide Notification No. PLA.155/96/24, created ASHRC (salaries & allowance and other terms and conditions of service of members) Rules, 1996, and published it in the Assam Gazette dated March 1, 1997. The state commission, in exercise of the powers conferred by Section 10(2) of the Act, created the ASHRC (Procedures) Regulations governing its proceedings.

Currently, one government website lists the Hon'ble Mr. Justice Sailendu Nath Phukanas as the chairperson and Mr. Sarat Mahanta as a member, with the three other posts of members vacant.[2] However, another government site lists the Hon'ble Mr. Justice Sujit Barman Roy, former Chief Justice of Orissa High Court as the ASHRC Chairperson since April 2007, and Mr. Binanda Chutia and Shri Jyoti Prasad Chaliha as the other members.[3] In addition to its leaders (either Justice Sailendu Nath Phukan, or Mr. Justice Sujit Barman Roy and Shri Sarat Mahanta, or Mr. Binanda Chutia and Mr. Jyoti Prasad Chaliha, depending on which source one is willing to follow), the commission also has a secretary/CEO (Mr. Ritendra Nath Sarma or Mr. Ahmed Shah), and a public information officer/deputy secretary (Mr.

2. http://assam.gov.in/commissions/ahrc.asp
3. http://ahrc.gov.in/present_setup.htm

N. Sapcota or Md. Abdul Khaleque).[4] Also, it has to be noted that all of this contradictory information is about the past composition of the commission, as it has not had chairperson since 2009.

The office of the state commission was established six months after the constitution of the first commission. It started functioning on September 16, 1996, from Head Office Building (2nd Floor), Medical College Road, Guwahati. It was formally inaugurated by Shri. Justice Ranganath Misra, the then Chairperson of the NHRC on November 3, 1996. The building belonged to Assam State Cooperative Marketing and Consumers Federation Limited (STATFED), which became non-functional at that time. The same building also hosts the Guwahati Metropolitan Development Authority (GMDA) office and office of the registrar of cooperative societies and other government offices. The building is dilapidated and very unclean. Since Assam is an earthquake prone area, the state of the building adds greatly to the anxiety of the employees of the commission.

The office currently has around twenty desktop computers, two servers, ten printers and two photocopier machines. Interestingly, the office also has a state of the art video conferencing system installed, but it has not been used in the two years since its installation. However, its biggest problem on the infrastructure front is its leased office in the STATFED building, as land has not been granted by the state government for the purpose of building its own office. In February 2008, a meeting was held solely for the purpose of the allotment of land to the commission, which was chaired by then ASHRC Secretary Mr. Das, Secretary PWD, Secretary RN Sharma, ASHRC, SK Roy Joint Secretary Political (A) Dept., BN Choudhury (DRDA) on behalf of DC Kamrup, SD Das, AEE (PCC Sub Division II) and Ng CD Singha, Under Secretary Political (A). The meeting did not yield any result. On 3rd August, 2010, after the intervention of the Chief Secretary to the Govt. of Assam, the Assam Government Construction Company (AGCC) land was proposed. AGCC being a dead chapter, one *bigha* of land, from its existing non-functional setup, was proposed to be allotted to the ASHRC. This decision, however, has not yet been acted upon.

The Chief Executive Officer (CEO) of the SHRC is the Secretary. Typically, in a SHRC, there are three divisions entrusted with specific tasks, namely, administrative, law and investigation. The administrative division is headed by the secretary of the commission. The law division is headed by the registrar and the investigation division by the IGP. However, in the case of ASHRC, there are only two wings, namely the investigation wing and the 'administration and accounts' wing. There is no 'law and research' wing in ASHRC, due to the shortage of staff. The staff under the 'administration and accounts' wing has to manage any work which comes under the purview of the legal wing as well. This doubling up has been one of the reasons behind the degradation of the performance of ASHRC.

In spite of a decade and a half of its existence, the employees of the commission are not properly trained. As a result, they have little idea of the demands of work in the human rights arena. This is highlighted by the fact that the commission's employees only started keeping records from the year 2001 onwards. A valuable record of the commissions' work since its inception was lost due to the incompetence of the employees.

The commission is currently working without a chairperson, since the resignation of Hon'ble Justice Mr Sujit Barman Roy in the year 2009. The commission is currently headed by Secretary Mr. Ahmed Shah Nawaz, ACS, who is in reality a joint secretary and not a secretary as per the provisions of the Act. Mr. Ahmed Shah Nawaz also holds the post of secretary in the IPR Department. He is known for his indifference to his work at the commission, and for his frequent clashes with other staff mem-

4. http://assam.gov.in/commissions/ahrc.asp; http://ahrc.gov.in/present_setup.htm

bers. At present, the total number of employees working in the ASHRC is 23 (including the secretary), and there are four vacancies. There is only one stenographer appointed for the three judges who sit on the commission.

The commission is fully dependant on the government for its finances and resources. This is clearly at variance with the Paris Principles. There is no obligation on the part of the state government to provide the minimum support necessary to the commission. However, it has tirelessly sought the support of the state government in terms of physical infrastructure, monetary support and staffing requirements. Currently, the commission is getting grant-in-aid of Rs. 30 lakhs from the state government, for payment of salary and other purposes of the commission. But that amount is not sufficient for carrying out its mandate. The commission has to take another Rs. 20 lakhs as a loan from the state government every month. As there is only one annual report from the ASHRC published to date, which does not mention anything about its finances, nothing can be said on this matter. However, interviews with staff have made it clear that the current provision of Rs. 50 lakhs is not sufficient for sustenance of the commission. Within that amount, the commission has to pay the salaries of the staff, reimburse the investigation wing members and also buy all the required material for office work including pens, pencils, file covers, paper clips etc. Thus, it is common to see the person approaching the commission supplying their own materials in order to ensure that the work is done.

The commission does not have a proper website providing reliable information. A rudimentary website about ASHRC (www.ahrc.gov.in) was created long ago, but it has not been updated since March 2008. As per the information, the work of uploading case information to the server of the NHRC to create a centralised database is being done, but at a very slow pace. This is mainly due to the lack of dedicated staff for this purpose. The website provides no information regarding the actual recommendations issued by the commission. However, it has some information under its Procedural Regulation of the ASHRC, and FAQs links on how to file a complaint.[5] The website groups the cases registered with the commission into a number of categories, including custodial death, torture, rape, illegal detention, conditions of confinement, dowry-related torture or death, indignity to women, sexual harassment at the workplace, violation of the rights of the child, mentally retarded and physically disabled, mysterious death and disappearance, pollution, and unlawful eviction.[6]

As per the available information, a total of 6,546 cases were brought to the commission, of which 4,834 were disposed of, and 1712 cases were under process. The total number of recommendations made by the commission was only 73, and recommendations complied with were just 45, with 28 compliance reports still pending. Of these cases, 774 of them were registered against the police (508 of these had been disposed of, and 266 were still under process). There were also 418 registered cases of custodial death.[7]

The commission is mandated to submit an annual report summarising the work done over the period of the past year. ASHRC has prepared only three reports since its inception. Out of these, only the one for the year 1996-97 has been published, to date. The other two reports have been submitted to the home department of the Assam Government, but they are yet to be tabled in the legislative assembly so that they can be released into the public domain. Even the ASHRC could not give any exact details regarding the pending annual reports. They only stated that the drafts of the copies of the annual report have been lost somewhere in the home department.

5. http://ahrc.gov.in/pro_regu_ahrc.htm; http://ahrc.gov.in/faqs.htm
6. http://ahrc.gov.in/cate_cases.htm
7. As per RTI replies from ASHRC

Persons approaching the commission, whether victims or complainants, are being forced to wait for long periods of time to have their cases dealt with and disposed of. In the period between April 2008 and March 2009, the commission registered 314 complaints, of which it has been able to dispose of only 191 cases; 122 cases are still pending before the commission. The number of complaints registered during the period of April, 2009 to March, 2010 was 260, and from that 145 cases were disposed of, and 115 are still pending. Ninety seven complaints were disposed of in the year 2010-2011, out of a total of 256 cases registered. One hundred sixty eight of the total cases registered during April, 2010 to February 28, 2011, are still pending.

Year	Registered	Disposed	Pending
2008-2009	314	191	122
2009-2010	260	145	115
2010-2011	256	97	168
Total	830	433	405

From the above table it is clear that in the last three years the commission has barely succeeded in disposing of 50 percent of the total cases registered. The list does not include the *suo moto* cases registered by the commission over the period. The numbers of *suo moto* cases registered are not known and AHRC is unwilling to part with that information, even under a RTI. Also, it should be noted that the government has not given any compliance reports upon the recommendations of the commission for over a decade.

It is also important to mention here that the commission doesn't keep a record of the cases registered beyond a certain time. When the secretary of the commission was asked about certain old cases, it was stated that, as per the interim decision of the commission members, the cases were destroyed, hence there is no information regarding them. He further stated that since the commission is an autonomous institution it doesn't need permission to destroy old cases. Also, the secretary expressed his helplessness, as there has been no chairperson for the past two years, and he does not work on the job on a full time basis but manages other offices' work as well. Due to the absence of a chairperson and members (who have been on leave for the past two months stating medical grounds), the commission's infrastructure is rotting and the complaints made before it are not heard.

In every district of Assam, the commission is required to set up an investigation department for quick investigation of the cases registered. It would also help minimise the travel expenses of the investigation team from the headquarters to all parts of the state. However, there are no investigation departments in any of the 27 districts. The Government of Assam, in August, 1996, with the concurrence of the Chief Justice of Guwahati High Court, under Section 30 of the Act, specified the Sessions Court at Dibrugarh, Jorhat, Nagaon, Tezpur, Dhubri and Silchar to be human rights courts of the respective districts, for the purpose of providing speedy trials of offences arising out of violations of human rights. Later, the sessions courts of nine more districts were declared to be human rights courts, but sadly, none of the courts has been functioning as provided for under the Act. A district-wise matrix of the period

between March, 2010 and November, 2010 is presented below. The matrix of one complete year could not be collected because of the lack of proper documentation, incompetence of the staff, and also due to their unwillingness to provide the data.

District-Wise Matrix from March, 2010 to November, 2010

Sl. No.	District	Registered	Disposed
1.	Baksa	4	3
2.	Barpeta	10	6
3.	Bongaigaon	4	2
4.	Cachar	19	8
5.	Chirang	0	0
6.	Darrang	14	6
7.	Dhemaji	2	2
8.	Dhubri	2	2
9.	Dibrugarh	5	2
10.	Goalpara	5	4
11.	Golaghat	0	0
12.	Hailakandi	5	3
13.	Jorhat	8	7
14.	Kamrup	17	11
15.	Karbi Anglong	2	1
16.	Karimganj	15	7
17.	Kokrajhar	15	7
18.	Lakhimpur	1	1
19.	Morigaon	6	2
20.	Nagaon	22	17
21.	Nalbari	4	2
22.	N.C. Hills	1	1
23.	Sivasagar	10	4
24.	Sonitpur	9	2
25.	Tinsukia	6	2
26.	Udalguri	6	3
	Total	**231**	**129**

The website of the ASHRC, however, displays statistics of all the cases registered and disposed of since its inception, up till March 31, 2008. According to this, 6546 cases have been registered to date, out of which only 4834 cases have been disposed of. As such, about 1712 cases are still pending. Almost

774 of the total cases have been registered concerning atrocities committed by the police and about 508 of them have been disposed of. This information has been provided in a categorised manner below:

Statement Of Cases Since Inception till March 31, 2008

Total number of cases registered	6546
Total number of cases disposed of	4834
Number of cases under process	1712
Number of cases registered against police	774
Number of cases registered against police disposed of	508
Number of cases registered against police under process	266
Number of custodial death cases registered	418
Total number of recommendations (departmental action & Interim compensations)	73
Total number of recommendations complied with	45
Compliance report yet to be received	28

Due to the dearth of information about the commission that is allowed into the public domain it is very difficult to draw firm conclusions. Over the years, the commission has been known for its failure in delivering justice through its orders and judgements. Though not always, the commission has favoured the government in its decisions the majority of the time. Intelligentsia has labelled the commission as a post-retirement employment opportunity for judges who have favoured the state in their career as a judge. So, the symbiotic relation between the state government and members of the commission is no secret. Allegations have been levelled, that for the purpose of the appointment of favoured judges, the post of chairperson is deliberately kept vacant for long periods.

Secondly, the commission is best described as a 'toothless tiger'. The commission is directly dependent on the state government for its financial sustenance. There is no provision for external aid to the commission for its sustenance. This further compromises the autonomy of the commission.

Thirdly, it would only be partly just to express regret for the ineffective functioning of ASHRC, and its failure to ensure value based human rights justice for its victims. Since the major stakeholder of this institution i.e. the Government of Assam is not proactive in enforcing human rights values in the state, the institution itself is unable to hold on to the values enshrined in the Paris Principles.

Of late, there has been a demand for a comprehensive review of the working of state commissions. Thus, on 22nd July, 2011 a committee comprising of Justice G.P. Mathur – Member, Justice S.R. Nayak – Chairperson of Karnataka State Human Rights Commission, and Justice S.N. Jha Chairperson of Bihar State Human Rights Commission, had its first meeting to look into issues like minimum manpower, basic structure and financial requirements of the SHRCs around the country. Altogether, it can be claimed that the working of the ASHRC can only be improved if the legislation regulating it i.e. the Act, is amended for a better understanding of the common people's solidarity. Also, efforts should be made to free the commission of its financial ties with government agencies, so that it could work in a free environment, and if that is not possible, it should at least be given an autonomous status.

VIOLATIONS OF HUMAN RIGHTS IN ASSAM

Assam has been home to separatist movements and violent insurgencies, waged by various organisations such as the ULFA, since India's independence in 1947. In attempting to quash these movements, the Indian Government has launched several counter-insurgency campaigns over the years, but the people of Assam have suffered the severe by-products of this conflict, enduring widespread and consistent violation of their human rights. Indeed, in 2007, the National Crime Records Bureau (NCRB) recorded a total of 6,844 crimes in Assam, which accounted for nearly 3.7 percent of all crimes in India[8]. These crimes and violations take a variety of different forms:

HUMAN RIGHTS VIOLATIONS BY THE SECURITY FORCES

There have been many reports of different atrocities committed by Assam's police and security forces[9] over the last few years. Examples of such violations include:

Rape – this form of violation is often committed during search-and-arrest operations, or when members of the security forces forcibly enter victims' homes. The act of rape is being systematically perpetrated by armed forces personnel, and these perpetrators are immune to prosecution under the judicial system as they are only subject to court martial proceedings[10].

Torture – this violation has become an almost routine form of punishment in the hands of security forces. The vast majority of persons detained for questioning at army facilities or police stations are tortured for information. This ill-treatment may take the form of electric shock, cigarette burns, removal of finger nails, repeatedly submerging the victim's head in water or urine, or hanging the victim upside down for long periods of time.

Extrajudicial killings – this violation, i.e. the killing of a person by governmental authorities without the sanction of any judicial proceeding or legal process, often involving the deliberate or premeditated execution of an individual which is then passed off as the result of self-defence in an encounter, has been widely documented throughout the state[11].

POLICE CORRUPTION AND BRUTALITY

The use of arbitrary arrest, illegal detention and torture by the police force has become alarmingly commonplace in Assam. In an effort to respond to the ever-increasing number of complaints of hu-

8. http://www.achrweb.org/reports/india/AR09/AR2009.pdf
9. Indeed, the *Times of India* has recently reported that Assam police officers are the 'worst human rights violators' in India: http://articles.timesofindia.indiatimes.com/2012-03-27/guwahati/31244480_1_rights-violation-human-rights-assam-police
10. For detailed documentation of rape cases see: http://www.assam.org/node/2381
11. Examples of documented cases are available at: http://www.achrweb.org/reports/india/AR09/AR2009.pdf, http://www.hrw.org/legacy/reports/pdfs/i/indonesa/indones2934.pdf

man rights violations committed by members of the police force, the state government constituted the Assam Police Accountability Commission (APAC). Over 60 complaints were received by the APAC against various police personnel as of 16 October 2008. Allegations included death in police custody, grievous hurt, molestation or rape, unauthorised detention or arrest, forceful deprivation of rightful ownership or possession of property of an individual, and blackmail or extortion.[12] The police have also been accused of failing to register FIRs, and neglecting to conduct investigations into crimes and violations of human rights.

In addition to the above violations, the disproportionate use of firearms by police officials, when handling protests by unarmed civilians, has been widely reported, resulting in the injuries and deaths of civilians who were simply exercising their fundamental right to peaceful protest.[13]

DISAPPEARANCE

There are times when individuals picked up by the security forces simply disappear. Police or militia deny having arrested them, and these civilians are never seen again, having been secretly abducted, imprisoned, or killed.

Perhaps the most notorious case of disappearance in Assam has been that of six leaders of the ULFA; Ashanta Baghphukon, Robin Neog, Bening Rabha, Nilu Chakraborty, Ponaram Dihingia, and Nabia Changmai. These men have been missing since December 2003. Hunger strikes by the missing men's wives, which they had hoped would force the state government to reveal their husbands' whereabouts and bring about direct talks between the government and the ULFA, were promptly crushed. And although petitions have been filed before the high courts, their hearings remain inconclusive, and the disappeared men have not resurfaced. Families of disappeared individuals might receive some form of monetary compensation, as the courts sometimes direct army or police authorities to make such payments, but they receive no information concerning the absent victims.[14]

CUSTODIAL DEATHS/VIOLATION OF PRISONERS' RIGHTS

Between 2001 and 2010 it is reported that 14,231 custodial deaths took place in India, as per the cases submitted to the NHRC. 84 of these cases took place in Assam. According to the ACHR, who published these figures in their report on torture in India in 2011, the data of the NHRC does not reflect the actual extent of custodial death in each state, as not all cases are reported to the NHRC, and, furthermore, these figures do not include the deaths that have taken place in the custody of the armed forces, as the NHRC does not have jurisdiction in these instances. Therefore, in reality, these numbers may be much greater.[15]

A large majority of the cases of custodial deaths take place as a result of torture. Many are glossed over by the authorities as cases of alleged suicide or alleged sudden medical complications.

12. http://www.achrweb.org/reports/india/AR09/AR2009.pdf
13. http://www.achrweb.org/ihrrq/issue2/ihrrq-oct-dec-2010.pdf
14. http://www.achrweb.org/reports/india/AR08/asom.html#_Toc216244151
15. http://www.achrweb.org/reports/india/torture2011.pdf

VIOLATIONS AGAINST WOMEN

According to the NCRB, Assam is rated as the most unsafe place for women in India. Most cases of violations against women involve rape, kidnapping and domestic violence. Women seem to suffer both at the hands of the perpetrators of such crimes, and of the police who fail to sufficiently aid victims. Indeed, police throughout India have admitted to treating claims of violence against women and girls differently from other crimes due to their 'private' nature.[16] In addition to this blatant negligence, the police are guilty themselves of committing violence and violations towards women, such as beating and raping women in custody.

According to figures provided by the Assam Government in the State Assembly, for the period of April 2009 to January 2010, 125 women were murdered, 1430 were raped, 143 were subjected to dowry-related harassment, and the police registered 3801 domestic violence cases, as well as 40 cases related to the trafficking of women.[17] These numbers give an indication of the widespread abuse women endure throughout the state.

Further to the above violations, women in the state are also at risk of being victimised by so-called 'witch hunters', and there have been several cases of murder where women were killed on suspicion of being witches.

VIOLATIONS OF THE RIGHTS OF THE CHILD

Children continue to be victims of violence, trafficking and child labour in the state of Assam. The NRCB recorded 167 cases of crime against children during 2007, including 2 murders and 34 cases of rape.

Assam is reportedly the largest source and transit point for the trafficking of women and children, and police claim that each year at least 500 women and children disappear from and in the state. These individuals become sex workers in the brothels of West Bengal (70 percent of whom come from Assam), or 'domestic helpers' in Delhi (it is estimated there are at least 65,000 young girls from Assam who have been trafficked to the capital for this purpose), or they are forced to work at tea plantations, cotton farms etc.[18]

Internally displaced children are particularly at risk in relation to these violations. Not only are they forced to live in appalling conditions in IDP camps, where their rights to health, food and education are severely neglected, whilst there they are also more vulnerable to trafficking and consequently to violence, sexual abuse and forced labour.[19]

VIOLATION OF THE RIGHTS OF THE INDIGENOUS PEOPLE

Assam is a heartland for many indigenous peoples, and as marginalised members of society, these groups are particularly at risk of certain human rights violations. In 2006 alone, the NCRB reported 244 cases of crimes against Scheduled Tribes (STs) and 282 cases of crimes against Scheduled Castes

16. http://www.hrw.org/sites/default/files/reports/india0809web.pdf
17. http://cequinindia.org/pdf/Special_Reports/GENDER-BASED%20VIOLENCE%20IN%20CONFLICT%20ZONES%20by%20Binalakshmi_Nepram.pdf
18. http://www.achrweb.org/reports/india/AR08/asom.html#_Toc216244166
19. http://www.achrweb.org/reports/india/AR09/AR2009.pdf

(SCs) in Assam, including 26 murder cases, 34 cases of rape, and 24 cases of kidnapping and abduction perpetrated against STs, and 5 murder cases, 11 cases of rape, and 27 cases of kidnapping and abduction perpetrated against SCs.

Two forms of violation that indigenous peoples suffer from in particular are land alienation and displacement, and the non-implementation of affirmative action in employment. For example, STs and SCs are suffering from the encroachment of their lands by non-tribal people, and there is reported widespread violation of land transfer rules and regulations. Increasingly, land reserved in tribal belts for STs and SCs is being transferred to non-tribal people, or being bought by non-tribal people supposedly for public use, with the plot then being put to commercial use. Furthermore, job reservations policies are not being fully implemented by the state government, and funds meant for tribal peoples are not being fully utilised.[20]

VIOLATION OF FREEDOM OF PRESS

Members of the press are particularly vulnerable to attacks and other forms of human rights violations in Assam. The press in the North-eastern states is less free than elsewhere in India, as journalists working in these states, which are caught up in conflicts, are likely to face attack from both state and non-state actors.

Journalists, editors and producers face attempted murder, threats for refusing to or insisting upon publishing certain information, abductions, and the ransacking or closing of press units amongst other violations and pressures. These violations are carried out both by state authorities and/or armed insurgents.[21]

For example, the NE TV company was attacked by both the ULFA and the state government in 2007. ULFA threatened the news channel after they aired a story containing damning intelligence on the organisation. Meanwhile the channel's press accreditation was withdrawn after a public argument between a government official and the network's chairperson concerning the state's involvement in the same, aforementioned story, and the accreditation was only restored following a direction for such restoration from the Supreme Court.[22]

20. http://www.achrweb.org/reports/india/AR08/asom.html#_Toc216244161
21. http://www.northeasttoday.in/our-states/manipur/manipur-militants-threatens-freedom-of-press/
22. http://www.achrweb.org/reports/india/AR08/asom.html#_Toc216244161

CHAPTER-II

Testimonies

Attack on Media by Police

Nalbari District

ANSUL HAQUE

I am Ansul Haque of NE TV, Rehabari. On April 28, 2007 the People's Committee for Peace Initiative in Assam (PCPIA) observed a national highway blockade in different parts of Assam, to put pressure on the government to initiate talks with ULFA. The aim was to press for a political solution to the problem, and to negotiate concerning the fasting of the wives of the missing ULFA men.

On April 28, 2007, at 11am, various media persons including NE TV, which comprised of my cameraman Parthajit Barman and myself, went to Paikarkuchi Chowk at Nalbari to cover the aforementioned agitation for our news channel. There, some policemen, in particular the Addl. SP of Nalbari, Mr. D. R. Das, T.S.I., Mr. Boloram Saikia, along with 25-30 other police officials, suddenly started assaulting and beating us. The police personnel confiscated our cameras, tape and other belongings. Many people were injured due to the *lathicharge* by the police. The incident was widely reported by various newspapers throughout Assam. When we went to lodge an FIR before the Nalbari Police Station in connection with the above incident, the police officials simply refused to register the case.

In this incident both I and my cameraperson were seriously injured. The police personnel arrested us and we were handcuffed and taken to the police station. While in custody we were subjected to inhumane torture till we became unconscious. Police admitted us to Nalbari Civil Hospital which subsequently referred us to the GMC Hospital. Mr. Parthajit Barman was beaten up so brutally in custody that his hand was fractured. This was partly in retaliation to our TV channel, which had reported violations of wildlife protection by Mr. Dilip Dey, Superintendent of Police, Nalbari and extortion of honest truck drivers/owners by the police of Nalbari district. We filed a complaint (AHRC Case No. 6217/2007) before the ASHRC through the CMD of North East Television, Mrs. Monoranjana Singh. We demanded action against the guilty officials and adequate compensation to all the victims, including ourselves. There was no communication from the commission thereafter. When we pursued the matter, we were told that a report was called for by the ASHRC from the DGP, Assam. The commission is said to have forwarded the copy of the report to us for our comments, but I would like to submit that we have not received any such reports for our comments. Without any further communication and independent investigation, the commission disposed of the complaint, in haste, on October 11, 2010.

Case of Custodial Death

Bharalumukh PS, Kamrup District

Ganesh Das deposing his father Late Biswanath Das's case

BISWANATH DAS (DECEASED)

My name is Ganesh Das**,** S/o Late Biswanath Das, R/o – Fatasil, New GMC Colony, Police Station-Fatasil, Ghy-21, District - Kamrup, Assam. On July 13, 2009, Mr. Kalu Rickshawala alias Mr. Raghunath Rai, along with some people from the New GMC Colony, mercilessly assaulted my father, Biswanath Das, due to a personal grudge. Mr. Raghunath Rai also filed an FIR in Bharalumukh Police Station, alleging that his five year old daughter was raped by my father. The police arrested my father based on the FIR filed against him. He was taken to MMC Hospital by Bharalumukh Police, since he was very badly assaulted by the aforementioned people. After treatment at MMC Hospital, he was handed over to the police personnel, and was taken into police custody. When I went to the Bharalumukh Police Station to enquire about my father, I was not allowed to see him, and the police personnel told me that I could meet him in court the next day. My brother also tried to visit him, but he was also not allowed to either. On the same day, at about 9pm, I received a phone call from Bharalumukh Police Station informing me that my father had died in their custody. After the phone call I went to the police station to see my father. There I was told that the body has been sent to Guwahati Medical College for the post-mortem. On July 14, 2009, the dead body of my father was handed over to us.

It is pertinent to mention here that the police personnel were present with us, continuously, from the moment the body was handed over, till it was cremated. They did not allow us to perform the rituals before the cremation, or even wash the dead body. Two days later, some police officials came to our house and tried to make me sign some blank papers. I refused to comply. Upset by the events, I approached HRLN for legal help on 15 July 2009 and filed an FIR in Bharalumukh Police Station reporting the custodial death of my father.

I was told by the Guwahati HRLN team that the AHRC has already taken up the matter based on the W.T. Messages sent by Sr. SP (City), Guwahati. A case was registered on 12 July 2011, bearing complaint number 6951/2009. To our utter surprise, in spite of this, the commission never contacted us, then or during the entire investigation. The administration just covered up the murder of my father in custody.

When I went through the documents, I came to realise that the Sr. SP (City), Guwahati, informed the ASHRC of this incident by W.T. Message. According to the Sr. SP (City), Guwahati, on July 13, 2009 at about 1:30pm, Mr. Biswanath Das, about

65 years of age, was handed over to Bharalumukh Police Station by the public, as he was alleged to have raped a minor girl named Miss Lakshmi Rai, five years of age. The said Mr. Biswanath Das was badly assaulted by the public before he was handed over to Bharalumukh Police. After he was handed over to the police, Mr. Biswanath Das was taken to MMC Hospital, Guwahati. He was examined and was given treatment at MMC Hospital. He was brought back to Bharalumukh Police Station, at about 2:20pm. As his condition deteriorated he was again taken to MMC Hospital, at about 4:20am, where he was declared dead.

The commission issued a notice to the DC (M) Guwahati to collect the post-mortem report with the video recording, inquest report and the report of the magisterial enquiry, if any, and to transmit the same to the commission. As a matter of fact, the matter was enquired into by Mr. Nareswar Upadhyay, ACS, Addl. District Magistrate, Kamrup (M) Guwahati, and the same has been forwarded to the commission.

The report of the enquiry by Mr. Nareswar Upadhyay, ACS, Addl. District Magistrate, Kamrup (M) Guwahati, was received by the commission and it was put up vide Case No.- 3/18c. In the report the Addl. District Magistrate put forward the brief facts and the circumstance of the matter. The commission, after going through the report, passed an order that they could only express their hope and trust, and also put forward that the police would investigate the offence committed by the public for causing the death of the deceased, Biswanath Das, by assaulting him. Save for the aforementioned, they have had nothing more to do with this case. Thus, the case is closed.

The commission did not take any initiative in investigating the matter. They did not even visit the place of occurrence, nor did they visit the victim's family. It is pertinent to mention here that they did not even inform the victim's family about the complaint.

Police Atrocity

Sonapur PS, Kamrup District

MD. MAINUL HAQUE CHOUDHURY

I am Md. Mainul Haque Choudhury. I live in Chamta Pathar. I live in a community of poor cultivators and labourers, who are primarily dependent on the land. A huge industrial group planned to set up a cement plant in our locality. The group went about this without adhering to any environmental safeguards, which is a serious threat to the ecology and natural resources of the area. It also posed a serious health hazard to the residents of Chamata Pathar.

Residents of the locality and concerned citizens had been protesting peacefully and democratically against the project since March, 2010 in the Sonapur area. On each of these occasions the police, along with CRPF and block development officers, brutally caned and tear-gassed unarmed and peaceful protesters, on the pretext of maintaining law and order. Several rounds of bullets were fired by them at the protestors, injuring more than 176 people on four occasions.

On July 30, 2011, during one of the protests, the police personnel, under the direction of the district administration, caned the peaceful gathering indiscriminately. In this atrocity more than 11 people were severely injured. One of them, Md. Ibrahim Bhuyan, later petitioned the ASHRC.

This conduct was repeated on October 30, 2010, at a protest meeting in a playground. Here, a police team led by the officer-in-charge of the Sonapur Police Station, came along with CRPF personnel and caned the gathering. Several rounds of bullets were fired into the air causing panic. As a result, more than 45 people were severely injured. Similar atrocities happened again on November 13, 2010, when the general public came out again to protest against the setting up of the industry. Women and children were dragged out of their homes and beaten up. This time, the count rose to almost a 100, because the police decided to fire at the protestors to disperse them, rather than firing in the air.

At this point police started arresting people active in the protests from the Sonapur area, and implicated them in false cases. Even the residents who sustained injuries during the incident were later picked up by the police, and were brutally tortured in the police station innumerable times. We tried to lodge an FIR before the officer-in-charge at Sonapur Police Station regarding the firing and brutal assault on innocent persons, but the officer-in-charge of that police station refused to accept the FIR and as such on November 15, 2010, a representation was filed by Itu Dey and Mamoni Dey of Chamata Pathar, before the SP, Kamrup (M) regarding the matter.

Once again, on January 12, 2011, at about 4pm in the evening, people of Chamata Pathar assembled to stop a truck of Star Cement Group which was carrying sand for construction. The officer-in-charge of Sonapur Police Station as well as the circle officer, arrived on the scene and asked the protesters to disperse. When they refused, they were brutally lathicharged. As a result, more than 12 people sustained grave injuries. A person by the name of Anil Boro sustained a severe injury to the head, while his wife, Gultoj Begum, was beaten up by the CRPF personals and dragged into the police vehicle. This was but one incident among many that took place, or was going to happen in the next few days.

Clearly, the illegal and arbitrary action of the police has directly affected the lives and liberty of the citizens, life and liberty being an integral part of democracy. The police and the CRPF personnels took the law into their own hands. They have shown a total disregard for the norms of civil society, and actively violated these basic human rights. And yet, they have shown no remorse for what they had done.

I, being the President of the 'Protesting of Polluted Industries Movement Forum', a forum for protest against the proposed setting up of the aforementioned industry, have submitted a memorandum, addressing the Hon'ble Chief Minister, Assam, Hon'ble Mr. Sharad Pawar, Union Minister, Agriculture Dept., Hon'ble Mr. Jairam Ramesh, Union Minister of Environment, Forest Department etc., on various dates regarding the set up of the industry. We also submitted a memorandum addressing the Deputy Commissioner, Kamrup and Sr. SP, City, Guwahati regarding the atrocities committed by police personnel. But everything fell on deaf ears.

Having no other way left, in the year 2010, we decided to file a complaint before the ASHRC. The commission was briefed about the situation and the atrocities through the petition submitted before it. Yet, we have not received any form of communication from the commission.

Eight months have passed. There had been no proceedings on the complaint until a few days ago when the district magistrate visited the area and recorded our statements. I would like to point out that the state commission's lackadaisical attitude has caused us immense mental agony, by failing to protect our rights.

Extrajudicial Killing by Police

Biswanath Chariali Police Station, Sonitpur

Deep Saikia deposing his brother Late Naba Saikia's case

NABA SAIKIA (DECEASED)

I am Deep Saikia, R/o Biswanath Chariali, Sonitpur, Assam. My brother, Naba Saikia, was former Publicity Secretary of *Biswanath Chariali Anchalik Student Union*. He was killed in a fake encounter by a special police team. I filed a complaint with the help of the All Assam Students Union (AASU) before the ASHRC on January 22, 2008, regarding this killing. It was registered as AHRC Case No. 6507/2008.

Having received no communication from the commission, I approached HRLN which obtained the following details from the commission. AHRC issued a notice dated January 28, 2008, to the District Magistrate, Sonitpur at Tezpur, to enquire into the matter and submit a report on or before February 26, 2008. But the report was not submitted on February 26, 2008. The commission issued another notice dated April 24, 2008 asking the District Magistrate, Sonitpur at Tezpur, to submit a report by May 25, 2008. Even the second notice was disregarded. It was only after the third notice, dated July 8, 2008 from the commission, that the report dated February 6, 2008 was submitted by the Addl. District Magistrate, Sonitpur.

It says, on the night of January 22, 2008 at about 4pm, the officer-in-charge of Biswanath Chariali Police Station informed the Sub Divisional Police Officer (SDPO) of the area that dacoity was taking place in the region. After information the officer-in-charge rushed to the spot, along with the CRPF. When police raided the house of Swarna Hazarika, two persons tried to flee from the next house, and one of them opened fire at the police. In self-defence, the police retaliated. One of the men was injured, taken to the hospital, and was declared dead on arrival. The other person escaped. Two sim cards, one bus ticket, one prescription from a dentist and a number of visiting cards were recovered from the dead person, who was identified as Naba Saikia. The killing was followed by blockades and protests, after which an FIR was lodged by Rantu Kalita from whose weapon the shots were fired.

The commission states that it tried to elicit my comments on this report. But the truth is, that I did not receive any communication from the commission. The case was finally closed vide order dated August 20, 2009 by the commission, assuming the report of the SDPO to be true. Clearly, the report is biased, and was meant to protect the police involved in the fake encounter killing of my brother. The conduct of the commission in this matter reeks of complicity.

Police Harassment of HIV+ Person

Nagaon PS, Nagaon District

MD. SABBIR RAHMAN

I am Md Sabbir Rahman, S/o Md. Gulam Rahman, R/o Fauzdaripatty, PS Nagaon Sadar, Nagaon, Assam. On November 28, 2007, along with my friend Md. Amjadul Haque, I was returning from Pathari, Nagaon, on a motorcycle. We were stopped by Sub Inspector Rafiqul Hassan Choudhury of Morikolong Town Outpost, Nagaon district. My friend showed his license and registration certificate. However, the pollution certificate's validity was overdue. On this the SI demanded an amount of Rs. 2000 from us, and when I refused, he slapped me. Although I told him that I was an HIV+ patient, and that any injury to me would aggravate my ailment, he did not relent, and started to kick me in my abdomen, abusing me, saying that I had no right to live and spread HIV to others. I was in great shock for a day, and decided to file a criminal case the next day i.e. on November 29, 2008. When summons were issued against the SI, he came to me and threatened me by saying that if I did not withdraw the case, he would frame me in a false drugs case. I was compelled to withdraw the criminal case.

However, I filed a complaint before the ASHRC on June 5, 2008 (ASHRC Case No. 6620/2008) detailing the incident. On July 15, 2008, I received a copy of the notice dated July 9, 2008, along with the ASHRC order dated June 24, 2008, from the AHRC. According to that, a copy of my complaint was sent to the SP, Nagaon, asking him to conduct an inquiry into the matter and submit a report before the commission within forty-five days i.e. before August 19, 2008. He did not submit the report within forty-five days. Another notice dated February 4, 2009, was issued requesting him to submit the report before March 16, 2009. Finally, the SP submited the report on May 15, 2009. The report denied all the allegations, terming them false and baseless. ASHRC forwarded that report to me, asking for my comments. I submitted my comments on July 21, 2009, asking the Addl. SP, Nagaon, to take the deposition of the eyewitnesses, as it was not possible for SP, Nagaon, to come to any conclusion without taking into consideration the eyewitnesses to the incident. I requested that the commission proceed against SI Rafiqul Hassan Choudhury. On being highly aggrieved at this careless attitude of the commission, finally, after two years, on August 16, 2011, I approached the commission in order to discover the status of my complaint, which is still pending before the ASHRC, and I came to know that, as the chairperson of the commission is absent, no one is aware of the status of my case, which is still pending.

Police Harassment

Noonmati PS, Kamrup District

HEMANTA KALITA

My name is Hemanta Kalita, S/o Mr. Bhabani Kalita, R/o Piyali Phukan Nagar, near Holy Child School, House No. 95, Police Station Chandmari, Ghy-21, District - Kamrup (M). I and two others filed a complaint (ASHRC Case No. 7056/2009) on December 4, 2009, before the ASHRC against Mr. Nikunjay Medhi, a constable in the Assam Police, who is presently posted in the office of the SP, City, Guwahati (Ghy).

Mr Nikunjay Medhi, a resident of Piyaliphukan Nagar, Chandmari, posted in the Noonmati PS in the year 2008, has been creating havoc in the locality, and extorting money from people at gun point for the past year. We small businessmen of the Pathar Query Tiniali area under Noonmati PS, were victims of his unlawful activities. He routinely demanded money from us, and threatened to arrest us as extremists if we failed to meet his demands. On December 3, 2009, when arriving at my house at about 9pm, he cordoned off my way and started to rebuke me with filthy language, and demanded Rs. 50,000. On refusal to make the payment, Medhi showed me his firearm and pointed the same to my head, threatening me with dire consequences. He rides an unnumbered motorbike while going around collecting money from us. We have already informed the officer-in-charge of Noonmati Police Station of the matter, but no action has been taken by them to contain his atrocities.

On December 10, 2009, the ASHRC issued a notice to the Sr. Superintendent of Police, City, Guwahati, along with a copy of the complaint, asking for an inquiry by an officer not below the rank of Deputy Superintendent of Police, and for the submission of a report to the commission within a period of thirty days. ASHRC received a report, a good two and a half months later, on February 24, 2010, from the Sr. Superintendent of Police, City, Guwahati. It says; "It was found that the victim had not submitted any written FIR before the officer-in-charge of Chandmari Police Station about the extortion bid." It further stated that he could not interrogate the other complainants, namely, Mr. Kashi Nath Yadav and Bishwajit Medhi, as they were not available at their residences at Guwahati, and accordingly prayed for further time to interrogate them.

I would like to mention here that, as a complainant, I was not told anything about the proceedings. However, the commission claims that a notice/letter was sent to me asking for my comments. On July 13, 2011, I discovered that the ASHRC had closed the Case No. 7056/2009, without any prior intimation to me, filed by me or to

HRLN, Guwahati, through whome I filed the complaint.

The final order dated October 25, 2010, passed by ASHRC, which I accessed through HRLN, stated that an enquiry report of my complaint was submitted by the SSP City, Guwahati, and on receipt of the enquiry report, a copy was sent to me by the ASHRC for my comments on several occasions. According to the commission, I had continually failed to respond due to which the commission ultimately had to proceed with the hearing of the case, without my comments. It was further declared, based on the enquiry report submitted by the SSP City, Guwahati, that the ASHRC has no further action to take in my case, and the case was, accordingly, closed.

Custodial Death

Udalguri PS, Kamrup District

Lachit Bordoloi deposing as complainant of the case

DIPEN BAYAN (DECEASED)

I Lachit Bordoloi, came across an article published in a newspaper regarding an incident dated January 25, 2005. The victim, the Late Dipen Bayan, was picked up from the street at about 9pm by SI Mohesh Nath, Officer-in-Charge (O/c) Udalguri PS, when he was standing in front of Luit PCO (near Udalguri market), on the eve of Republic Day. He was taken to the police station at around 10:30pm. The victim was 31-year-old, and was the bread-winner for his family. When the family members of the victim went to the police station to inquire about the matter, their signatures were forcefully taken on blank papers by the O/c Mr. Mohesh Nath. The O/c assured the family that the victim would be released, and that he would be dropped at his house by the police. However, Dipen Bayan was badly assaulted by SI Mohesh Nath in the police station. As a result, he died. After this death, Dipen's body was carried at night in the police jeep, and hung in the Udalguri weekly market. Thus, his body was found hanging in the Udalguri Market the next morning at about 6am. The family members of the Late Dipen Bayan lodged an FIR, suspecting involvement of SI Mohesh Nath, O/c Udalguri Police Station, in the death of Bayan. In accordance with the law, a case was registered in Udalguri PS, vide No. 16/2005, U/s 302 of IPC.

The O/c Mr. Mohesh Nath, has been placed under suspension, and a magisterial enquiry has been constituted. Local people and members of AASU demanded that the police officer should be punished and that the victim's family be paid an adequate compensation for the loss of life of a major bread-winner of the family. According to the report of Mr. T.K. Dey, ASI Udalguri (the investigation officer of the case), forwarded to the Sub Divisional Judicial Magistrate, Udalguri, Dipen Bayan was assaulted by SI Mohesh Nath which led to his death, and the body of Dipen was carried at night in the police jeep and hang in Udalguri weekly market. The ASI of Udalguri Mr. Jogesh Hajarika visited the PCO and said that the death of Dipen was not due to suicide, but that he was hung only after being killed.

In the report of legal enquiry carried out by Mr. T. Pator ACS and E.M., it is clearly revealed that there were some red spots on the lower abdomen, discharge from the penis, and that the testicles were found to be swollen. The post mortem report revealed that the death was from hanging while alive, and was suicidal in nature. The records collected from Udalguri PS shows that there was no bail bond of release of Dipen Bayan from the custody, though it was entered in the general diary entry. There-

fore, a case was registered under Udalguri PS, Case No. 16/2005, U/s 302 IPC. A case was also registered against the O/c Udalguri PS, SI Mohesh Nath, and he was arrested on the same day, that is, on January 26, 2005. The investigation was entrusted to the senior officer Mr. T.K. Dey.

The complaint has been filed at the ASHRC, of Case No. 5225/2005, on January 27, 2005, by me. On January 29, 2005, the commission, after taking cognisance of the complaint petition, called for the Inquest Report, the Magisterial Enquiry Report and Post-Mortem Report from the Deputy Commissioner, Udalguri District. The order passed on December 26, 2006, awarded a compensation of Rs. 1,00,000 to the next kin of Mr. Dipen Bayan, by the Home Department, Government of Assam. It was put up after three months i.e. on February 27, 2007, for a 'Compliance Report'. The status of the case is still not known by the complainant. Being the complainant, I was not consulted with by the commission as to whether or not the victim's kin was compensated, and the commission has no knowledge of the same.

Custodial Death

Guwahati District

Rajbala Das deposing her son Late Jagannath Das's case

JAGANNATH DAS (DECEASED)

I am Rajbala Das, mother of the victim, the Late Jagannath Das. My only son, Jagannath Das, was mercilessly assaulted by some local people, and handed over to the Maligaon Police Outpost in a precarious condition, on December 20, 2003, with reference to Case No. 541/03, U/s 326, 341 of IPC. At that time, the main accused of the case, Mr. Ramu Lama, was absconding (my son was also an accused in the said case). We requested that the court release my son on bail. But the police never took any action to have medical reports made, or to book the persons who assaulted my son. Ultimately, the court ordered the release of my son on bail, and he was released on March 10, 2004. My son was not given adequate medical attention whilst in custody.

On March 14, 2004, at around 2am, my son expired. This was reported to the Maligaon Police Outpost. The police took my husband's signature on various papers, and as my husband was illiterate, he had to follow their advice. The dead body was received by the police and subsequently examined in the Department of Forensic Medicine, GMCH, Guwahati. The dead body was handed over to us on the same day i.e. March 14, 2004.

We believed that had the administration given my son proper medical attention to, his life could have been saved. This is a total violation of human rights. We note with distress that the main accused in the aforesaid case, Mr. Ramu Lama, is still free, and no action has been initiated to arrest him.

We filed a case with the ASHRC in 2005, regarding this incident. The commission, while taking cognisance of the complaint petition, issued a notice to the SP City, Guwahati, to enquire into the matter and submit a report to the commission. Accordingly, SSP City, Guwahati forwarded the enquiry report to the commission. On receipt of the report, a copy thereof was forwarded to us for our comments. In the comments we stated that our son, Jagannath Das, was not suffering from any disease and was a fit, young person. Hence, we rejected the report submitted by the DSP, Pandu Division, Guwahati.

Thereafter, on December 21, 2005, the commission sent a copy of the comments to the SSP City, Guwahati, seeking his views regarding the medical treatment offered to our son. On May 11, 2006, the SSP City, Guwahati, submitted that he found no lapse on the part of the police personnel of Maligaon Police Outpost in providing necessary treatment to our son while he was in police custody. A copy of the said views

from the SSP City, Guwahati, was sent to the Superintendent, Central Jail, Guwahati, seeking a report about the health of the deceased Jagannath Das while he was in judicial custody. On October 29, 2006, the Superintendent, Central Jail, Guwahati, submitted the report. A copy of this report was also sent to us for our comments. According to the report, after being mercilessly assaulted by local people, our son, Jagannath Das, was produced by one Babul Das, along with 10-12 other people at Madhavdev Nagar, at Maligaon Outpost, on the night of December 19, 2003. He was then taken to the Central Railway Hospital, Maligaon, in a critical health condition following the assault.

The commission stated that after careful consideration of the aforesaid reports of the DSP, Pandu Division, and the Superintendent of Central Jail, Guwahati, it transpires that necessary steps were taken for providing medical examination and treatment while the deceased UTP (under trial prisoner) was in custody. It appears that there was no negligence on the part of the police and the jail authority in providing necessary treatment to the deceased, Jagannath Das. In the post mortem report the cause of death was attributed to hepatic failure (natural cause). During the course of the post mortem examination no external injury was found on the body. The liver was found to be enlarged and yellow in colour. It was accordingly opined that, "death was due to Hepatic failure (natural death)".

In view of the above facts and circumstances, the commission came to the conclusion that there was no lapse on the part of the police or the jail authorities, in providing medical treatment to the deceased, Jagannath Das, as alleged in the complaint petition, and the case was closed on June 30, 2008. It is to be noted that the investigation was carried out by the same policeman who had been accused. In such a situation, we demand an independent investigation and medical examination. The commission has done nothing more than protect the criminals, thus denying us justice.

Police Torture of Human Rights Defenders

Guwahati District

LACHIT BORDOLOI

I am Lachit Bordoloi, R/o Jyoti Nagar, Ghy-21. On Febraury 9, 2008, at midnight, a police party led by the DSP of Chandmari Police Station forcibly entered my house at Jyoti Nagar, Guwahati, and searched for me. The police party was not accompanied by any female constables. When my wife, Mrs. Renu Bordoloi, told the police that I was not at home, the police ransacked the house, causing damage to the household articles, and they took away two laptops and computer disks without giving any copy of the seizure list. They threatened my wife and made her sign a blank paper. The police personnel also inflicted mental torture upon my wife and our daughter Sikha Bordoloi by unnecessarily questioning them about me. The next day, I was arrested at Moran, and charged with planning to hijack a plane with some ULFA members. However, ULFA denied my involvement in any such plan and also denied that they knew me personally. The police also arrested Mr. Nekibur Zaman and Mr. Khagen Talukdar, both activists of the MASS. I approached the ASHRC, imploring them to take appropriate action against the police personnel involved in these incidents.

A notice was issued to the SSP City, Guwahati to inquire into the allegations; the enquiry was to be carried out by a senior police officer, not concerned directly or indirectly with the incident in question, and they were to submit a report to the commission. In due course of time, the commission received the report from the SSP, and as per the record, a copy thereof was sent to me seeking my comments, to be finished before August 5, 2008. However, I have not received any report for comments from the commission.

In his report the SSP Guwahati, stated that Mr. Susant Bishwa Sharma, A.P.S., DSP Chandmari Division, was directed to submit a report on the complaint petition lodged by Mr. Aditya Lahkar and, accordingly, he submitted a report. It appears from the report that the interrogation statements of ULFA activist Manoj Tamuli indicated that I was in nexus with the banned ULFA organisation and, accordingly, my house was searched on the night of February 9, 2008, to apprehend ULFA extremists as well as for recovery of evidence establishing my links with the banned outfit. I was absent from my house. The police recovered a number of files, one laptop, five compact disks, and 78 audio/video cassettes, and seized the same, as they were suspected to contain incriminating evidence. On getting this information, the staff of Chandmari PS again went to the residence of Mr. Nekibur Zaman, R/o Mahalakhsmi Apartment of Tarun

Nagar, under Dispur PS, to verify whether I was with him. But the security guard of Mahalakhsmi Apartment, informed them that Mr. Zaman had gone out in his vehicle at about 10:30pm, and had not yet returned. They waited there till 3am but as Mr. Zaman did not return the police party called off the search operation.

Relying just on the police version of events, and not reverting to me for my comments, the commission disposed of the case, stating the police report to be true. I am sorry to state here that the commission is just acting like a post master, merely accepting reports and forwarding them. It doesn't make any sincere attempt to contact the victim. The commission in Assam is hardly burdened, and denying people justice, with the excuse that they deal with a large number of complaints, does not seem applicable to them.

Police Torture

Boko PS, Kamrup District

SIDDIK ALI

I am Mr. Siddik Ali, S/o Late Elimuddin Dewani, Village Mandira N.C., PO Malbari, PS Boko, District Kamrup. One Abul Hussain lodged an FIR at Mandira Outpost alleging that some people had killed his brother, Azal Haque, by stabbing him with a sharp weapon. A case was registered at Boko PS, vide Case No. 24/2004. I was arrested in conection with this case on May 17, 2004, and was taken into police custody for five days, on the orders of the court. While I was in police custody the investigation officer allowed the opposite party and some others to enter into the lockup, and in collusion with the police, they assaulted me with *lathi,* causing serious injuries. I had to be referred to the GMCH for treatment. My articles were looted in the presence of the Officer-in-Charge of Boko PS.

I approached the commission and it issued notice to the SP, Kamrup, to conduct an enquiry and submit a report to the commission. SP submitted a report to the commission vide letter dated July 11, 2005. In the report, SP, Kamrup, stated that on May 17, 2004, at 5pm, I was arrested and remanded for five days in police custody for investigation. On May 22, 2004, at 8pm, SI Bapuram Kalita, with UBC/1249 Tiken Das, UBC/1942 Sainur Ali, and with ASRF (Assam Special Reserve Force) party, returned me to Boko PS, in a grievously injured condition. Tiken Das lodged an *ejahar* at Boko PS, stating that on May 22, 2004 at 10am, I attempted to flee by jumping from the veranda of the outpost building, and was injured by falling in a drain. A case was registered vide Boko PS, Case No. 79/04, U/s 224, IPC. However, I stated before DSP, Kamrup, and Mr. A.M. Hazarika at GMCH that I was brutally assaulted by the police of Mandira Outpost, both by the police staff and by private individuals, resulting in the injury of my left leg and right hand. Finally, after thorough inquiry it was established that, SI Bapuram Kalita and UBC/1249 Tiken Das were responsible for my injuries, while I was in police custody. So, departmental proceedings against SI Bapuram Kalita and Tiken Das have been ordered vide O/P No. 4/2004 and 5/2004 respectively, which are pending for enquiry. The commission held that the actions of the aforesaid two police officers undoubtedly constitute custodial violence, and directed the SP Kamrup to expedite and complete departmental proceedings, and take necessary action. They were also to inform the commission about the action taken within a period of two months after the completion of departmental proceedings. The case was closed on October 6, 2009. To date, as per my knowledge, no action has been taken against the accused police persons.

Arbitrary Arrest and Police Torture

Behali PS, Sonitpur District

BIMAN KR. BOSE

I Biman Kr. Bose, R/o Staff Quarter, Monabari Tea Estate, under Gingia Outpost (Behali Police Station) in the District of Sonitpur, Assam, would like to state that during the period from March 15, 1979 to May 2000, I was an employee of the Monabari Tea Estate, working there in the capacity of a general clerk. I used to stay in the staff quarters with my family, where I lived a happy life with my wife and my daughter.

On the night of September 13, 1999 at about 10pm, a group of seven to eight people wearing plain clothes and armed with sophisticated fire weapons forcefully entered my house and ransacked my belongings. They identified themselves as the police commandos from Guwahati. They confiscated all valuable items like jewellery, watches etc. and they forcibly took my signature on a blank paper, and made me sign a statement that they had not taken any articles from my house. Thereafter, I was forcibly removed from my house, and taken away in a Maruti Gypsy towards Tezpur. On the way to Tezpur I was laid on the floor of the Maruti Gypsy and was brutally beaten. Before reaching Biswanath Chariali, I was asked to get down from the vehicle and was assaulted by a 'Jeora Khari'. I was then ordered to run away, with a threat that I would be shot dead if I didn't. When I refused to oblige, I was forcibly taken back to the vehicle and kept under the seat. They asked me several questions about BLT and ULFA extremists, and tortured me the whole way to Tezpur, causing severe injuries to my private parts. On arrival at Tezpur all the commandos got out of the vehicle one by one at different places, and the vehicle stopped near the cinema hall for some time. Thereafter, they finally stopped the vehicle near a shop. Finally, two people pulled me out of the vehicle and dragged me to the Tezpur Police Station and handed me over to the police. They also deposited two pistols and three long bullets, at about 2:30am.

By this time my condition had become critical, with multiple injuries and bleeding in different parts of my body. However, I was handcuffed, and dumped in the police station, and kept there unattended. About 30 minutes later, I was taken to the Tezpur Civil Hospital for medical examination. After the medical examination the doctors advised the police authorities to admit me to the hospital; the police did not follow the advice and brought me back to the police station.

On September 14, 1999, my wife, Mrs. Gitanjali Bhuyan, lodged an FIR narrating the incident at Gingia Police Outpost, and the said FIR was registered at the Gingia Police Outpost, Behali PS, Case No. 137/1999, U/s 384, 365 of IPC. While I

was lying in the police station wounded and handcuffed, Mrs. Kakoli Bose alias Pompa, came to the police station along with Mr. Dulal Bose. Finding me in a wounded state with my injuries still bleeding they pleaded with the police authorities to provide me with medical aid, but the authorities flatly refused. Thereafter, my wife and other relatives also reached the police station. Finally, the police personnel took me to the Tezpur Civil Hospital on September 14, 1999 and my wounds were stitched up to stop the bleeding. They kept me in detention till September 15, 1999.

On the same day O/c Gingia Police Outpost came to Tezpur Sadar Police Station and took me into custody. The O/c Gingia Police Outpost brought an ambassador car to take me to the police outpost, but because my condition was so critical I had to be taken in an ambulance. On the way to Gingia my condition deteriorated and police personnel were forced to take me to Biswanath Chariali Civil Hospital. The hospital authorities, considering the nature of my injuries and deteriorating health condition, referred me to Guwahati Medical College and Hospital. As the police refused to take me to GMCH, the medical authorities themselves shifted me to K.P. Memorial Hospital, on September 16, 1999. But, on that very day, the police took me to the Gingia Police Outpost and detained me there. I was released on bail by Sub Divisional Judicial Magistrate, Biswanath Chariali, on October 12, 1999.

While I was at the Tezpur Police Station, I was interrogated by the police. I came to know that I had been kidnapped by the Commando Party with the assistance of some SULFA members, who planned to kill me. But when they could not execute their plan, they produced me at the Tezpur Police Station to save their skin, and three days later they registered a false case against me, and sent me to Biswanath Chariali Court. In the aforesaid incident, one of my fingers was fractured due to an assault made on me while I was taken to Tezpur Police station, and I also had to incur huge amounts of costs for my treatment.

On December 30, 1999, I approached the ASHRC at Guwahati, asking them to take the necessary action against the guilty officials, and also to grant me adequate compensation (ASHRC Case No. 3120/99). The commission took cognisance of the complaint and during the inquiry, the commission examined as many as 17 witnesses. The commission issued notice to the SP, Tezpur, to enquire into the matter and submit a report. The SP submitted a report on March 3, 2000, which was later sent to me for my comments. I furnished my comments. Thereafter, the commission, vide order dated April 2, 2001, asked the SP, Investigation Cell, to investigate the case and submit a report. The commission received report on September 29, 2003. In the report SP, Investigation Cell, stated that Mr. Pabitra Kalita, Mr. Gopal Chandra Khanikar, Mr. Nandeswar Das, Mr. Dhaneshwar Milik, and Mr. Diganta Gaonkhowa, were found to be responsible for violation of my human rights and accordingly the commission, vide order dated November 4, 2003, issued notice to all five police personnel to show cause as to why the appropriate recommendations should not be made against them.

The SI Pabitra Kolita, in his reply filed before the commission on September 9, 2005, admitted that the records of Gingia Outpost had been altered. He further stated that the Behali PS Case No. 138/99 U/s 25 (1-B) Arms Act was registered against me on September 16, 1999 only to regularise the lapse of the police. Further,

he stated that, "Later on, I learnt that at the order of Mr. Abhijit Bora, APS, Addl. SP (HQ), Tezpur, stated that Commando Personnel, HAV Gopal Khanikar, ABC/146 Dhaneswar Milik, ABC/164 Nandeshwar Das, ABC/213 Diganta Gaonkhowa , D/C Rajkumar Thappa (Driver of the SP), accompanied by SULFA members Krishna Hazarika, Vivek Nath, Bimal Nath and Rubul Das, had picked up Biman Bose from his residence on September 13, 1999, at night, and handed him to Tezpur PS". HAV Gopal Khanikar AB/SI, Dhaneswar Milik ABC/146 Mr. Nandeswar Das ABC/164 and Diganta Gaonkhowa ABC/213, have stated in their statements before the commission that the then Addl. SP had called them together, with a SULFA party, to search my house at Monabari Tea Estate.

The learned commission, after making due enquiry and hearing all the necessary parties, vide its judgment and order dated April 6, 2009, observed that the action of the police, cost me grave mental and physical injuries, and violated my human rights, for which I deserved to be compensated by the concerned authorities. Moreover, the commission opined that the manner in which my house was searched by the Commando-Battalion party in the dead of night on September 13, 1999, and the manner in which I was picked up for interrogation and subjected to physical torture, and the manner in which the party then registered a case on a subsequent date for the alleged recovery of arms and anomalies, cannot be said to be justified action of the police in accordance with the law. Compensation, accordingly, was granted to me, and the Government of Assam's Home Department was directed to pay the compensation. Unfortunately, only a very meagre amount of Rs. 20,000 was paid. Moreover, it took the commission ten long years to come to the aforesaid conclusion that my human rights had been violated, and they did not take into consideration the fact that all this time I was working to obtain justice, and therefore underwent immense mental, physical and economical suffering because of the delay.

Torture and False Case by Police

Fatasil Ambari, Guwahati District

SURAJIT BORO

I am Mr. Surajit Boro, S/o Late Sanjit Boro, R/o H. No. 2, Ward No. 12, Village Fatasil Datalpara, Guwahati. On the night of September 13, 2010, at around 12-12:30am, the officer-in-charge of the Fatasil Ambari Police Station, accompanied by some other police personnel, came to my house and asked me to come to the police station for some important work. However, on reaching the police station, I was arrested without any reason in a false and fabricated case, vide Fatasil Ambari PS, Case No. 327/2010, U/s 457, 380 of IPC. After my arrest, I was detained in the police lockup where I was subjected to inhumane torture.

In the forwarding report dated September 14, 2010, the grounds leading to my arrest were found to be totally frivolous. On October 1, 2010, the learned session judge granted me bail. In the order passed by the session judge, it was observed that there was nothing in the case diary and that the material did not justify further detention. However, now people in my locality insult me and call me 'thief', and as such it has become impossible for me to live amidst the humiliation of people, and I am breaking down, day by day, in frustration.

I approached the ASHRC on December 13, 2010, stating all the facts of the police atrocities, asking them to investigate the matter and take necessary action on it, with a view to ensure the delivery of justice to me. A case was registered with ASHRC, Case No. 25/24/10-11.

ASHRC, by its judgement and order dated December 15, 2010, disposed of the case with the following observations, "...merely because the sessions judge has made certain observations, it does not mean that the human rights of the complainant have been violated. In fact, the complaint does not disclose any case of action whatsoever. Assuming that his arrest and custody was totally unjustified it is for the court of law to do the needful whenever the accused is produced before the court. In such matters this commission has no jurisdiction to interfere".

Though I had specifically stated in my complaint that while I was in the lockup under police custody I was subjected to inhumane torture, and that because I had been falsely implicated in a case I had lost all respect in my locality, the ASHRC totally overlooked the matter, and gave a partial, one-sided order, totally denying me justice.

Police Torture

Basistha PS, Kamrup District

ANANTA KALITA

I am Ananta Kalita, R/o Village Debrabari near Kalitakuchi. I was an active member of the *Assam Jatiyatabadi Yuva Chatra Parishad* (AJYCP). On the night of September 16, 1999, I was kidnapped by a group of 12-13 unknown armed miscreants. I was blindfolded and brought in a vehicle to a police battalion camp inside Guwahati. There, I was asked to disclose the whereabouts of ULFA activists Rupjyoti Bora and Basanta Sarania. I pleaded ignorance. On the night of September 18, 1999, I was again blindfolded and taken some distance, atop a hill, where I was fired at from close range by one of the assailants. From there I fell nearly hundred feet down and remained unconscious. On regaining consciousness, I was in severe pain, and was thirsty. I pleaded and cried for water. But there was no one to help. My hands were tied and my eyes were tightly shut. I cried for water for almost half an hour but there was no one to help me inside the jungle. I realised that a bullet had pierced through my head and I was bleeding profusely. I climbed the hill and found a stream nearby. I drank plenty of water and regained strength. I then sat, and rubbing my hand against a sharp stone, managed to cut the rope. On reaching the main road I discovered that I was in Jorabat. Later on, I took a lift and reached the Maligaon main office (headquarter) of the AJYPC, from where I was rushed to the Guwahati Medical College Hospital (GMCH). I also lodged a FIR in Basistha Police Station, in connection with the incident of the attempt on my life. In connection with my kidnapping, a case was registered vide Case No. 155/99, U/s 147, 148, 149, 365 of IPC. During the investigation, it was revealed that I had been forcibly taken in two Tata Sumo vehicles towards Guwahati via Kalitakuchi, Pakhamela Chowk under Hajo Police Station, on the night of September 16, 1999.

On September 19, 1999, while I was hospitalised in GMCH, in a serious condition with bullet injuries, the Officer-in-Charge of Hajo Police Station, along with the Investigating Officer (IO) of the case, recorded my statement. As my condition was very serious I was referred to Guwahati Neurological Research Centre (GNRC) for further treatment. As a follow up, the IO of the Hajo case also recorded the statements of Sentries/SM/Adjutant of 4th APBn (Armed Police Battalion), as well as of 10th APBn Camp Kahilipara, but all of them denied having any knowledge of the events. According to them, no such person was brought in vehicles of the above description and kept in the battalion campus. The IO also carried out an enquiry in the Jorabat area from the local people, who expressed total ignorance about such an incident having taken

place in that area. On being examined, Inspection Officer (Traffic) Guwahati City also gave a negative reply about movement of such a vehicle on the night of September 16, 1999 in which I was taken inside the city and kept in a police camp. After that, no action was taken against the assailants. The Hajo Police Station later closed the case. But the case was reopened after pressure from the senior hierarchy of the Assam police.

A complaint regarding the case was filed before the ASHRC by Mr. Lachit Bordoloi, Secretary General, MASS with ASHRC (Case No. 2992/99). In a letter dated November 29, 1999, the ASHRC asked the SP, Kamrup, Guwahati, to submit a report regarding the case. Accordingly, the SP, Kamrup, Guwahati, submitted a report on December 19, 1999. The ASHRC, through its letter dated February 4, 2000, asked Mr. Lachit Bordoloi to submit his comment on the report dated December 19, 1999, submitted by the SP to the ASHRC, before March 1, 2000. Meanwhile, the then AGP Government in Assam was directed to conduct a judicial enquiry into my case, which remained incomplete. After that, there was no follow-up of the case pending before the ASHRC. Hence, the status of the case remains unknown. The commission very conveniently wiped its hands of the matter, though there is mentioned nowhere in the Act, that the commission can't proceed with a case if a commission of enquiry has been setup. I feel that the commission should have taken up the case and investigated it to aid the enquiry. This clearly depicts the lack of will among the commission members.

(In the meantime, K.N. Saikia Inquiry Commission was appointed to enquire into the secret killing in Assam. The commission, in its report, asked the then Assam Government to pay Rs. 5 lakh as compensation to Ananta Kalita, for the ordeal he went through. But Ananta Kalita received only Rs. 3 lakh, and, to date, he has not received the remaining Rs. 2 lakh.)

Death Because of Police Firing

Bhimajuli, Sonitpur District

Lachit Bordoloi deposing as complainant

HRIDAY KURMI (DECEASED)

I Lachit Bordoloi, on behalf of Late Hriday Kurmi, Pankaj Adhikary and Galia Panibharal, BCH, as ex-member of MASS would like to state that, on October 4, 2009, at around 6:30pm, ten people from Dilichang, Bhimajuli village were killed by NDFB extremists, and many more people were injured. It is surprising that the police from the local police station, situated at a distance of about two kms from the place of occurrence, could do nothing, nor could they give any protection to the innocent people. The police took more than two hours to arrive at the scene of occurrence.

On the next day, on October 5, 2009, the angry and aggrieved people peacefully demonstrated before the police station. However, the police retaliated with ruthless *lathicharge* and opened fire in the air to scare away the people. Due to this, many innocent people were seriously injured. About two to three hours later, the irate people stopped a large convoy of police and security personnel, accompanying some top police officials and political leaders. To control this, the police resorted to unprovoked and indiscriminate firing, resulting in the death of an innocent person, namely, Hriday Kurmi, and also in serious injuries to three other people.

In connection with this, a complaint was filed by Mrs. Archana Saikia Bormudoi, Pesident of MASS, before the ASHRC. Acting upon the said complaint, a notice was issued by the commission to the DGP Assam, requesting an enquiry into the allegations. The enquiry was conducted by Mr. S. N. Singh, IPS, IGP (NR), Tezpur, Assam. After elaborate enquiry, a report was submitted and the same was forwarded to the commission by the ADGP (Law and Order) Assam, by his covering letter dated 27th April 2010.

The report justified the action taken by the police, stating that there was a time difference, as Hriday Kurmi was brought in at 2:00pm, while the firing started at 3:05pm. The commission considered the enquiry report as correct and true. So, the case was accordingly closed, without giving us any chance to put our views across.

We contend that the enquiry report has falsified the events of the day, and was prepared by the accused police officers themselves. The report stated that on October 4, 2009 at around 6.50pm, Mr. Debeswar Borah informed the Balichang PP (Patrol Party) that some Bodo youth equipped with arms, came to his home and started firing. This information was received by UBC/294 Paresh Das, present at the PP, as the incharge of Balichang PP was out of operation duty. He contacted SI (UB)

Pratul Bania. Pratul Bania along with SDPO Biswanath Chariali and Md. Fakrul Islam rushed to the PO (Police Outpost) along with the SSB team from Mohjuli camp. They reached the PO at 7.25pm. During the enquiry it was revealed that the police did not take an unduly long time in reaching the PO. The attack had taken place in the twin villages of Dilichang and Bhimajuli, which are spread over one and a half km, as a result of which, it took about one hour for the police to evacuate the injured persons from the first PO to the last PO.

During the enquiry, it was also revealed that the police resorted to *lathicharge* and firing on five different occasions at four different places. In those incidents, a strong mob consisting of about 2000 people, equipped with *lathi*, spears, bows and arrows attacked the Balichang PP, attempted to set the PP building on fire, attacked the house premises of Sailen Basumatary, and tried to set his house on fire, and attacked the Bimajuli village of Bodo community. When they refused to stop such violent activities despite being warned repeatedly, the police had to resort to mild *lathicharge* to disperse the unruly mob. When the unruly mob did not disperse, even after the mild *lathicharge*, finding no other option, the police resorted to firing in the air to save life and property in self-defense. Hriday Kurmi stated in his dying declaration recorded by a Doctor at GMC Hospital, that he was injured at around 2pm on October 5, 2009. Mr. Dipak Gaur claimed in his statement that he found Hriday Kurmi lying injured on the bank of Dilichang River at about 12pm, and took him to Balichang SHC at 2.45pm. Then, he took him to Biswanathchariali Civil Hospital. But, the firing took place at about 3.05pm. So, the enquiry concludes that the bullet injuries were sustained by him prior to the arrival of the convoy of senior government officials. Therefore, the contention that Mr. Hriday Kurmi and Mr. Pankaj Adhikari sustained bullet injuries due to firing by PSO, is not borne by the facts revealed during the enquiry.

The police came up with a totally false story, which the commission accepted, and so it disposed of the complaint.

Police Inaction

Tezpur, Sonitpur District

BIREN KR. BORAH

My name is Biren Kr. Borah, R/o Village Ketekibari, Near Mahendra Two-Wheeler, PO Ketekibari, Tezpur, District Sonitpur, Assam. On July 12, 2003, I, along with some others, filed a complaint regarding the country spirit shops of Sonitpur. I complained to the authorities that of the 29 Country Spirit Mahals allotted to Mahaldars, only 11 Mahals are adhering to the government regulations. Innumerable illicit country liquor distilleries have appeared all over the district, and excise officers are turning a blind eye to them. Excise constables have turned into informers, alerting the illegal distilleries about raids. We submitted some paper cuttings relating to country spirit shops from a newspaper dated November 20, 2003. All the field functionaries, right from the assistant inspector, inspector to the superintendent, are sitting tight in the office, by engaging excise constables to collect the commission from illicit distilleries and illicit liquor shops. Excise constables who refuse to cooperate are punished with frequent transfers etc. Moreover, there are frequent reports of death due to consumption of illicit liquor, and very recently a number of people died at Borgaon, under Biswanath Chariali Sub Division, due to consumption of such liquor. Nearly 18 people from the Da-Parbatia and Chandmari area, under Tezpur PS, died in 2005.

After filling the complaint, I did not receive any communication from the commission. Finally, I came to know from HRLN that the commission had called for a report from the Deputy Commissioner of the Sonitpur District accompanying a copy of the complaint petition. The commission awaited the report from October 20, 2007 until August 07, 2008. On October 04, 2008 the commission received the report from the Deputy Commissioner of the Sonitpur District. In the report, he mentioned that the concerned department can only comment on the frequent transfer of excise constables. It is stated that five people from Borgaon, under Bihali PS, died due to consumption of illicit liquor in 2001. This refers to Bihali PS Case No. 139/2001, U/s 270,272,273,328,304(A) of IPC. The charge sheet in the case had already been submitted vide C.S. No. 83, dated August 27, 2002. In the year 2005, 18 people from the Da-Parbatia and Chandmari area under Tezpur PS died, reportedly due to consumption of illicit liquor. This refers to Tezpur PS Case No. 769/05, U/s 304, 328 of IPC, R/W Sec 53(1)(a) of the Assam Excise Act, which is under investigation. The case was closed accordingly on February 03, 2010, without giving us relief, and without looking at the broader situation of the case.

Inhuman Living Condition and Administrative Apathy

Tezpur, Sonitpur District

KUSUM MAHANTA

My name is Kusum Mahanta. I am a resident of Main Road, Near Naina Optician, Ward No. 6, Tezpur, District Sonitpur, Assam. I have been residing in Tezpur since 1973. From 1998 onwards our family has suffered heavy losses during the rainy season. The deplorable condition of the drain of the ward was making life miserable for the residents of the area. In the year 2000, water entered my house and reached up to two and a half feet as a result of which 30cm of the wall of my house collapsed. Due to this, many precious articles in my house were spoiled, books were damaged, and many antique pieces were also destroyed, and had to be sent to the district museum. In the years 2000 and 2001, I, along with the other aggrieved persons of the locality, filed complaints before the Additional Deputy Commissioner (ADC), Development Member Secretary, Sonitpur and DC of Sonitpur. In the month of April 2001, the development authority took some measures to clean and reshape the drain. But, the work was not completed. As a result, the problem persisted.

Again on March 6, 2002, I informed the Municipal Board, Tezpur, about the problems we are facing. On receiving my application, the Tezpur Municipal Authority, on March 11, 2002, made an effort to clear all the dirt, mud, and debris which was covering almost ten meters of the drain. Even this time, after two days of work, the work could not proceed further because people living in nearby areas had stopped the workers, who finally covered the drain with mud leaving no trace of it.

This time, I along with the other residents of the same locality approached the Deputy Commissioner, Tezpur, and submitted an application, dated March 12, 2002, requesting for the clearing and reshaping of the drain. But he also did not do anything to resolve the problem. On March 10, 2003, we filed an application before the same authority requesting him to put pressure on the town development authority, to complete the construction and cleaning of the drain. But our prayer again fell on deaf ears. We then approached Mr. Brindaban Goswami, MLA, the leader of opposition party, on May 28, 2003, with a prayer for the upgrading and concretisation of the two drains passing through Ward No. 6., but all in vain. Again, on February 23, 2004, we approached the Vice Chairman of the Tezpur Municipality and handed over a complaint petition. But no action was taken.

Finding no other way, in the year 2004, I filed a complaint before the ASHRC, which was registered as ASHRC Case No. 5180/2004. The commission issued a notice to the Deputy Commissioner, Sonitpur, calling for a detailed report on the matter.

Accordingly, the Deputy Commissioner, Sonitpur obtained a report from the Chairman of the Tezpur Development Authority, Sonitpur, and forwarded the report under his letter dated April 28, 2008. The Chairman of the Tezpur Development Authority, Sonitpur, under his letter dated March 10, 2008 informed the district magistrate that the whole area is a low lying area and that it was previously a 'Hollow Land', where the problem of waterlogging was a common phenomenon. He further claimed that to get rid of the waterlogging problem during rainy season in that area, a hume pipe culvert was constructed on the road coming down from Samabayika, with the funds of the office of the Tezpur Development Authority. But, I want to mention here that, to date, nothing has changed, and the residents of that area are facing the same problems. For this reason, I had to sell my properties at a very low price on November, 1, 2011.

"The commission closed the case vide order dated August 3, 2009, by stating that the complainant had not commented on the report submitted by the Chairman of Tezpur Development Authority. The order also stated that since the complainant had not submitted any comment, it appears to the commission that the complainant's grievances, as to the alleged waterlogging problem in the area, have been redressed by the Development Authority of Sonitpur. According to the commission, it has no further role to play in the case".

It is pertinent to mention here that I never received any communication from the ASHRC, regarding the submission of comment on the report.

Police Inaction

Udharbond PS, Cachar District

Sadik Ahmed Laskar deposing as complainant

ANONYMOUS (A 30 YEAR OLD WOMAN)

I Sadik Ahmed Laskar, member of *Barak Human Rights Protection Committee* (BHRPC), came across news items published in 15th & 16th November 2007 issues of *Samajik Prasanga* & *Dainik Jugashanka* respectively - two local daily newspapers, wherein it was stated that a human life had been ended and that three other innocent lives were under serious threat. It was reported, that in order to appropriate the dwelling of a widow, some people strangled her to death, and to give it the form of a suicide, hung her body. Thus, a 30-year-old widow was killed in a cruel manner, in front of her mother. Moreover, the old lady (the mother of the deceased) was threatened and asked to keep quiet, and told that if she informed the police, the plight of her daughter's young children would be the same. And so, fearing the consequences, she did not approach the police. Moreover the killers drove her away from the house. She left her home that night with the dead body of her daughter and with her grandchildren, and she never returned to her home. We immediately started to search for them and we found them on November 19, 2007, loitering in the court campus. On November 14, 2007, Kaborun Nesa, the mother of the deceased, lodged a complaint with the Chief Judicial Magistrate, Cachar. The Court of CJM forwarded the complaint to Udharbond Police Station, for registration of an FIR and investigation. But the police did not respond. On November 20, 2007, we took the initiative to take the victims to the DC and SP, Cachar, separately, and submitted two separate petitions.

However, due to the callousness and apathy of the concerned authorities we approached the ASHRC, seeking relief for the victim on December 23, 2010. A notice, along with a copy of the complaint, was issued to the SP of Cachar for an enquiry and report. In due course of time, the commission received the report, and has claimed to have forwarded a copy to BHRPC, seeking comments. In reality, we received no such copy seeking comments. And after that there was no communication from the commission regarding the case. We are still unaware of the status of the case.

Rape and Police Inaction

Silchar PS, Cachar District

Sadik Ahmed Laskar deposing as complainant

RUSTANA BEGUM

I Sadik Ahmed Laskar, member of *Barak Human Rights Protection Committee*, came to know of the rape of a minor girl named Rustana Begum, daughter of a widow named Sunapakhi Bibi, belonging to the poorest stratum of the society. She is the resident of Kanchanpur Part 1, Hailakandi, Assam. At the time of the incident, she was about 15 years of age, and she was raped in the most inhumane manner, at Silchar Medical College and Hospital (SMCH), Silchar, at about 5pm on February 2, 2008, by two security guards on duty.

At the time of the incident, the victim Rustana Begum was going to the canteen to fetch hot water for her mother who was admitted at the hospital. The two security guards were named Rahim Uddin Mazumdar and Biswajit Ghose, both of whom hail from Masimpur, Silchar and who were employed by Barak Security Agency (BSA), a private security firm, which was providing security to the hospital. They stopped her at the door of the room of the Medical Record Department (MRD) and forcibly took her to the Out Patient Department (OPD) room, which usually remains closed at such hours, where they took turns to rape her. This happened before the eyes of Atul Das, a chowkidar (fourth grade employee) of the SMCH, who acted as a guard in the SMCH. Later at night, the two in-charge of security, Mr. Shushanta Nath and Mr. Surendra Singh, at the SMCH on behalf of the BSA, threatened the victim, her mother and her relative Abdul Mannan with dire consequences, and asked them neither to disclose the incident to anybody, nor to inform the police about the incident.

After we became aware of the incident, we contacted the mother of the victim, Sunapakkhi Bibi, and helped her lodge a complaint with the police at Silchar Police station (Case No. 208/08, dated February 6, 2008). On February 7, 2008, Mr. Abdul Mannan, one of the relatives of the victim also filed a complaint in the Court of CJM, Cachar, regarding the threat to life of the victim, her mother and his own life, U/s 107 of the Cr.PC, 1973. However, due to inaction on the part of the police and delay in the investigation, we filed a complaint with the ASHRC (ASHRC Case No. 6649/2008).

The commission issued a notice asking the authorities for a report regarding the case, which request was complied with eventually, and the SP, Cachar, submitted his 'Enquiry Report' to the ASHRC, vide Case No. G/SR/5171, dated August 29, 2008. The report is mysteriously silent on the claims of the BHRPC made in the complaint, on the basis of its fact finding report which states that:

(i) Mr Atul Das, a public servant working as 'chowkidar' in the SMCH, abetted the

offence; (ii) Mr. M.K. Dey, the Superintendent, SMCH, and Mr. Sushanta Nath and Mr. Surendra Singh, both of whom were in-charge of security of the SMCH on behalf of BSA, the private security firm, facilitated the act of rape by negligence in their duty;

(iii) Mr. Laskar, in-charge of the Ghughoor Outpost, Silchar PS, Mr. Satyen Gogoi, SP, Cachar, Mr. Gautom Ganguly, DC/DM, Cachar, violated the constitutional rights to remedies, and legal and psychological assistance.

The commission, accordingly issued notice to us, i.e. BHRPC, for furnishing comments regarding the case within December 20, 2008. However, it is pertinent to mention that the letter issued by the commission reached BHRPC on May 25, 2009, i.e. five months after the last date fixed by the commission for submitting our comments. As we were unaware of the status of the case, we had again approached the commission regarding the case, but we discovered that by the time we had furnished our comments on June 21, 2009, our case had already been disposed of.

Violation of Child Rights

Kamrup District

Lachit Bordoloi deposing as complainant

NABANITA DAS

I Lachit Bordoloi, as an ex-member of MASS, would like to inform you that the victim Nabanita Das was a student of Class-VIII, of Gurukul Grammar Higher Secondary School. One day she was talking to her school mates in her mother tongue (Assamese Language). She was humiliated by the teacher, and she was punished and forced to kneel down outside the classroom, and then was made to write down in English 1,000 times that she would never speak in Assamese again. Also, she was asked to learn English from Class 1 students. These things made her take extreme measures as she felt utterly humiliated. She attempted to commit suicide by jumping from the second floor of the institution, alleging humiliation and punishment by teachers for speaking in Assamese inside the classroom. This incident has been reported in electronic media as well as various newspapers. Such action amounted to a violation of the constitutional rights given to all citizens, including children. When this incident came to the notice of MASS, it took up the matter and filed a complaint before the ASHRC, requsting that they hold an enquiry and take the necessary steps to deliver justice.

After that, MASS received an 'Order Sheet' dated February 4, 2010, issuing notice to the principal of the school to submit a detailed report on the matter. The commission also issued notice to the Deputy Commissioner, Kamrup District, to initiate an enquiry to be conducted by a responsible officer of the administration, and to submit a report within thirty days.

The further proceedings of the case are not known to MASS. They were never contacted by the commission.

Harassment of HIV+ Person

Kamrup District

RAJESH MAHATO

I Rajesh Mahato, am an HIV+ person. When my wife was pregnant, she was taken to the Rangia CHC for a medical checkup. She was examined by Dr. Gauranga Medhi, under whose care a child was born. After the birth of the child, she was advised to undergo blood examination by Dr. Medhi. In the blood examination report it was detected that she was also suffering from HIV and that the virus had been transmitted from me. After the detection, Dr. Medhi organised a press conference and disclosed the detection of the HIV virus in me and my wife. The news was given wide publicity in the Assamese vernacular newspaper, namely *Asomiya Pratidin,* in its issue of January 29, 2010 and *Dainik Asom* in its issue of February 1, 2010 respectively. After the publicity, I suffered immensely, as I was ostracised by society and my livelihood suffered. As a result, it became impossible for me to maintain my wife, along with my two daughters. After discovering that I am an HIV+ person the other tenants left my landlord's house, and as a result, the income source of my landlord also took a hit. Furthermore, the Assamese newspaper *Dainik Asom* also published that I have illicit relationships with other women. This created a misunderstanding between me and my wife.

I take grave exception to the conduct of Dr. Medhi. It should be checked, because patients suffering from HIV have a right to live a dignified life, and any effort to create obstacles for such victims to live a dignified life should be treated as a criminal act violating the human rights of such people. Aggrieved by the conduct of the doctor and the journalist, I approached the ASHRC for redress on February 15, 2010. After that, the proceeding of the commission was not known to me at all.

Through HRLN, I came to know that acting upon the said complaint, the commission issued a notice to the Director of Health Services, Govt. of Assam, with a copy of the complaint and newspaper clippings, for an enquiry into the matter. In due course of time, the commission received the report. After perusal of the enquiry report by the commission, it was found that there was no definite proof that the matter was disclosed by the hospital staff. In that view, the commission considered the enquiry report as correct and true, and on that basis the commission held that the case did not involve any violation of human rights. Accordingly, the case was closed on April 5, 2011.

Harassment at Workplace (Railways)

Jalukbari PS, Guwahati District

KAMAKHYA TALUKDAR

I am Mr. Kamakhya Talukdar, S/o Late Jogannath Talukdar, H.No. 53, Padumbari, PO Gotanagar, Jalukbari PS, Guwahati, Assam. I am employed as Head Clerk (Bills), under the Chief Personnel Officer, NF Railway, Maligaon, Guwahati. I have completed more than thirty years of continuous services in the NF Railway. On November 21, 2008, I fell seriously ill and visited Dr. S. Barla at OPD of the Central Hospital, NF Railway, Maligaon, at 9:30am, with prior permission from the Controlling Officer, APO/Bill and office Superintendent. After examining me, the doctor prescribed medicines for five days and advised me to take rest for seven days and also suggested to take a departmental sick memo. On November 21, 2008, I submitted an application before the office superintendent and APO (Bills) NF Railway, Maligaon praying for the issuance of a sick memo, but the authorities asked me to come on Monday, i.e on November 24, 2008, 22nd & 23rd November 2008 being Saturday and Sunday. When I approached the concerned authorities I was denied the sick memo again.

As per the advice of the Dr. S. Barla, I visited him again after seven days, i.e. on November 27, 2008, at the Central Hospital, NF Railway, Maligaon, as my health had not improved. However, he refused to treat me as I did not have the sick memo, and the department officer had asked him not to treat me. At the same time, I submitted another representation before the CPO, NF Railway, Maligaon, praying for issuance of a sick memo with a copy to APO (Bills) informing them of the facts and circumstances. I was suffering from chronic bronchial asthma, as diagnosed by Dr. Barla. As my health condition was deteriorating day by day, and having no alternative, I immediately visited a private doctor at Maligaon. On the same day I visited Dr. A. Adhikari, a Medicine Specialist, for treatment, and after examining me, the doctor prescribed medicines and advised me to go to a senior ENT specialist.

I did not receive any positive response from the authorities, only false commitment and some abusive acts. For this prejudiced and arbitrary act of the authorities I had to endure physical and mental agony. The vindictive officers denied even the family passes for going to Apollo Hospital, Chennai, for medical treatment. At last, I lodged a complaint before the Medical Director, NF Railway, Guwahati on December 12, 2008, stating the facts and circumstances, and the denial of treatment at Central Hospital, Maligaon, with a copy to the Chairperson, NHRC, New Delhi, before going to Apollo Hospital, Chennai.

On December 12, 2008 the authorities issued the sick memo but I received it on

January 30, 2009, after a lapse of 71 days from the date of submission of application. The normal convention is that immediately after receiving the application for a sick memo, it is to be issued within a period of two days. I consistently argued the matter before the concerned authorities for collecting the sick memo till January 20, 2009, but that too was fruitless. In spite of the denial of a family pass in the month of January, 2009, on January 26, 2009 I visited the doctor of ENT, Dr. Babu Manohor, and Dr. Saukat Ali, MD, Senior Consultant, who after examining me, prescribed medicines, and I was advised to take three months rest after which I was asked to come back for a review. On April 2, 2009, I again visited the doctors of Apollo Hospital; the concerned doctors advised me to take rest for three months again and suggested a review after six months. On September 2, 2009, when I again visited the Apollo Hospital, the doctors issued a fitness certificate to resume my duty after September 5, 2009, and advised me to be reviewed after three months.

I had to part with a huge amount of money at my own cost for treatment at the Apollo Hospital and with other private doctors, for which I had to face mental agony due to my acute financial crisis. The medical documents of Apollo Hospital, Chennai, and other conveyance expenses, amount to Rs. 68,579, and I requested that the authority reimburse the said amount from the department. This request was blatantly denied. Moreover, the authorities were not granting the leave period from May 2009 to August 2009, and my monthly salary thereof, although I had commuted medical leave in full credit (approximately 592 days up to July 31, 2009) at my leave account. I had made several representations before the authorities to get the monthly salary and other service benefits such as SDA etc. I have been facing severe financial crisis in maintaining my livelihood, and have been deprived of my fundamental rights. I submitted another representation raising my grievances before the General Manager, NF Railway on July 13, 2009. I also requested that a departmental enquiry be conducted in the interest of justice, but it was not executed, and I did not receive any response.

After getting a fitness certificate from a doctor of the Central Hospital, NF Railway, Maligaon, I joined my duty on September 9, 2009. I also prayed for medical leave to be granted for my treatment period from November 21, 2008 to September 5, 2009, but they stopped my salary from May 2009 to August 2009, without any intimation to me, and for which my family members and I have been facing another dimension of arbitrary, *mala fide* and inhumane treatment. Moreover, they made all recoveries from my monthly salary of September 2009, without informing me and I was able to get only Rs. 1168 in that particular month, whereas the deduction had been made from the stopped salaries by them from the period of May 2009 to August 2009, without granting the said leave period. Due to this I suffered to get my basic needs, including treatment and food, fulfilled. I was deprived of right to life, health, dignity, liberty and security as well as suffering mental disturbance, which is a gross violation of human rights. For this I demanded a compensation of Rs. 6,00,00,000, and requested them to pay my monthly salary for the leave period.

On December 16, 2009, I had filed an RTI at the railway department, but I was not satisfied with the reply of the RTI, and so I approached the NHRC, but in the judgment they marked me absent, though I was present.

I approached ASHRC for justice, and the case was registered on November 19, 2009, bearing Case No. 7045/04. The commission, after very carefully examining the above complaints, gave the opinion that though the complaint had a strong basis, the commission could not proceed with the matter because of jurisdictional constraints, and having no other alternative closed the case on February 4, 2010. And therefore, I approached the NHRC for redress of my grievance. They dismissed my case stating that it was beyond the limitation period as it was a case from 1991, which is impossible since I myself had filed it in 2010. I have been facing a lot of harassment at my workplace, and am unable to bear it. So, I have resorted to taking voluntary retirement.

Discrimination with Disabled People

Assam

PARVEZ AHMED TALUKDAR

I Parvez Ahmed Talukdar, along with five other group members of our organisation HRLN, conducted a survey. In the survey, my group and I noticed the inadequate measures taken by the Traffic Police of Guwahati for the convenience and facilities of physically disabled persons. There was an absence of auditory signals at the red lights in the public roads for the benefit of visually handicapped persons, an absence of curb-cuts and slopes to be made in pavements for easy movement of wheel chairs for the benefit of wheelchairs users, a lack of devices with appropriate symbols for the benefit of disabled persons, and a lack of warning signals at appropriate places. The surface of zebra crossings and the edges of railway platforms had not been engraved for the benefits of the blind and persons with impaired vision. The absence of these facilities is a discrimination against physically challenged persons, and is violation of fundamental rights guaranteed under India Constitution.

For the reason stated above, in the year 2010, I along with my group filed a complaint before the ASHRC. The commission, after taking cognisance of the aforesaid complaint, issued a notice with a copy of the complaint to the Chief Engineer, PWD (Roads), requesting an enquiry into the above complaint and sumission of a report before the commission within 45 days. The commission also issued a notice with a copy of the complaint to the SP (Traffic) Kamrup, requesting it to inform the commission if any suggestions had been made by the traffic police to the PWD (Roads), to ensure that the above facilities for physically challenged persons were adequate.

Regarding the engravings on the edges of railway platforms, the commission cannot take any steps in this matter as the railway is a central government organisation, over which the commission has no jurisdiction. By this order dated March 25, 2011, the case has been disposed of and closed by the commission.

Inhumane Living Condition and Administrative Apathy

Dispur District

MD. HASAR ALI

I Md. Hasar Ali, Secretary, Ananda Nagar Christian Basti Nagarik Samity, Dispur, filed a complaint to the ASHRC, stating that the area of Dispur had been submerged under kneedeep water since February 16, 2006, due to a blockage of the natural exit channel of the public drain, and there had been a consequent accumulation of sewage. This was not only a major inconvenience, but also a public nuisance effecting health and hygiene. The locality and surrounding area has become a breeding ground for mosquitoes. Waterlogging has rendered wells in the neighbourhood unsuitable for domestic use. Urban water supply connections have become submerged under kneedeep sewage making them prone to contamination, and thus causing health hazards to consumers.

All these problems are a consequence of the blocking of the original natural exit channel of the public drain, downstream of the RCC Road culvert, located in front of the Christian graveyard, by unplanned construction of a multi-storeyed residential ownership flat building, named 'Ananda Enclave'. Thus, the promoter of this complex is liable to provide a suitable outlet to carry the entire runoff from the upper catchment. One wonders how permission for a multi-storeyed construction of more than sixty feet high, could be granted by GMDA on a major PWD Road, without making any provision for drainage and sewage disposal. It may be mentioned here that I, along with other aggrieved persons, have made several attempts since 2003 to convince various authorities in government and other public authorities to bring about the removal of the blockage of the original natural exit channel, but there was no response from the concerned authorities.

As a last resort, we filed a complaint on March 27, 2006 before the ASHRC (Case No. 5779/2006). The commission issued a notice to the DC Kamrup (Metro), the Commissioner, Guwahati Municipal Corporation, the Chief Executive Officer, GMDA and the Executive Engineer, PWD (Roads) City Division-1, with a copy of the complaint, and asked them to furnish a report before June 17, 2006. After receiving the various reports, copies of the reports were forwarded to me for my comments. Accordingly, I have forwarded my comments against two reports. After that there was no further communication from the commission.

I was informed by members of HRLN that the case was finally closed by the commission, vide order dated June 24, 2008, stating that I had not chosen to file any comments, which seems to suggest that my grievances have been redressed.

Police Inaction

Dhupdhara PS, Goalpara District

MD. DASKIMUDDIN SHEIKH

I Md. Daskimuddin Sheikh, R/o Dhupdhara, District Goalpara, filed a complaint petition before the ASHRC, making a serious allegation concerning the violation of human rights by the Officer-in-Charge of Dhupdhara Police Station, Mr. Someswar Dutta. I alleged in the complaint that the O/c had not executed the order of the Court of Session, Goalpara regarding allotment of a plot of disputed land covering Dag No. 45/56, Patta No.43 measuring six *bighas* and two *kathas*. When I approached the O/c of Dhupdhara regarding the execution of the order of the Sessions Court, Mr. Sameswar Dutta misbehaved, and then threatened to kill me. Being aggrieved, I approached the commission asking that they take necessary action against the police officer. The said complaint was registered as ASHRC Case No. 6/54/2007.

The commission called for a report from SP, Goalpara. In the report it was stated that, during the enquiry it transpired that on 13/02/2007 Basir Ahmed came to Dhupdhara Police station to hand over copies of an order passed by the executive magistrate, with the direction to execute the order of the sessions court, within seven days. It is further stated that I did not come to the police station. The report claims that the allegations that I met the officer-in-charge and that he misbehaved with me and threatened to kill me are baseless, and the order of the sessions court was executed on February 22, 2007.

But I was not aware of the report, as I did not receive any copy from the ASHRC. Hence, I could not give my valued comments. I came to know through HRLN that my case was closed on May 15, 2008, as the commission accepted the report submitted by the SP as true and correct.

Police Harassment of Woman

Sonapur PS, Kamrup District

KALPANA PATAR

I am Kalpana Patar, R/o Village Borkhat, Jalukbari, Sonapur PS, Kamrup, Assam. I have been earning my livelihood by selling tea, sweets and snacks in a small tea stall attached to my residence. On August 20, 2008, at 6:30pm, one ASI, named Pradip Baruah of Sonapur PS, came to my bedroom where I, along with my mother, was taking rest. The ASI tried to touch my private parts whereupon I raised an alarm. Then, the ASI and his accompanying police personnel destroyed some of my personal belongings including a bench, almirah etc. They also damaged my *puja* materials, and utensils for my restaurant like glass, dishes etc. I reported this to the ASHRC (Case No. 6702/2008). Acting upon the complaint, a notice was issued to SSP City, Guwahati for an enquiry to be completed into the matter by an officer not below the rank of DSP, and that a report be submitted before the commission. The enquiry was conducted by Sri Nabaneet Mahanta, DSP, Dispur Division, Guwahati.

The report of the DSP that was submitted states that, on August 22, 2008 at 12:40pm a telephone call was received by the O/c of Sonapur PS that requested that an officer be sent. Accordingly, the O/c of Sonapur PS sent ASI Pradip Baruah to report to the commandant. At about 1:40pm the ASI returned to Sonapur PS and informed the O/c that some people of Milanpur village were illegally selling wine and county liquor near the SSB camp, and in this regard the commandant had requested the ASI for taking necessary actions. Accordingly, the ASI, along with other staff, proceeded to Milanpur in order to search for the illegal selling of liquor. Upon the arrival of the police party all the persons involved in selling liquor fled, leaving liquor bottles, jarkins etc. The said ASI entered my house as a part of this search operation.

But I was not aware of the report as I did not receive any copy from the ASHRC. Hence, I could not give my comments. I came to know through HRLN that my case was closed on Novenber 15, 2010. ASHRC accepted the report of the police as true and correct.

Police Inaction

Basistha PS, Guwahati District

KISHAN GUPTA

My name is Kishan Gupta, S/o Sri Ramsurat Gupta, R/o House No. 45, Munchi Garage, Opposite Mikhul Outpost, Pattarkuchi, Beltola, Guwahati. On March 21, 2010, Mr. Tridev Sharma, accompanied by two other persons, suddenly entered my house while I was sleeping, and started to assault me for no reason. They then decamped with Rs. 7,000. In this connection, I went to Basistha Police Station at about 11:30pm. I was taken to Agile Hospital by the police for the treatment of injuries I had sustained during the incident. On March 25, 2010, I lodged an FIR at the Basistha Police Station. However, the police did not take any action in this matter. I took the matter to the ASHRC for enquiry and appropriate relief on April 21, 2010. It was placed before the commission on May 10, 2010, and the commission issued a notice along with a copy of the complaint to the SSP City, Guwahati, for an enquiry into the matter by an officer of the rank of an Addl. SP, and submission of a report before the commission within 45 days, i.e. on June 28, 2010.

The enquiry was conducted by a group comprising of Mr. Swapneel Deka, APS, Addl. SP, Headquarter, Guwahati, and Asst. SI Meher Khan, I/o Inspector Satadal Chandra Deka and staff. The group recorded the statement of the witnesses Mrs. Tulsi Devi, Mrs. Sadha Choudhary, and Mr. Monoj Singh. All the witnesses had heard that some altercations had taken place inside the house and that somebody had beaten me. The statement given by me was corroborated by the FIR, which was lodged on March 25, 2010. During the investigation, the accused stated that, on March 21, 2010, I called him to my residence to pay a loan which I owed him. According to his statement, as I refused to pay the money, both of us started an argument about the repayment of the loan, and out of anger, the accused slapped me. This report was forwarded to the commission by SSP City, Guwahati, under his covering letter dated May 29, 2010.

On the basis of the FIR lodged on March 25, 2010 at 7:55pm, vide GDE No. 1211, a case was registered vide Basistha PS, Case No. 137, U/s 447,323,379 of IPC. The I/o arrested the accused on March 26, 2010 in connection with the above case U/s 447,323 IPC, and he was released on bail bond, since no evidence could be collected against him U/s 379 of IPC.

The I/o found that the charge of stealing Rs. 7000 could not be proved. Further, it was mentioned that I lodged the FIR on 25-03-2010 but the incident had actually occurred on March 21, 2010.

The I/o had collected a medical report from Agile Hospital wherein Dr. Madhuparna Sharma opined the injury I had sustained as a simple injury. Moreover, when I first reported the matter at the police station on March 21, 2010. The fact about the stolen money was not reported by me, but it was mentioned in the FIR dated March 25, 2010.

After completion of the investigation, the case was returned in the chargesheet vide Basistha PS Case No. 98, dated March 26, 2010. Thus, it was found that during enquiry the group who had taken up the preliminary steps in investigation, had investigated the case appropriately and had taken action as per the law. The allegation brought by me that the police had not taken any initiative in the investigation of the case was not true.

The commission ordered me to furnish my comments on the report of the SSP, dated May 29, 2010, before August 7, 2010. But, I was not aware of the report as I did not receive any copy from the ASHRC. Hence, I could not give my comments. I came to know through HRLN that my case was closed by the commission, accepting the report submitted by the SP, as true and correct.

Police Inaction

Chandmari PS, Guwahati District

RIJU DAS

I Riju Das, R/o Amiya Nagar, Chandmari, Guwahati, filed a complaint petition before the ASHRC, that during the night of February 29, 2008, Mr. Jayanta Deka forcibly entered my house during the absence of my husband, and assaulted me by inflicting injuries, and also outraged my modesty. I filed an FIR at Chandmari Police Station regarding this incident, but the police refused to accept the FIR. Therefore, I approached the commission to seek justice. The said complaint was registered as AHRC Case No. 6525/2008. I came to know about the proceedings of the complaint by the commission from a member of HRLN, who approached the ASHRC and went through the details of the case, and informed me that the commission had issued a notice to the SSP City, Guwahati, requesting an enquiry into the allegations made in the complaint and submission of a report before April 24, 2008.

In due course of time, the commission received the report from the SSP City, Guwahati. In the report the SSP had stated that in the course of the enquiry they had consulted the available records of Chandmari PS, and had found no record of the lodging of any such complaint by Mrs. Riju Das. It is not a fact that Chandmari Police had refused to receive my complaint. In this connection the SP visited my house and took the statement of my father-in-law, who had stated that his daughter-in-law often created nuisance under the influence of liquor, and this incident was brought to the notice of Latasil Police Station. Accordingly, Latasil Police visited my house along with social workers. Upon the arrival of the police, I fled to avoid police arrest. On January 20, 2009, the commission closed the case accordingly. The enquiry team didn't even bother to take my comments during the entire investigation.

But the above mentioned report was not known to me until HRLN approached me. When HRLN approached me I came to know that the enquiry report was placed against me. But it is unfortunate that I did not get any information from the ASHRC regarding the complaint that I had filed with the commission.

EXPERT & JURY OBSERVATIONS

AJIT BHUYAN
Human Rights Activist & Journalist

I am an activist of the human rights movement and a journalist. The nineties were a period of gross violation of human rights in Assam, when armed forces were operating without restraint. I organised the common people, along with some of my colleagues, like Mr. Parag Das, and Adv. Niloy Dutta. We went to various parts of Assam, and collected data and generated documentation. We challenged the Indian Government. After a long struggle, the Indian government was forced to constitute the NHRC at the centre, and ASHRC in the states. Many human rights activists doubted their credibility from their very inception. Today, having observed their work, there is nothing left to feel other than disappointment. Thus, I admire your efforts to strengthen the human rights commissions by organising this public hearing. Your objective is noble and laudable.

Almost 70 percent of the population of Assam is living below the poverty line, and is uneducated. Having travelled through most of the rural areas of Assam, I have come to understand that people are unaware of their basic human rights. We tried to make them aware. We taught them the procedures to file an FIR with the police as soon as possible, and also how to collect all the necessary materials required for documentation. Yet awareness has not reached the requisite levels, even after all these years.

Personally, I feel that the appointment of judges to the commission out of political consideration is responsible for the state of the ASHRC. These kinds of appointments have generated concern all over India. As a journalist, I have published many reports on the ASHRC. It is in such a pitiable condition that they do not even have funds to procure a single paper clip. These facts are widely known and even the commission does not deny them. To speak plainly, they are simply penniless.

People have seen from their experience that the commission is basically toothless, and personally I don't feel it could accomplish anything special. It is basically a conspiracy to stop popular anger from turning into a revolution. The institution is in existence to do little more than to give international credibility to the Indian Government. In reality, they never meant to monitor or stop human rights violations. My personal experience with the commission has reinforced this opinion. I was arrested by the government four times, once secret killers even entered my house. But every time my brother's advocates argued in the court and got me acquitted. I personally have never been to the ASHRC. The last time I was arrested, was in 1997, and the ASHRC was formed 1996, thus it was already in existence. I filed an FIR with the police but no action was taken, because the secret killing was done under the guidance and patron-

age of the government itself. A mere officer-in-charge of a police station could not do anything about it. The high court has the power, and it can control the state government. But the commissions did nothing, as appointment to the commission is political in the first place. Secondly, there is political pressure. After each of my four arrests, the government could not file a chargesheet, even for a single case. I was accused of kidnapping, bomb-planting, murder etc. everything was done to send me to jail, but every time due to the failure in preparation of the charge sheet, I was acquitted.

I think, for the protection of our own human rights, the legal procedure is necessary. If the power to fight legally is not in our hands, we cannot carry forward the revolution of the protection of human rights. Legal fight and the revolution should go hand-in-hand, and I believe in this, as an activist. Today, if anything can control the tyranny of the government, it is only the mass revolution.

GAUTAM UZIR
Advocate

I was the lawyer in the Chamla Pathar case. I asked the complainant of the Chamla Pathar matter to take certain steps, like the filing of an FIR, filing representations to the SP, and even to file the case in the high court. In my opinion, the ASHRC does not have any power to implement rules and regulations regarding environmental issues. Thus, the victims should take the proper initiative through the procedure of law to make the state liable for the incident that took place in Chamla Pathar.

Human rights are not defined in the Act. It is not possible to interpret all environmental issues as human rights violations. Proper relief in environmental issues cannot be achieved through a commission such as a ASHRC. It can only be achieved with proper judicial procedure under regular courts of law and certain tribunals. The ASHRC is just a commission, and it has certain limitations. Thus, we cannot use the ASHRC as a substitute for the judiciary.

As an environmental activist, I feel that the human rights commissions can do little in environmental issues. For example, in the SC decision concerning the issue of famine mosquitoes in Assam, in which a commission was formed under the municipality corporation to look into the issue, which failed miserably. Thus, in my opinion, involving the judiciary is a better option than filing a case with the ASHRC. The ASHRC can only make suggestions to the government as to what to do and what not to do. Its recommendations are not mandatory. In my humble opinion, the commission is like a rehabilitation centre for retired judges, IAS officers and ACS officers. Once, I approached the ASHRC against an MLA, who raped a girl, which later resulted in the birth of a boy. The commission did not provide any relief. We had to approach the high court. The functioning of the commission totally depends upon the funds which come from the state. In my 26 years of experience, I have learnt of certain cases which were filed with the ASHRC, but were solved through money. The ASHRC has a long way to go, and to be a proper functioning body it will need proper implementation of the Act.

ANIL KUMAR BHATTACHARYA
Senior Advocate, Guwahati High Court

To me, the ASHRC is like a forum, where the government assures retired judiciary members a good post-retirement package. It is just a matter of 'work for the government and you will be rewarded'. Not all human beings are equally strong-hearted, and some may succumb to the pressures of life. Being human, we cannot expect everything from one another.

Unless something is done about the Protection of Human Rights Act, 1993, all the efforts put into research, and all the seminars on human rights being organised are futile. However, the effort put in by HRLN into the collection of data about human rights victims is commendable. With the collected data, HRLN can come forward with very strong recommendations. Maybe in the future, these efforts may bear fruit, and the victims may get justice. But for that to happen, the Act must be abolished for good or drastically amended.

The ASHRC is supposed to publish an annual report, but they do not do so. We know that in the case of the district magistrate and the sessions court judge, they have to submit an annual report on the cases they have disposed of, before the chief justice of the high court. Failure to do so could result in disciplinary action. Similar provisions are necessary in the case of ASHRC too. Secondly, the ASHRC lacks a statutory force, as is seen in cases of other statutory tribunals. For example, the central administrative tribunal, the state administrative tribunal etc., have the statutory power to punish individuals in cases of contempt or non-compliance of orders, but no such power has been given to the ASHRC.

The world is a complicated place, and what HRLN is doing in it, is admirable. If a person cannot protect himself and if he does not come forward by himself, it becomes impossible to work for society.

I will return from this seminar with a saddened mind, as I will be thinking of what I have done as a lawyer throughout my life. I did not apply my mind towards human rights as much as I should have, maybe because the Act, was enacted 45 years after the Universal Declaration of Human Rights (UDHR). The UDHR was signed so many years ago, that it may have lost its relevancy in the international forum. Pandit Jawahar Lal Nehru was there when UDHR was signed. So, when one is doing this job, one must asume, though it may sound negative, that all government agencies are against the upholding of human rights. If I was a chief minister, I would have created a stronger human rights commission. But, since this Union Act covers all the states of India, and as such, no state can have any other statute, one will have to follow the

present statute and abide by them, and the members of the commission cannot be blamed, because they are also bound by the same statutes. Also, they have no financial power. It's the same almost everywhere these days. In the consumer forum, the chairperson says to the lawyers: "You must come with your own papers, we cannot provide you with any. The chairperson passes a judgement on papers borrowed from the lawyers themselves".

It is my habit to always go to the root cause of the problem. I do not know whether that is right or wrong. But I can satisfy my conscience that I am looking in the right direction whatever the result may be.

As an organisation, what HRLN has to do is go to the victims, meet them, make necessary arrangements, send registered letters and, if required, publish them. TV channels can also make reports about those human rights violations, but what they cannot do is publish the names or telecast who is the victim or who is the accused. Telecasting a victim girl on TV is an absolute violation of her constitutional rights. Nobody can ask an accused to confess on TV or in an interview. It may happen in some cases that such an atmosphere is created wherein a man, not responsible for the crime, especially in those cases where capital punishment is given, may give in to pressure, and may even be hanged on the basis of his confession. When I was arguing in the famous Mahendra Nath case, I candidly told the judges that I am against the death sentence. These judges may give a death sentence but I do not understand what right these judges have to hang a person. They are the same people who asked a homeless lady to comment on a report, and now they think they can give a verdict to hang people. Right from my student career, I was completely against the death sentence. When a death sentence is given, twelve years will pass before the sentence is executed in reality, and during this time the person sentenced has to die every day. The President of India takes twelve years to decide whether to upheld the sentence or grant mercy. What he cannot see is that this mercy petition is not really merciful; it is just like deciding, one way or another, and letting the person live or be hanged as soon as possible.

I shall now conclude my speech, by describing the confession of two accused persons, in the famous case of Ranga and Birla, in Delhi. Both of them were sentenced to death, and the sentence was upheld by the Hon'ble Supreme Court of India. As per the requirement of law, they were asked for their last wishes. Both of them replied that they wanted to meet the Chief Justice of India. All over the world there was a clamour concerning their request, and everybody was asking what this was all about. The then Chief Justice of India, Y. V. Chandrachud, who was a great man, said why not fulfil their last wishes, as they too are citizens of the country. Furthermore, he asked for the convicts to be presented before him without handcuffs. The police chief asked what would happen to the security if the convicts were not handcuffed. The Chief Justice replied that the police may do whatever is necessary for his security within the room itself, because he was not willing to die at the hands of the convicts, but the police would have to bring the convicts to him without handcuffs. So, these two citizens of India wanted to meet the Chief Justice, who had confirmed their death sentence. The Chief Justice asked the convicts what they would like to have; '*thanda ya garam*'. Both of them replied, "Sir, *apne haathon se pani pila dijiye*". Secondly, one of them said that

"Sir, *dua kijiye jis kurshi pe aap baithe hain, main bhi baith sakoon agale janam main*". Thirdly, "*Aapne jo kiya theek kiya, hum logon ne yeh kasoor kiya hain*".

When I heard the story, I thought of how great those men were, yet they were going to die. The police had thought that those same convicts might attack the Chief Justice. Not that the police were wrong in thinking so, as it was their duty to look after the security of the Chief Justice. This is how human rights are being ruled out nowadays. If we go back to basics, we can see that no human being is inherently bad. Only circumstances make them so. If one goes through the background of a person who has attacked him, he may discover the situations that forced the other person to attack him. This is the reason why there is a commission in place, and one should go forward to analyse and check the laws, jointly with them. I don't know how many years I will be spared, but if somebody approaches me regarding human rights, I shall be happy to help her/him.

RAMESH BARPATRAGOHAIN
Associate Professor of Law

I express my sincere gratitude to the organisers for giving me the opportunity here to interact with people from such different walks of life. As a student of law, I realised that human rights education is an important aspect of education. That is why I always try to emphasise the fact that we should try to educate our future generations with sense of human rights and human values. Only then can we think about a better future for our society.

Starting from the charter of the United Nations, there are various international documents which we have signed and ratified, but we have not followed them up institutionally. Provisions in our Constitution mandate compliance with these international documents. For example; Article 51(C) of the Constitution imposes a duty on us to respect international documents. And also the parliament is imposed with the responsibility to make national laws in accordance with those international laws that fit our national values. Thus, in 1948 itself, when the United Nations Declaration on Human Rights (UDHR) was ratified, India was one of the pioneers of the UDHR. Yet, it took 45 years, and significant global criticism, for us to come up with our own Human Rights Act in 1993. I have noted on a number of occasions that this law is a defective law. The consequences of this defective law were in evidence when I heard the testimonies of victims as well as experts here today. The dignity of human life and human rights has been totally disregared by the process followed by the commission.

The Charter of the United Nations has declared that every person in the world must have a right to live with dignity. The first article says that everybody is born free with dignity. Now, dignity is a relative term, that is applicable relating to the different states of people. Say for example that I am a very ordinary person, ordinary in the sense that in the present system I am a beggar, I am a daily-wage earner, but I am entitled to have a right to live with dignity. For, me three basic things are necessary. The first is food, the second is clothing and the third is shelter, which every member of the United Nations is bound to provide to each and every citizen of their country. It is necessary to propagate this awareness. And that is why I advocate incorporating a basic course on human rights into our educational system, right from the primary level to the international level of education, so that at every stage, depending on the curriculum, the younger generation will know what human rights are, and how these human rights need to be protected.

We find constitutional functionaries taking oaths in the name of God in law, where there is no space for spirituality. But God is a symbol. The idea indicates the

value of humanity, and the sense of obligation towards the fellow people. You have seen how callous the members of these human rights commissions are. In one sense of course, the problem is with the law, because of which they are not in a position to deliver justice in an effective manner. But it is also possible to be effective within the limitations placed upon you.

When we talk about humanity, we somehow overlook talking about the relationship between rights and duties. I often come across people who talk about rights, their rights, but not the rights of others. Suppose, I am a millionaire, I have built a palatial home, and I am enjoying my rights with my friends, playing loud music. I tend to forget that my neighbours are also citizens. When one of them approaches and says: "Why are you doing this, I am not able to sleep?", I say that this is my money and I am enjoying it. Can one say that we are human rights conscious people? Thus, I urge that we must highlight the dependency of rights and duties.

In 1948 we signed this international document, which is binding under Article 51(c), and the Parliament under Article 253 of the Constitution, and we enacted many legislations, but with many loopholes and defects. In a national seminar, I had the opportunity to submit a paper on this subject, especially on the working of the NHRC. In my paper I submitted that this law should be totally replaced, and if not replaced, then it should be very carefully, meticulously amended. The government may or may not consider what is valuable to human rights. Then, I must suggest, that under the framework of the Constitution it is possible. For example, that the Supreme Court, under Article 32 of the Constitution, and the NHRC be joined, but that the NHRC be confined to dealing with human rights matters only; not service matters or anything of that nature, only the violation of human rights. Under Article 32(3) there is a provision that through the power that is enshrined in the Constitution of India, the Parliament, by making laws, can extend power and jurisdiction to any court; if this were done in the case of the NHRC then we could say that we have given a dignified status to the NHRC. But this power of enforcement should be totally independent, and also it should be accordingly regulated, as it is in most of the countries of the United Nations. Secondly, I suggest that as the high courts are constituted with these powers and can be confronted with regards to human rights issues, the SHRCs should also be made on a par with the high court, but confined with true jurisdiction to matters of violations of human rights. By talking to different sections of society, we should carry an academic message to the rest of the world. We are trying to take certain steps that may pave the way for social justice in India, and to the hope of Mahatma Gandhi, that every human being living in India would have a smile on their face, one day.

DR. WALTER FERNANDES
Eminent Activist

Twenty-two cases which had been heard by the ASHRC were heard by the Jury consisting of five people. A few common points emerged from these cases. These points can be of use to both the ASHRC, and to legal activists.

The first issue that emerges from the hearing is the enormous amount of faith that people who have suffered either real or perceived injustice still have. Some of them had suffered injustice from the police. So they quite rightly approached the ASHRC. But there are others, like Parvez Ahmed and others, and the case of Ms. Kusum Mahanta on poor maintenance of the road at Tezpur, whose grievances do not come under human rights. The former should have gone to the GMC for better facilities on the road for the disabled, and the latter to the department of environment, with a complaint about waterlogging. But either they are not aware of the correct procedure, or they have enormous faith in the ASHRC. One cannot fault the ASHRC for dismissing these cases, for not coming under human rights.

The second conclusion from the hearings is what looks like the callous attitude of the ASHRC, or possibly its bureaucrats. Many complaints are made against the police. But since the ASHRC does not have its own machinery for inquiry, it has to depend on the same police department to inquire about the complaint. The ASHRC is helpless in this regard. However, what follows after, shows some callousness.

A notice is served and no effort is made to ensure that the complainants receive it. Only one complainant, Barak Human Rights Protection Committee said that they had received a letter, and this they received five months after the deadline set for the reply. It came by ordinary post, and not by registered post or with a certificate of postage.

In the absence of a reply from the complainant, the police version is accepted without question, even when it is about alleged crimes committed by the police personnel. For example, the complaint of Mrs. Hemanta Kalita is against a Police Constable Nikunjay Medhi, demanding Rs. 50,000 and pointing his firearm at Mr. Kalita to demand that amount. The case was sent to the police for enquiry. The police enquiry report says that no such incident took place. There was no reply from the victim because he (Mr Kalita) claims that he did not receive any letter from the ASHRC. So, the case is closed without further enquiry. This is but one of many cases that came up for hearing.

Another example of callous behaviour is the case of Biman Kumar Bose. The commission took nearly fourteen years to give its judgement. After that long delay it

ordered a compensation of Rs. 20,000.

People from HRLN said that when they inquired about this matter with the ASHRC they were told that the ASHRC had posted the letters, and that they had not received any replies. But ASHRC had no record to show that they had in fact sent the letters to the complainants. This is surprising for a government organisation. Every department keeps a record of outgoing and incoming mail. ASHRC has no such record. One would be justified in surmising from this that the letters were not sent at all.

The lower level bureaucracy does not seem to have done its duty. The members would have been expected to find out why no reply was received from so many complainants. If they had inquired into this, they would have been able to remedy the situation. They would also have been able to find out whether it was a deliberate act of omission on the part of the staff. In that sense one tends to believe that the commissioners themselves have failed in their duty.

The third aspect that comes out of the hearings, is that the ASHRC takes a purely legalistic view of things. The instances given above demonstrative of this. A letter is supposedly sent to the complainant. No reply is received and the case is closed. This behaviour goes beyond all legal and ethical limits.

An example is the case of Dipak Gaur. The police enquiry report said that in his dying declaration, the Late Hridoy Kurmi had told the doctor that he was injured at 2pm, and Mr. Dipak Gaur had stated that he found Hriday Kurmi lying injured on the bank of the river Balichang at 12pm, and that the firing took place at 3:05pm. Therefore, he could not have died in the police firing. This report was accepted, without noting whether a dying declaration could be so accurate about the time, or whether there was a contradiction in the declarations of Mr. Hridoy Kurmi and Dipak Gaur. No reply had been received from the complainant and ASHRC did not make an effort to find out whether the complainant had received the report.

Another example is that of Jagannath Das. The police said that according to the police enquiry, the post-mortem report had said that the person had died of hepatic failure, and that the person had received appropriate treatment while in police custody. The ASHRC did not ask for the records of that treatment. The ASHRC did not ask how he could have died just four days after his release, after three months of detention. Was the hepatic disorder aggravated by neglect or by other causes?

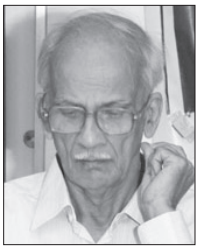
Another example is that of Ms. Leela Begum, who was allegedly killed, and was then hung to give it an appearance of suicide. The mother was driven out of her house and was living in the streets. The ASHRC knew that the woman was living on the streets, and yet closed the case because of a lack of reply, from a person living on the streets without an address. The *Barak Human Rights Protection Committee* received the letter from ASHRC long after the deadline fixed for replying to their letter.

These are among the cases of callousness, and of taking a purely legalistic view. The commission needs go beyond this view and take a human rights approach to the cases. It needs to ask whether the victims are in a position to reply, and if they have not replied why they have not replied. It needs to go beyond the letter of the law to its spirit of protecting human rights, which is the very reason for its existence.

Absence of a legal approach is the main issue found with the cases filed by most complainants. Most of them do not seem to have prepared a proper affidavit. Such, for example, was the case of the members of the media. Moreover, in hardly any case have the complainants followed up their case. One can understand this when the case concerns illiterates or persons living on the streets. But even the members of the media, who are educated, did not follow-up their case.

In other cases, the complainants may have been violating the rights of another person. For example, Mr. Rajesh Mahato complained that he got a bad name, because the hospital divulged the fact that he was suffering from HIV-AIDS. No proof was produced to show that the hospital divulged the news. More importantly, he had violated the human rights of his wife by transmitting the disease to her and possibly to their child. But his complaint was only about his own rights. His wife and child did not enter into his view.

An obvious conclusion from these cases is the task of human rights organisations. The ASHRC needs to go far beyond a purely legalistic perspective to a human rights perspective. Human rights activists have an important task to perform in the form of human rights education. Litigation and following up on the actions of the ASHRC are required, in order to improve their functioning. But that can never happen in the long run if the ordinary people are not aware of their rights and the procedures they must follow to secure these rights.



JUSTICE SK KAR

By going through the connected documents vis-à-vis the provisions of the Protection of Human Rights Act, 1993, it can be seen that the Act does not give any effective relief that can be sought under the Act, for victims of violations of human rights. It is opined that there should be clear-cut and detailed provisions in the Act, so that the aggrieved party can get appropriate relief under the Act.

There are also laws under which one can seek adequate relief in civil proceedings, but such procedures are time-consuming and expensive, so in the Act, there should be some guidelines on how to seek damages in the case of a violation of human rights.

The reading of the Act does not convict a person under the provisions of this Act, so one could seek adequate relief by way of approaching other forums. It is opined that if adequate relief is to be given to a victim of a violation of human rights, exhaustive procedures must be codified by amending the Act, if possible, with an appellate forum, for final adjudication.

Members of the human rights commission ought to be taken from different vocations, so that the verdict given by the commission may have a wide coverage of all aspects, depending on social status, earning capacity, loss of income, and other amenities that have been suffered by the victims of human rights violations.

I have observed, after hearing the statements made by the victims of human rights violations, that they have not been getting adequate/expected relief by agitating against the human rights authorities, although a long period has elapsed from the time they have approached human rights activists. This matter requires the immediate attention of all concerned and engaged in the protection of human rights and allied matters.

CHAPTER-III

Jury Report

BACKGROUND

The HRLN organised an Independent People's Tribunal on August 20, 2011, in Guwahati, in collaboration with several other human rights and civil society organisations. During the event several activists, as well as many victims, provided their testimonies to the panel comprising the following:

- Justice S. K. Kar, Retired Judge of the Guwahati High Court;
- Justice Meera Sharma, Retired Judge of the Guwahati High Court;
- Dr. Ramesh Barpatra Gohain, Academician;
- Dr. Walter Fernandez, Social Activist;
- Mr. A. K. Bhattacharya, Senior Advocate.

After hearing the depositions, the Jury finalised the following report on the ASHRC:

By going through the connected documents vis-à-vis the provisions of the Protection of Human Rights Act, 1993, it can be seen that the Act does not give any effective relief to victims of violations of human rights. It is opined that there should be clear-cut and detailed provisions in the Act, so that the aggrieved party can get appropriate relief under the Act.

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Members of the human rights commission ought to taken from different vocations, so that the verdict given by the commission may cover a wide range of aspects, depending on social status, earning capacity, loss of income and other amenities that have been suffered by the victim of the human rights violations.

We have observed, after hearing the statements made by the victims of human rights violations, that they have not been getting adequate/expected relief by agitating against the human rights authorities, although a long period has elapsed from the time they approached human rights activists. This matter requires the immediate attention of all concerned and engaged in the protection of human rights and allied matters.

Twenty-two cases which had been heard by the ASHRC were heard by the Jury, consisting of five people. A few common points emerged from them. These points can be of use to both the AHRC, and to legal activists.

The first issue that emerges from the hearing is the enormous amount of faith placed in the commission by people who have suffered either or perceived injustice. Some of them suffered injustice from the police. So quite rightly approached the ASHRC. But there are others, like Parvez Ahmed and others, and the case of Ms. Kusum Mahanta on poor maintenance of the road at Tezpur, whose grievances do not come under human rights. The former should have gone to the GMC for better facilities on the road for the disabled, and the latter to the department of environment, with a complaint about water logging. But either they were not aware of the correct procedures, or they have enormous faith in the ASHRC. One cannot fault the ASHRC for dismissing these cases, as not coming under human rights.

The second conclusion from the hearings is the appearance of the callous attitude of the ASHRC, or possibly of its bureaucrats. Many complaints are made against the police. But since the ASHRC does not have its own machinery for inquiry, it has to depend on the same police department to inquire about the complaint. The ASHRC is helpless in this regard. However, what follows after, shows some callousness:

— A notice is served and no effort is made to ensure that the complainants receive it. Only one complainant, *Barak Human Rights Protection Committee,* said that they had received a letter, five months after the deadline set for the reply. It came by ordinary post and not by registered post or with a certificate of postage .
— In the absence of a reply from the complainant, the police version is accepted without question even when it is about alleged crimes committed by the police personnel. For example, the complaint of Mrs. Hemanta Kalita is against a Police Constable Mr. Nikunjay Medhi, who apparently demanded Rs 50,000 and pointed his firearm at Mr Kalita upon demanding that amount. The case was sent to the police for enquiry. The police enquiry report says that no such incident took place. There was no reply from the victim because he (Mr Kalita) claims that he did not receive any letter from the ASHRC. So, the case has been closed without further enquiry. This is but one of many similar cases that came up for hearing.
— Another example of callous behaviour is seen in the case of Biman Kumar Bose. The commission took nearly fourteen years to give its judgement. After that long delay it ordered a compensation of Rs 20,000.

People from HRLN said that when they made inquiries concerning this issue with the ASHRC, they were told that the ASHRC had posted the letters, and that they had not received a reply. But the ASHRC had no record to show that they had in fact sent the letters to the complainants. This is surprising for a government organisation. Every department keeps a record of outgoing and incoming mail. The ASHRC has no such record. One would be justified in surmising from this that the letters were not sent at all.

The lower level bureaucracy does not seem to have done its duty. The members would have been expected to find out why no reply was received for so many cases. If they had inquired into this they would have been able to remedy the situation. They would also have been able to find out whether it was a deliberate act of omission on the part of the staff. In that sense one tends to believe that the commissioners themselves have failed in their duty.

The third aspect that comes out of the hearings, is that the ASHRC takes a purely legalistic view of things. The instances given above are demonstrative of this. A letter is supposedly sent to the complain-

ant. No reply is received and the case is closed. This behaviour goes beyond the legal and ethical limits.

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These are among the cases of callousness and of taking a purely legalistic view of things. The commission needs go beyond this view and take a human rights approach to the cases. It needs to ask whether the victims are in a position to reply, and if they have not replied why they have not replied. It needs to go beyond the letter of the law to its spirit of protecting human rights, which is the very reason for its existence.

Absence of a legal approach is the main feature of the complaints prepared by those persons seeking redress. Most of them do not seem to have prepared a proper affidavit. Such, for example, was the case of the mediapersons. Moreover, in hardly any case have the complainants attempted to follow-up their case. One can understand this when it concerns illiterates or persons living on the streets. But even the members of the media, who are educated, did not follow-up their complaint.

In other cases, the complainants may have been violating the rights of another person. For example, Mr. Rajesh Mahato complained that he got a bad name because the hospital divulged the fact that he was suffering from HIV-AIDS. No proof was produced to show that the hospital divulged this news. More importantly, he had violated the human right of his wife by transmitting the disease to her and possibly to their child. But his complaint was only about his own rights. His wife and child did not enter into his view.

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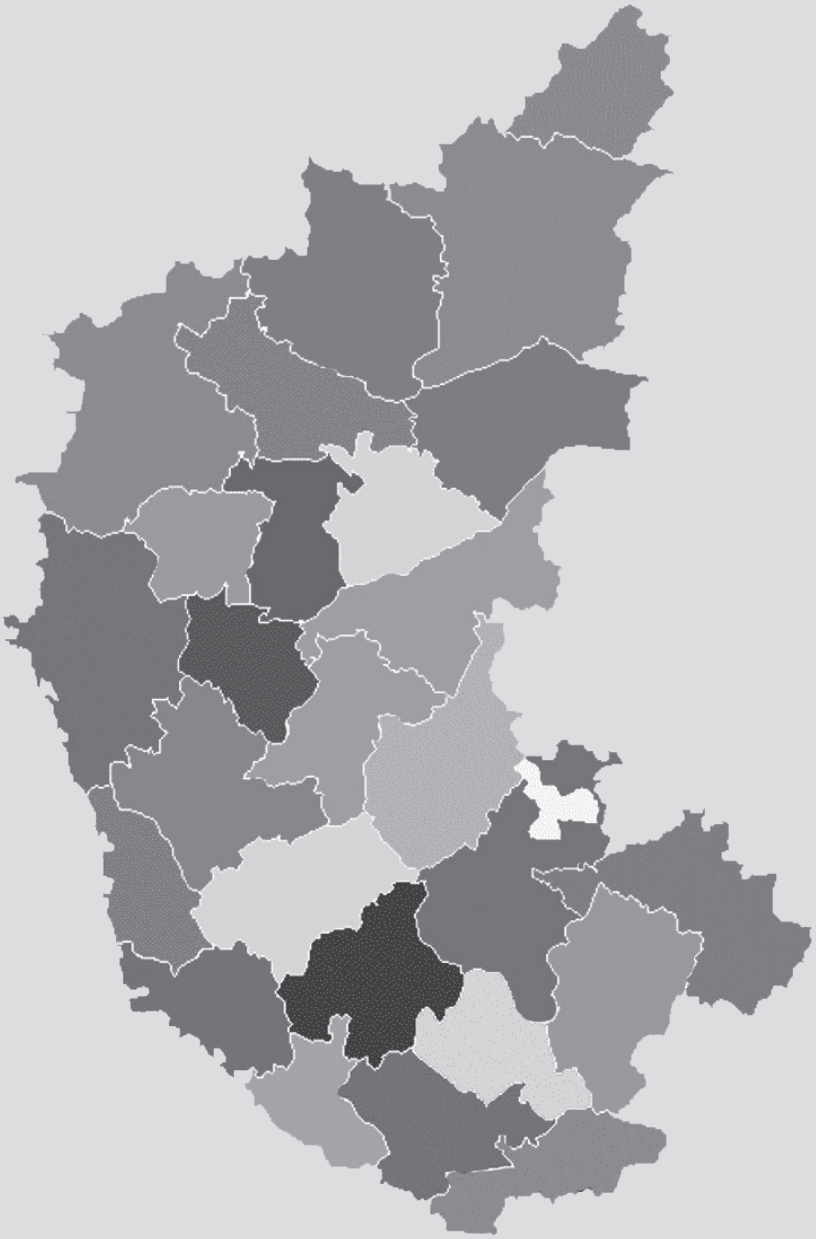


KARNATAKA

Mathew Jacob | Harsh Dobhal
Maya Cheringhandy Patteri

Sl. No.	03	City	Bangalore
Total Cases before Jury	35	**Date**	May 7, 2011
Jury: Mr. A.K Subbiah, Senior Advocate; Mrs. Hemalatha Mahishi, Senior Advocate; Mr. S Mariswamy, Retd. IPS Officer; Mrs. Lalitha Nayak, Former Minister and Social Activist; Brig. Murali Narayana Murthi, Retd. Army Officer			
Networking Groups Karavali Ale; People's Democratic Forum; South India Cell for Human Rights Education & Monitoring; People's Union for Civil Liberties; Karnataka Dalit Mahila Vedike; National Dalit Movement for Justice; Mangalore Secular Forum; National Confederation of Human Rights Organisations; Stree Jagruti Samiti			

THE INDEPENDENT PEOPLE'S TRIBUNAL ON THE FUNCTIONING OF
KARNATAKA STATE HUMAN RIGHTS COMMISSION

EXECUTIVE SUMMARY

ESTABLISHMENT OF KARNATAKA STATE HUMAN RIGHTS COMMISSION

Karnataka State Human Rights Commission (KSHRC) was established in July 2007. However, the KSHRC did not come into existence until fourteen years after the enabling Act was passed. The KSHRC came about thanks to the high court in 2006, which, whilst dealing with a case of custodial death, directed the state government to set up the commission within six months.[1] Prior to this court order, there had been many efforts to persuade the state government to establish the SHRC. For example, the NHRC requested that the state government constitute the SHRC during its meeting on May 13, 2005. However, it took two years and a court order to finally establish the KSHRC in July 2007.

Although the KSHRC represents a new resource for many human rights violation victims concerning redress, the state government renders it ineffective. The state government pulls many of the strings that force the KSHRC to be dependent on it. Furthermore, numerous testimonies and complaints in this report will show the lack of independent investigation on the part of the commission to help victims of human rights violations.

AUTONOMY OF KARNATAKA STATE HUMAN RIGHTS COMMISSION

Due to the overwhelming political influence in the decision-making process involved in electing commission members, no other factors are able to influence these appointments. In addition, there is no known procedure to follow when determining the appointment of the KSHRC's members.

Furthermore, two crucial tactics the government uses to keep the SHRC under its control is through staff and funding. The commission, in its annual reports, discusses the difficulties in discharging its duties due to a lack of staff. In addition, its staff come from other organisations and agencies, mostly from state governments or the police. Although the Act prescribes that 1 out of the 3 members must have a background in human rights which means they can be from any walk of life, there have not been any such instances in Karnataka since the inception of the commission, where someone outside of the state structure was appointed to the KSHRC.

Currently, the KSHRC is housed on 1625 sq. ft., on the 3rd and 4th floor of the M.S. building. Some 4,634 sq. ft. of the 1st and 2nd floor of the fifth phase of the same building complex has been allotted by the state government to the commission by an order issued on June 16, 2010. However, the commission has not yet received possession of the space. During an HRLN team visit it was found that the existing premises were inadequate. There was no space, to the extent that desks and files spilled into the cramped corridor. However, the commission has requested, through its first annual report, the allotment of the Park House and its annex buildings located near Vidahan Soudha. Although this

1. P. Hanumanthappa S/o Late Dasappa v Home Secretary, State of Karnataka (WP12606/2002) A report on the progress of the KSHRC, SICHREM (p. 13)

request was accepted, the government, in spite of several reminders, has taken no further action for the commission.

The commission is dependent on the state government for its funds to achieve its goals, but its third annual report which included balance sheets for two financial years, shows that the commission failed to utilise the money sanctioned by the state government in both years. In addition, there is no heading under which the expenditures were made by the commissions; thus, it is difficult to comment on the patterns of expenditure by the commission. According to the third annual report, the commission is understaffed. There were 53 posts created initially, which has now risen to 105. Of these 105 posts, 42 posts were vacant, while 25 are filled with people on deputation and 38 are contractual employees. Thus, the commission does not have any dedicated staff despite repeated requests.

Accessibility

One major requirement for a commission to fulfill its mandate is through being accessible to the public. KSHRC does not have a website. This is disturbing, because it makes information about the commission and its activities hard to come by. Having a website would make the KSHRC more efficient. It could display relevant information regarding complaints, complaint procedures, statistics, accounts, staff, contacts, recommendations, etc.

The greatest number of complaints received by the commission is from the Bangalore Urban district. These account for almost half of the total cases received by the commission, while the other half of complaints are from the remaining 29 districts. This is truly disturbing, because it demonstrates the inaccessibility of the office to people residing outside of Bangalore, because of factors such as distance, time, and cost.

Three Principle Divisions

There are three principle divisions in the SHRC: administrative division, legal division, and investigative division. The secretary of the commission heads the administrative division. The registrar heads the law division and the Inspector General of Police (IGP) heads the investigation division. Although, the administrative division keeps the machine running, the latter two departments do deal with some issues regarding accomplishing tasks.

Legal Division

The legal division is responsible for handling complaints. In recent years the number of complaints received had been enormous. Between April 2008 and March 2009, the commission received 5579 complaints with 3907 cases pending. This number rose between April 2009 and March 2010, with 8872 complaints, received by the commission, and 7800 cases pending. These statistics show that the commission is over worked and understaffed.

Investigative Division

The investigation division consists of only 25 people. The number of members in this department is not sufficient for the commission to investigate all the complaints. Due to the lack of staff, the common practice in handling complaints is to refer the complaints to the same jurisdictional police officers that the complaints are against. The Protection of Human Rights Act, 1993 (PHRA) power to the commission to independently investigate any human rights violation. Also, the commission has the power to utilise the services of any officers or investigation agency of the state government to investigate, with

the consent of the state government. However, the commission does not appear to use these provisions very often. In addition, they do not have any other investigative departments besides the one in the Bangalore Urban district.

There are many avenues that the KSHRC has at its disposal, but it does not use them. The commission has however acknowledged its lack of personnel. It has demanded a revision of the personnel in the investigative division. In addition, the commission has sent a revised proposal for the same. The proposal seeks 210 personnel spread across the state. However, the proposal seeks to fill these positions exclusively with police personnel. Numerous human rights groups favor a more diverse department to ensure the independence, sensitivity, and responsiveness of the investigation division.

RECOMMENDATIONS AND COMPLIANCE

After investigating a matter, the commission can issue an 'order' in which it makes recommendations to the state government. The order is not binding on the state government. However, there are ways in which the state government needs to comply whenever receiving an order from the commission. For example, on the receipt of an inquiry report and the accompanying recommendations, the state government is obliged to forward its comments to the commission, along with details of actions that have been taken or are proposed to be taken as a result of such recommendations. In addition, when placing the annual report of the commission before the state legislature, the state government also has a duty to file an 'Action Taken Report', setting out its reasons in the event that the recommendations of the commission are not complied with.

It is nearly impossible to get reliable data on the state government's compliance record concerning the recommendations made by the commission. Looking at the annual reports by the commission however, this information may be evaluated. In the first annual report submitted by the commission, five complaints were highlighted, however, the state government complied with the recommendations made by the commission in just one of these complaints. In the second annual report, there were ten cases highlighted as 'the important cases', nevertheless, there was no compliance by the state government. In addition, there were 16 recommendations made by the commission in the third annual report, but the state government complied with none of them.

In addition to investigating complaints, the commission is granted powers to further fulfill its goals and mission. Section 12(i) of the PHRA, 1993 obliges the commission to encourage the efforts of NGOs and institutions working in the field of human rights. However, the commission has done little to promote awareness of the safeguards available for the protection of human rights. For example, the commission has not issued any publications, or run any training sessions, to inform people of their rights.

POLICE VIOLATIONS AND KSHRC INEFFECTIVENESS

Custodial Death

According to a survey carried out by the *Asian Centre for Human Rights* (ACHR) in 2009, Karnataka has reported 69 cases of custodial deaths between 1999 and 2009. It also notes that in reality these figures could be much higher, as a large percentage of custodial deaths go unreported. Further, police routinely cover up custodial deaths by claiming that detainees 'committed suicide' or that they succumbed to illness.

Chapter IV, section 17, of the Act, grants the KSHRC the power to call for a report or information from the central government or any state government, or any other authority or organisation when inquiring into a complaint, with a specified time for the report or information to be completed. In addition, if the KSHRC does not receive the information or report within the time stipulated, it may inquire into the complaint on its own. Although this option is available to the KSHRC , it rarely employs this tool. This negligence by the KSHRC can be seen in two cases. For example, P. B. D'sa, President of the *People's Union for Civil Liberties* (PUCL), filed a complaint with the KSHRC about the death of Rakesh and Prakash Sorannanavar in the Sub-Jail of Mangalore and Udupi. In the case of Rakesh Rajesh, his death was due to the police officials of Mangalore, who neglected to provide him with timely treatment. Mr. Rajesh complained of a severe stomach pain, however, the jail authorities refused to take him to the hospital because of the unavailability of an ambulance. In the second case, regarding Prakash Sorannanavar, Mr. Sorannanavar was found dead by hanging in a Sub-Jail of Udupi. This case sparked interest, not only because P. B. D'sa doubts the police's official story, but also the newspaper report. Although the KSHRC registered the case and directed the Addl. Police Commissioner and Jail Authority, Bangalore on January 18, 2010, for a detailed enquiry and to submit the report within eight weeks, the outcome of the enquiry is unknown. This is a situation where the KSHRC should have begun its own enquiry into the complaint. The KSHRC directed the commissioner and jail authority for a detailed report on January 18, 2010, with a specific time of submission of eight weeks. It has been two years since the KSHRC called for this report, and there is no known activity occurring regarding this case. In addition, the KSHRC is granted the power to refer cases to the Supreme Court or high court to grant an order as may be deemed necessary.[2] Again, the KSHRC has failed to effectively use the tools provided to it by the Act to give victims of human rights violations any kind of redress.

Encounter Killings

One avenue taken by police officials to violate human rights is encounter killings. Article 21 of the Constitution establishes that: "[n]o person shall be deprived of his life or personal liberty except according to the procedure established by law." Encounter killings are common in Karnataka. Although the NHRC guidelines on encounter deaths mandate that in any case of so-called 'encounter' a FIR must be registered against those who caused the deaths, police officers often do not initiate this step, thus resulting in these crimes going unreported.

Chapter IV, Section 18 of the Act, requires the KSHRC, during or after an inquiry, to provide a copy of the inquiry report to the petitioner or his representative.[3] Although the KSHRC has this power, testimonies made by numerous victims demonstrate the KSHRC's unwillingness to provide such information to the petitioner or his representative. One particular case involves a 19-year-old boy, Mohammed Mukkaram Pasha. He was a drag racer, who was shot dead by army sentries at Flag Staff House, at around 1:45am. The KSHRC took *suo muto* cognisance of the issue based on a news reports in papers dated December 29, 2008. In addition, Mr. Prakash Kariyappa, a fact-finding coordinator for the *South India Cell for Human Rights Education and Monitoring* (SICHREM), filed a complaint with the commission regarding this case. On December 31, 2008, the KSHRC passed the following order:

The commission, having considered the issue in great elaboration thought it appropriate that the

2. Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006-No. 43 of 2006] Chapter IV, Section 18 (b)

3. Protection of Human Rights Act, 1993, [As amended by the Protection of Human Rights (Amendment) Act, 2006-No. 43 of 2006] Chapter IV, Section 18 (d)

commission itself should conduct investigation into the shooting before fixing liability on anyone. In that view of the matter, the commission unanimously authorised Sri. R. H. Raddi, member of the commission, to conduct investigation and inquiry into the shooting, and submit a fact-finding report to the commission, for further consideration, within a period of one month and list it on February 16, 2009.

Although the commission had set a specific time limit for the report, there has not been any response to Mr. Prakash Kariyappa regarding the complaint filed by him. Mr. Kariyappa has been waiting for a response for over three years. This inaction by the KSHRC demonstrates their failure to initiate an investigation in these matters. Furthermore, this late response is inexcusable due to the multiple procedures at the KSHRC's disposal. For example, the KSHRC can call for a report or information from other agencies with a deadline to respond. Moreover, the KSHRC has the authority to approach the Supreme Court or the high court concerned for such directions, orders or writs as the court may deem necessary. Despite these functions, the KSHRC has failed to effectively use its powers and continues to ignore victim's complaints.

Arbitrary Arrest, Illegal Detention and Torture

Article 5 and Article 9 of the 1948 Universal Declaration of Human Rights establishes that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and "no one shall be subjected to arbitrary arrest, detention or exile." However, law enforcers in Karnataka consistently violate both these articles. For example, in an interview with *Human Rights Watch*, a Bangalore police officer admitted:

"We do use some extralegal methods. You might disagree, but we cannot do all the work by the book. Then the police would be completely ineffective." (HRW 2009)

Even though police officials are committing human rights violations, there is no consequence for their actions. In many instances, when a complaint is filed with the KSHRC, the same police officials who are charged with the crime compile the inquiry that than results in the commission concluding that no violation occurred.

The provisions in the Act, allow the SHRC to inquire into the person or persons who conducted the investigation in order to understand how the investigation ended with a certain conclusion. Although this tool has been bestowed upon the KSHRC, it is rarely employed. For example, in cases where individuals suffer from abuse or torture by police officials, many of their complaints are dismissed due to the inquiries investigated by the same officials who are charged with the allegations of abuse. This can be seen in the testimony given by Atul Rao. In this case, Atul Rao was in judicial custody, where he was allegedly assaulted in jail by other prisoners. The PUCL lodged a complaint with the KSHRC dated July 4, 2008, concerning criminal assault. The KSHRC, using one of its bestowed powers, directed the Inspector General, Western Range, Mangalore, to conduct an investigation and submit a report within two weeks from the date of receipt of notice. The Inspector General, Western Range, and Mangalore submitted a report on August 19, 2008, stating that the enquiry conducted by the DSP Udupi Sub-Division stated that a few prisoners were playing carrom with Atul Rao in his cell. An argument broke out, and a fight took place among the prisoners in Atul's cell regarding the murder of MLA's wife. Although this was the report that was submitted to the KSHRC, numerous newspapers reported a different story. It was reported by the newspaper that Atul Rao was tortured in prison, and that there was a threat to his life. However, the commission in its final order dated March 11, 2010, disposed of the complaint. This case shows a discrepancy between what was reported by the DSP Udupi and what many other sources believe happened to Atul Rao. In such an instance, the KSHRC missed

an opportunity to use its power to investigate or inquire into the investigation carried out by the IG, Western Range, and Mangalore, in order to understand the conclusion that came about in their report. Instead of inquiring into the report given by these organisations, the KSHRC has demonstrated a lack of pursuance of the truth that results in victims having no redress from human rights violations.

This lack of pursuance by the KSHRC can also be seen in the testimony given by Raheem Ujire. In this case, Mr. Suresh sent an email to the KSHRC regarding the torture conducted by police officials upon Mr. Raheem Ujire. On February 2010, SI Pramod Kumar of Bajpe Police Station confronted Mr. Raheem at Kaikamba Junction, and started asking him various questions. Mr. Raheem informed the police officer that he was a TV reporter for Kasturi Channel, however, the police officer forcefully took Mr. Raheem to Bajpe PS and made him sign a false statement. The KSHRC registered the complaint and directed the IGP, Western Range, Mangalore, for a report. After receiving the report from the organisations, the KSHRC made a decision to dismiss the complaint, although it never received comments from the complainant. This case is an example of the KSHRC taking the reports submitted by the Inspector General of Police, Western Range, and Mangalore, as the truth, and considering nothing else. The KSHRC does not attempt to investigate any further into the complaint, nor does it question the conclusion obtained by these organisations. Again, here is an example of the KSHRC's failure to help victims of human rights violations to obtain redress.

Violation of Human Rights of Women and Children

Another human rights violation commonly practiced in Karnataka is excessive use of force by police officers against women and children. For example, the National Crime Records Bureau (NCRB) recorded 6569 incidents of crime against women in Karnataka during 2007. Unfortunately, in many cases where crimes are committed against women, the perpetrators are police officers. However, prosecution of the culprits rarely occurs.

Section 12 of the Act states: "[t]he commission shall perform all or any of the following functions, namely: (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant."

However, numerous testimonies demonstrate that the KSHRC has not started or initiated any investigation after receiving a petition from a victim. For example, in the case of Deepa, who was hung in a police station and severely beaten on her hands, legs, and back for more than an hour by police officials. She filed a complaint with the the KSHRC on January 20, 2011. However, she has not received any registration regarding her complaint, nor has the commission given any acknowledgement of the same. This demonstrates the ineffectiveness of the state commission to initiate an action. With regards to Ms. Deepa, it's been almost two years since she filed a petition with the KSHRC.

Although the KSHRC has been vested with this power, numerous cases demonstrate its failure to send its recommendations to the concerned authority, due to its lack of pursuance of a full investigation after receiving a report from an organisation or authority. This can be seen in the case of Smt. Savitha (HRC No. 3174/2010). She was verbally and physically abused on the street in Bangalore by an ASI police officer. She was threatened with arrest, although she had committed no crime. On May 3, 2010, the KSHRC registered a complaint against the offending officer. However, the KSHRC directed the police to enquiry into the matter, rather than an independent and unbiased investigator. Unsurprisingly, the report submitted by the police denied the entire incident. Since receiving the report, there has been no proceeding thereafter. This is an example of the KSHRC not fully complying with its obligations

and duties. Although the KSHRC has the power to send a copy of its inquiry report together with its recommendation to the concerned authority, they have yet to comply with this duty. It's been two years since this complaint was filed and yet the victim has no reason to believe that anything is going forward or proceeding. The KSHRC has been bestowed with the power to investigate the police officers who conducted the report.[4] In this case, one might think that there is an obvious bias present, given that police officers conducted an investigation of human rights violations committed by other police officers. This is yet another example where the KSHRC did not use its tools to investigate thoroughly into an incident. In addition, one may argue that although the KSHRC may have felt satisfied with the results of the police report, they are obligated when receiving a report and making that determination to at least inform the complainant of their decision.[5] Although the KSHRC has this duty, the complainant never received any confirmation or determination regarding her complaint. This further shows the KSHRC's lack of pursuance with an investigation into a complaint.

Violation of Human Rights Against Minority Groups

Before the creation of the Indian Constitution in 1950, India had in place a caste system among its citizens. Although the Indian Constitution abolished the caste system in 1950, an estimated 160 million dalits are denied access to land, forced to work in degrading conditions and continuously abused or even killed by the police and higher caste groups. (HRW, 2010)

The provisions in the Act, allow the KSHRC to inquire into the person or persons who conducted the investigation in order to understand how the investigation ended with a certain conclusion. Although this may be a tool that has been granted to KSHRC, it is rarely employed by the commission. This can be seen in cases regarding violations of human rights against minority groups, for example, in the case of a 23-year-old girl who was kidnapped by a BJP leader and JDS leader from her home on May 3, 2008. A complaint was filed with the commission. Although the commission sought a detailed report from the SP, North Kanara District, the KSHRC disposed of the complaint, claiming that it was being dealt with by the police. This is another example in which the KSHRC takes no further action into a complaint, regardless of the fact that it referred the complaint to the same jurisdictional police officers against whom the complaint was made. The KSHRC has the power to independently investigate the person or persons who conducted or assisted in the investigation, and when police officials conduct reports it would be negligent of the commission not to do so.

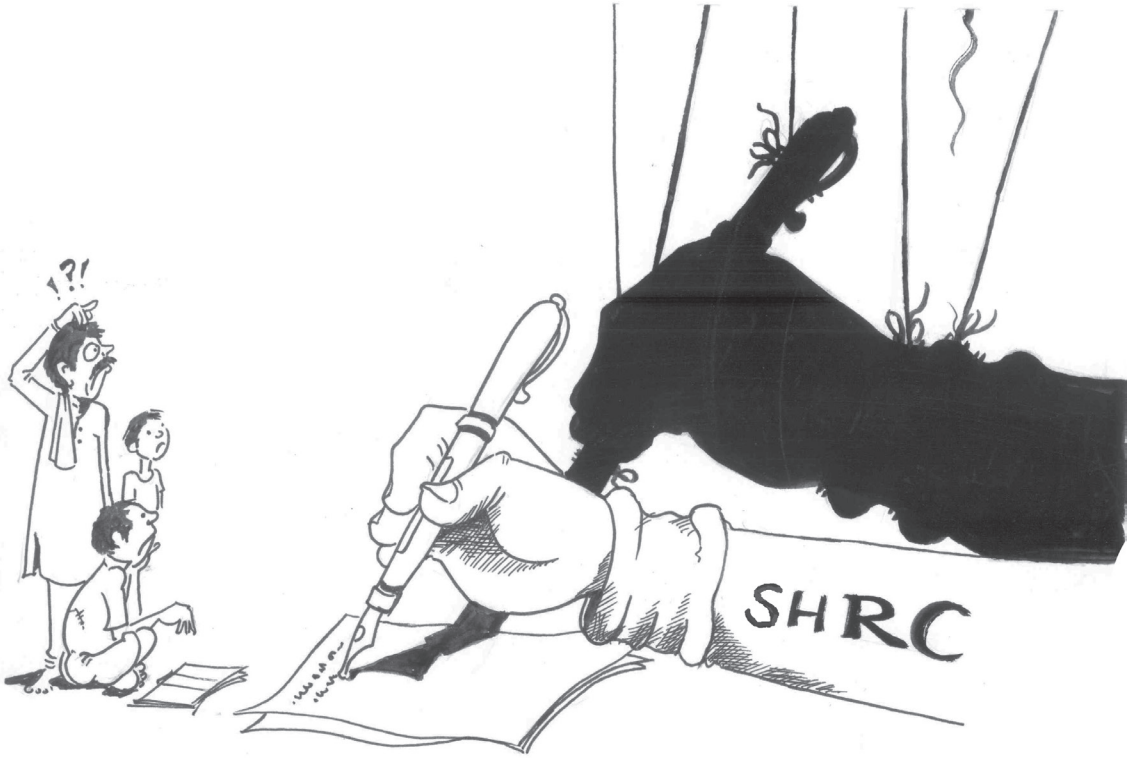
Furthermore, testimonies from numerous individuals demonstrated the nature of the human rights violations committed against Muslim groups. For example, Mohamed Fouse, an advocate by profession, filed a complaint on January 16, 2010, with the KSHRC, stating that on December 13, 2009, on the pretext of road expansion and further action as per the law, Muslim households and mosques were attacked by a group of twenty government officials. In this action, women, children, and elderly people were dragged from their households and forcefully taken to the police station. Mr. Fouse's complaint was registered by the KSHRC on February 16, 2010. The commission directed the SP, Mandya District, to conduct a detailed report regarding the incident and to submit the report within eight weeks from the date of the receipt of the notice. After receiving the report, the commission directed Mr. Fouse to submit comments within four weeks from the date of receipt of the notice. Mr. Fouse's comments

4. The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006-No. 43 of 2006] Chapter III, Section 14(5)
5. The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006-No. 43 of 2006] Chapter IV, Section 17(b)

described his disappointments over the biased inquiry conducted by DSP, Mandya District. Taking this into consideration, the commission transferred the review to the IGP which upheld the earlier report submitted by the SP. The commission then decided in its final order dated March 9, 2011, to dispose of the complaint. This is another example of the KSHRC failing to question the report submitted to it by the SP. This was a chance for the KSHRC to conduct an independent investigation of the SP regarding his/her results.

CONCLUSION

Since the establishment of the KSHRC, there have been numerous problems when dealing with petitions and complaints. There are two major reasons for the KSHRC's ineffectiveness. One is the dependence the commission has on the state government to effectively conduct its goals and missions. The commission understands that in certain areas it needs to improve, however, this improvement is not possible unless the government funds the commission sufficiently. The second issue the commission has, is the procedure it follows in inquiring about a petition or complaint. The testimonies throughout this report highlight this issue. On too many occasions, the commission, after registering a complaint, directs an organisation or authority to conduct a report on a specific incident when that organisation or authority may be the same entity that the allegations have been made about. Although the commission is granted the power to conduct independent investigations and to use other tools to help effectively inquire into a report, the commission would rather allow these organisations to conduct a report, and let the report be the basis of deciding whether there was any human rights violation or not. Until there is a drastic change within the functions and operational structure in the KSHRC, victims will continue to receive lack luster help from the state commission, and offenders will continue to violate human rights impunity.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SHRC

THE INDEPENDENT PEOPLE'S TRIBUNAL JURY PANEL

SOCIAL AUDIT REPORT

CHAPTER-I

Patterns of Violations and Functioning of KSHRC

INTRODUCTION

The South Indian State of Karnataka is known for gross human rights violations, and a vibrant human rights movement. The following report is a testimony of this fact. It hopes to paint a portrait of the working of the KSHRC. The KSHRC was established in July 2007, a good fourteen years after the enabling act came into existence.[1] It came into being after a long struggle by human rights activists. In December 2006, the high court, while dealing with a case of custodial death, directed the state government to set up the commission within six months[2]. There had been efforts to persuade the state government to constitute a SHRC earlier. For instance, the union home ministry wrote to the Chief Minister of Karnataka on January 18, 1999 to constitute the SHRC; once again NHRC requested the state government to constitute the SHRC during its meeting on May 13, 2005. After much coaxing, the government ordered the Constitution of the KSHRC in June 2005.[3] However, it took two years and a court order to finally constitute the commission in July 2007.[4]

Having brought the KSHRC into existence, the state government than did all that it could to render it ineffective. The broad contours of this process were well-laid by the way the union government handled the NHRC.[5] The most important of

1. PHRA (1993), Section 21
2. P. Hanumanthappa s/o Late Dasappa v Home Secretary, State of Karnataka WP12606/2002) A report on the progress of the KSHRC, SICHREM (pg. 13)
3. GO No. LAW 20 LAG 05, dated 28.06.2005.
4. As interpreted from the KSHRC's first annual report.
5. *NGO Parallel Report on the Compliance of the Paris Principles by NHRC India* for a detailed account of the ways the institution is undermined at the union level.

these moves was to deny the commission any independence from day one. The Paris Principles clearly indicate that independence of the commission from the government is paramount for fulfilling its mandate.[6] They hold that proper procedure for the appointment of members of the commission; pluralism in the commission; expertise, commitment and empathy among the members of the commission; financial independence etc. are all indispensable for ensuring the independence of HRCs. The enabling act and the government have systematically violated each of these principles.

KARNATAKA STATE HUMAN RIGHTS COMMISSION

AUTONOMY OF THE COMMISSION

Section 22 of the Act lays down a procedure for the appointment of chairperson and members of the SHRCs that is thoroughly compromised as per the Paris Principles, and pays scant regard to it. The committee that appoints the chairperson and the members to the commission comprises of the chief minister, Speaker of the Legislative Assembly, the home minister and the leader of the opposition in Legislative Assembly.[7] This is a committee who's majority from the ruling formation only, and is essentially comprised of people from the political establishment, with no representation from civil society groups active in human rights protection. Further, there is no known procedure that this committee follows in choosing SHRC members. As a consequence, the selection of the appointees to the commission is always arbitrary and politically skewed.[8] Thus, in October 2011, Amnesty International, in its recommendations on the effective protection and promotion of human rights, stressed the need to have senior leaders of proven quality and independent stature in SHRCs, because they are of great significance, as they set the tone of the activities of the institution as a whole.

Further, unlike the NHRC which has chairpersons of the National Commissions for Minorities, Scheduled Castes, Scheduled Tribes and Women as *ex officio* members of the commission, the SHRC does not have a similar provision with respect to the analog bodies at the state level.[9] This, along with the utter insensitivity of the appointing committee, denies any pluralism in the composition of the SHRC. Thus, till date, there has never been a single woman member appointed to the commission.[10]

A further tactic adopted to keep restrict the commission is to control its finances and deny it dedicated staff. The SHRC has constantly been seeking autonomy from the state in these respects. Thus a recent annual report of the commission says, "It may be kindly noted that the SHRC is a body constituted under central statute. The government may examine the service conditions that are now framed

6. The second section of the Paris Principles entitled 'Composition and Guarantees of Independence and Pluralism'
7. Section 22 of The Protection of Human Rights Act, 1993
8. From Hope to Despair, People's Watch (p. 14)
9. Section 3(3) of The Protection of Human Rights Act, 1993
10. A report on the progress of the KSHRC, SICHREM (p. 14-15)

in the light of what has been done in the case of Lokayukta, State Election Commission, Karnataka Administrative Tribunal, State Information Commission, Karnataka Public Service Commission and the law commission. Even though the Act gives power to the state government, it has to consider all aspects and also the rules that are framed in similar commissions, both in the state and elsewhere."[11]

Further, the commission, in all three annual reports tabled so far, has constantly talked of the difficulties in discharging its duties due to a lack of staff. It has even requested that the state chief secretary provide the commission with the services of the *Civil Rights Enforcement Cell* for investigative purposes. Since most of the staff are deputed from the state government or the police, the independence of the commission is seriously compromised. On the rare occasions when the commission ends up with a decent bureaucrat, they are transferred arbitrarily without the consent of the commission. For instance, when the services of the Secretary, Sri Ramamurthy, were withdrawn, he was replaced by Sri Ganeshan without any consultation with the commission.

The Act itself prescribes that only one person, out of the three members of the commission, need to have human rights experience.[12] This person could be picked up from any walk of life. However there haven't been any such instances in Karnataka since the inception of the commission where someone from outside of the state structures was appointed to KSHRC.

INFRASTRUCTURE FOR THE COMMISSION

One of the principle problems with the Act, is that it gives the government the keys to the treasury of the commission. It imposes no minimum obligations on the government's allocation of resources to the commission. Section 33 of the Act holds that, "The state government shall, after due appropriation made by Legislature by law in this behalf, pay to the state commission by way of grants such sums of money as the state government may think fit for being utilised for the purposes of this Act'.[13] This leaves the commission totally at the mercy of the government for its physical, financial and human resources. We will discuss all these three aspects in turn in the succeeding paragraphs/lines.

The commission is currently located on 1625 sq. ft. of space on the 3rd and 4th floor of the M.S. Building. Some, 4,634 sq. ft. of the 1st and 2nd floor of the fifth phase of the same building complex has been allotted by the state government to the commission, by an order issued on June 16, 2010. However, the commission does not yet have possession of the space.[14] During HRLN team visits to the site, it was found that the existing premises were hopelessly inadequate. Since the rooms cannot accommodate the entire staff, they spill into the cramped corridors with their desks and files. The commission has been asking the state government, ever since its inception, for a separate building for its office and a dedicated place to accommodate the citizens who approach it with complaints from far-flung parts of the state. In its first annual report, the commission requested that the government allot the Park House and its annex buildings (which housed Karnataka Public Service Commission previously) located near Vidhan Soudha to the commission. This request was accepted by the chief minister in 2005, but then no further action was taken by the government in spite of several reminders from the commission.[15]

There is very little information available regarding the finances of the commission. The third annual

11. The KSHRC's third Annual Report (p. 3)
12. The Protection of Human Rights Act, 1993, Section 21 (2) (c)
13. The Protection of Human Rights Act, 1993, Section 33 (1)
14. The KSHRC's third Annual Report (p. 2) and as observed during the visit to the commission
15. Commission in all the three Annual Reports have constantly asked for more space for it to operate

report of the commission had balance sheets for two financial years. It showed that the commission failed to utilise the money sanctioned by the state government in both years. The financial reports do not show the heads under which the expenditure was made. Thus it is difficult to comment on the patterns of expenditure by the commission.

According to the third annual report the commission was grossly understaffed. Creation of posts at the commission pre-dates the inception of the commission. Thus the commission never had an opportunity to determine the number of staff that it needs to carry out the task. It has to make do with what the state government decides to hand down to it. There were 53 posts created initially, which has now been pushed up to 105. Of these 105 posts, 42 posts are vacant, while 25 are filled with people on deputation and 38 are contractual employees.[16] Thus, the commission hardly has any dedicated staff, in spite of repeated requests. It is indeed commendable that the KSHRC managed to submit three annual reports and get them tabled in the Legislative Assembly annually without fail unlike the other SHRCs, with their skeletal staff.

Some of the workload of the commission could have been handled better if the commission had a well designed multi-lingual website. Ironically this SHRC, which is located in the Mecca of information technology in India, does not have a website. This makes information about the commission and its activities hard to come by, and also makes interaction with the commission difficult for the general public. The commission should have a website which provides information on all the cases, and all the relevant information regarding complaints, complaint procedures, statistics, accounts, staffs, contacts, recommendations etc. The difficulties the public face were sampled first-hand by this researcher when he had to make repeated trips to the office to gather information that should have been available without hassle.

According to Section 21(3) of the Act, the Chief Executive Officer (CEO) of the SHRC is the secretary to the commission. There are three principle divisions in the SHRC: the administrative division, the legal division and the investigative division. The administrative division is headed by the secretary of the commission. The law division is headed by the registrar and the investigation division by the IGP. While the first division keeps the machine running, the other two are the most important in terms of accomplishing the tasks of the commission. We shall take a closer look at them.

LEGAL DIVISION

The legal division is responsible for handling complaints. Usually, it takes a year to dispose of a case once a complaint is lodged. In the period between July 2007 and March 2008, the commission received 1872 complaints; this number increased to 5579 in the period between April 2008 and March 2009. At the end of March 2009, there were 3907 pending cases as compared to 905 in March 2008. The number of complaints received during the period of April 2009 – March 2010 was 8872, and the number of pending cases at the end of March 2010 had increased to 7800. Almost 4979 complaints were disposed of in the year 2009-2010. These statistics shows that the commission is over-worked and understaffed.

Furthermore, the commission had occasionally taken up *suo moto* cases over the years. The current trend is to resort to this kind of intervention more often. This kind of active interest in safeguarding human rights within its territorial jurisdiction is highly welcomed. During the year 2007-2008, 92 *suo moto* cases were taken up; in the year 2008-2009 that number was 1,264; and in 2009-2010 it rose up

16. As mentioned in the third annual report of the KSHRC (pg 6-7)

to 2,477 cases. The table below represents the complaint matrix of the commission since its inception. Around 40 percent of complaints are pending, amounting to a huge backlog.

YEAR	PERIOD	RECEIPTS	SUO MOTU	DISPOSAL	PENDING
2007	01.07.2007 – 31.12.2007	890	33	871	19
2008	01.01.2008 – 31.12.2008	4903	1035	4559	344
2009	01.01.2009 – 31.12.2009	8177	2201	5333	2844
2010	01.01.2010 – 31.12.2010	8903	1827	4060	4843
2011	01.01.2011 – 28.04.2011	2657	365	420	2237
GRAND TOTAL		**25530**		**15243**	**10287**

(Source: RTI response furnished by KSHRC)

The greatest number of complaints received by the commission is from the Bangalore Urban district. They account for almost half of the total cases received by the commission, while the rest are from the remaining 29 districts of the state. Clearly, access to the commission within the city made a difference to the number of reported cases of human rights violations. The commission is inaccessible to the people residing outside of Bangalore because of factors such as distance, time and cost. But the commission is not blind to this fact and has acknowledged this in one of its requests to the state chief secretary. The commission asked the government to make the services of the civil rights enforcement cell available to it, which has its offices in all the districts of the state, till such time as the commission has the required staff and infrastructure to conduct its independent investigation.[17] Another reason for more complaints being registered from Bangalore could be the presence of more human rights organisations in the city compared to other districts. A district-wise complaint matrix for the year 2009-2010 can be seen in the table below:

Sl. No	Name of the Districts	Complaints pending as on 31.03.2009 (2008-09)	Complaints received from April 09- March 10 (2009-10)	Total of 3 & 4	Complaints disposed from April-09 to March-10 (2009-10)	Pending as on 31.03.10 (2009 – 10)
1	2	3	4	5	6	7
1	Bangalore Urban	1435	3440	4875	2822	2053
2	Bangalore Rural	82	236	318	92	226
3	Bellary	232	265	497	91	406
4	Belgaum	136	336	472	168	304

17. As mentioned in the third annual report of the KSHRC (p. 64-65)

5	Bagalkote	65	153	218	63	155
6	Bijapur	106	263	369	118	251
7	Bidar	41	63	104	22	82
8	Chitradurga	66	105	171	59	112
9	Chikmagalur	94	104	198	43	155
10	Chikkaballapur	36	130	166	68	98
11	Chamarajanagar	23	89	112	18	94
12	Davanagere	80	158	238	69	169
13	Dharwad	84	230	314	121	193
14	Dakshina Kan-nada	258	404	662	156	506
15	Gadag	25	73	98	28	70
16	Gullbarga	86	225	311	96	215
17	Hassan	105	175	280	94	186
18	Haveri	53	80	133	42	91
19	Kolar	65	146	211	62	149
20	Koppal	17	83	100	42	91
21	Kodagu	43	57	100	28	72
22	Mysore	166	418	584	178	406
23	Mandya	58	120	178	48	130
24	Raichur	39	94	133	35	98
25	Ramanagar	65	244	309	55	254
26	Shimoga	70	205	275	72	203
27	Tumkur	114	273	387	102	285
28	Uttara Kannada	211	534	745	131	614

29	Udupi	52	168	220	55	165
30	Yadgir	-	1	1	1	0
	Total	**3907**	**8872**	**12779**	**4979**	**7800**

(Source: KSHRC Annual Report 2009-10)

INVESTIGATIVE DIVISION

The Investigation division consists of only 25 people. The distribution of this staff is as follows:

Sl. No.	Designation of the Post	No. of Posts
1	Inspector General of Police	1
2	Deputy Superintendent of Police	1
3	Section Superintendent	1
4	First Division Assistant	1
5	Stenographer	2
6	Head Constables	2
7	Police Constables	2
8	Typist	1
9	Drivers HCs/PCs	3
10	APC(Orderlies)	4
11	Dalayaths	7

This staff strength is not sufficient for the commission to investigate all the complaints using its own staff. Thus it is a common practice that, when complaints against the police need to be investigated, such complaints are referred to the same jurisdictional police officers against whom such complaints are made.[18] Under the Act, the commission has the power to independently investigate any human rights violation; if the relevant authority does not deliver its report on time or if that report is not deemed satisfactory, the commission also has the power to utilise the services of any officer or investigation agency of the state government to investigate, with the consent of the state government. But the commission does not appear to use this provision very often, as it doesn't have investigation departments in other districts apart from Bangalore Urban. The commission falls back on the very same jurisdiction, i.e., the police against whom the complaint is lodged, to conduct the investigation[19]. The commission has asked the state government for a revision in the personnel in the investigation division, and sent a revised proposal for the same. The proposal seeks for the appointment of 210 personnel in the state, for the investigation division, spread across the state. Below is the table of the detailed proposal indicating new requirements in the investigation division to be created in the six regional circles.

18. A report on the progress of the KSHRC, SICHREM (p. 21) and also published in the third Annual Report of KSHRC.
19. As mentioned in the third Annual Report of the commission (p. 51)

A comparison between the two tables shows the enormous gap between the current strength of the investigative division and the requirements of the commission.

Sl. No.	Designation of the Post	No. of Posts
1	Superintendent of Police	06
2	Deputy Superintendent of Police	12
3	Police Inspector	12
4	Police Sub-Inspector	24
5	Civil Head Constable	24
6	Civil Police Constables	48
7	Women Police Constables	12
8	Armed Head Constable/Armed Police Constable (Driver)	30
9	Armed Police Constable	24
10	Stenographers	06
11	Computer Operator/Typists	06
12	Attendants	06

(Source: KSHRC Annual Report, 2009-10)

Another contentious issue regarding the investigative division is that it looks like an exclusive province of police officers. Reports by ANNI[20] and *Human Rights Watch*[21] have noted this fact and its undesirable consequences. Human rights groups are of the view that along with the police, people from non-police backgrounds (academics, lawyers and doctors etc.) should also be part of the investigation wing of the SHRC. There is also a need for representatives from marginalised sections of society like women, dalits, tribals etc to be part of the investigation team. This is more likely to ensure the independence, sensitivity and responsiveness of the investigative division.

RECOMMENDATIONS AND COMPLIANCE

The commission can investigate, and based upon its evaluation of the complaints, issue an 'order' in which it makes recommendations to the state government. But these orders are not binding. The commission frequently makes recommendations to the state government. On the receipt of an inquiry report and the accompanying recommendations, the state government is obligated to forward its comments to the commission along with details of actions that have been taken or are proposed to be taken as a result of such recommendations. Furthermore, when placing the annual report of the commission before the State Legislature, the state government also has a duty to file an 'Action Taken Report', setting out its reasons in the event the recommendations of the commission are not complied with. The commission also has certain other powers under the Act, to try and secure compliance with its orders.[22]

It was nearly impossible to get reliable data on the state government's compliance record to the

20. 2008 report on the Performance and Establishment of National Human Rights Institutions in Asia (p. 61)
21. *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, Human Rights Watch, August 2009 (p. 104)
22. A report on the progress of the KSHRC, SICHREM (p. 24)

recommendations made by the commission. The only way is to interpret the information available in the annual reports of the commission. In the third annual report of the commission, there is mention of some important recommendations and compliance by the state government since its inception. There are five complaints highlighted from the first annual report, but the state government complied completely with recommendations in the case of just one complaint. The other four cases were either partially complied with or not complied with at all. Of the ten complaints highlighted from the second annual report as 'the important cases', there has been no compliance by the state government. So is the fate of the 16 recommendations made by the commission in the period of the third report.

Clearly the state government treats the commission as a minor nuisance rather than a venerable institution. The above discussion clearly reflects the grave situation in Karnataka, where the commission is helpless in forcing the State to abide by its recommendations. It has to be noted that the commission has the power to obtain court orders for the compliance of its recommendations.[23] Despite this power, the commission in Karnataka does not appear to have ever approached the court. Clearly, the commission treads gingerly in any matter of political consequence.

There are aspects of the commission's work that it has paid little attention to. For instance, Section 12 (i) of the Act obliges the commission to encourage the efforts of NGOs and institutions working in the field of human rights. However, it has done little to promote awareness of the safeguards available for the protection of human rights. The commission has not issued any publication or run any training sessions to inform people of their rights. The only activities that have been undertaken are the issuance of a publication to the police and the holding of regional workshops. One of the reasons for this state of affairs is said to be the lack of funds approved to the commission by the state government. But on the analysis of the financial statements, it is evident that the commission has never fully utilised the amount approved. This clearly reflects a lack of willingness on the part of the commission and a non-availability of human rights educators in the commission. The commission should engage itself actively with the human rights activists, defenders and NGOs, and proceed with an awareness campaign.

HUMAN RIGHTS VIOLATIONS IN KARNATAKA

CUSTODIAL DEATH

The use of torture resulting in death in Indian penal institutions is a well documented reality. A recent report by the *International Human Rights Organisation* (IHRO) on custodial deaths notes that, "In recent years, third degree torture and custodial deaths have become an intrinsic part of police investigations and the injury inflicted on the prisoners is sometimes unbearable".[24] The official figures on custodial deaths are patently unreliable. According to a survey carried out by the *Asian Centre for Human Rights* (ACHR, 2009), Karnataka has reported 69 cases of custodial deaths between 1999 and 2009. It

23. Section 18(2) of the PHRA 1993
24. IHRO, 2011

also notes that, in reality, these figures could be much higher, as a large percentage of custodial deaths go unreported. The director of ACHR, Suhas Chakma observes:

"These deaths in custody do not however represent the actual number of deaths in police custody... A number of cases of custodial deaths taken up by ACHR with the NHRC show that the latter was not informed by the police about these deaths. Its guidelines on reporting custodial deaths within 24 hours continue to be flouted." (ACHR, 2009). Further, police routinely cover up custodial deaths by claiming that detainees 'committed suicide' or that they succumbed to 'illness'. Very often in cases such as these, autopsies are not carried out efficiently or at all, making it very difficult to establish the actual cause of death. Following are some illustrative cases.

HRC No. 4489/10, deals with the death of P. Lokesh, aged 25, who died on June 20, 2010 while in the custody of Hennur Police. Media reports say that Lokesh was arrested on charges of theft, and died while he was in police custody. 'His condition was normal' when he was first arrested, however DCP, Chandar Shekar told *The Hindu* that Lokesh died of gastroenteritis, whereas friends and family of Lokesh suspected that "'third degree police torture' caused his death". On June 30, 2010, the KSHRC filed a complaint with the IGP and asked for a detailed report into the incident, and the actions of the police officers involved. However, the complainant has not received any intimation from the KSHRC since December 10, 2010.

The citing of 'suicide' as a cause of death in custody is a commonplace practice. Many police reports claim that victims have committed suicide by a variety of means; including knives, poisons, electric cables and clothes. In HRC No. 3436/10, Mr. R. Manohar of *South India Cell for Human Rights Education and Monitoring* (SICHREM) filed a complaint with the KSHRC on April 23, 2010 regarding the death of under-trial prisoner, Mahadeva (34), while in judicial custody under 'suspicious circumstances'.[25] The Superintendent of Parappanagrahara Central Prison, Bangalore, claimed that Mahadeva committed suicide by hanging himself with his shirt from a toilet pipe in a "less frequented section of the jail." The post-mortem report recorded "Death due to asphyxia as result of hanging", but it failed to indicate whether it was a case of suicide or homicide. The KSHRC directed the IGP of Prisons to submit a detailed report into Mahadeva's death on July 30, 2010, which is still pending.

ENCOUNTER KILLINGS

Article 21 of the Constitution decrees that "No person shall be deprived of his life or personal liberty except according to procedure by law", however this foundational principle is often violated. As with custodial deaths, encounter killings are disturbingly common in Karnataka. If police, security forces and the army, 'who are regarded as the custodians and guardians of law', take the matter of law and order into their own hands, including the 'right to kill', serious human rights violations are being inflicted' (PUCL, 2010). A 2003 report by *South Asia Human Rights Documentation Centre* (SHRDC) on extra-judicial killings notes that:

> **"International human rights law prohibits the arbitrary deprivation of life under any circumstances. Article 3 of the Universal Declaration of Human Rights states that, '*everyone has the right to life, liberty and security of person*.'"**
>
> **(SHRDC, 2003)**

The security forces often cite 'self defense' as a justification for encounter killings, however evidence

25. SICHREM, 2010

suggests this is often just a flimsy smoke screen for a cold-blooded murder. "The NHRC guidelines on encounter deaths clearly mandate that in any case of so-called 'encounter', an FIR must be registered against those who caused the death" (PUCL, 2010). Police officers often don't initiate even this first step, resulting in these crimes going unreported. "It is in this way that impunity continues to thrive in India and the reputation of the police continues to slide."[26]

The commission tried to intervene in some of these cases. For instance, it registered the s*uo moto* case regarding 19 year old Mohammed Mukkaram Pasha, who was shot dead by army sentries for committing a traffic offence.[27] In a report by SICHREM, they found that Mukkaram Pasha was unarmed and therefore the police's conduct could in no way be considered 'self defense'. Furthermore, six shots were fired at the suspect which is clearly an excessive use of force. This incident raises several issues such as the use of excessive force by police, the use of firearms on unarmed suspects and shooting to kill rather than shooting to maim. Although many questions were raised and allegations made by human rights groups into the death of Mukkaram Pasha, the KSHRC upheld the police version of events, absolving the police of any wrongdoing.

This is a worrying trend within the KSHRC, as reports from *Human Rights Watch* (HRW) have shown that "police officers who should be in prison for misusing their authority are being protected by their supervisors." (HRW, 2009) Despite this report, the KSHRC did not carry out an independent investigation.

ARBITRARY ARREST, ILLEGAL DETENTION AND TORTURE

Article 5 and Article 9 of the 1948 Universal Declaration of Human Rights decrees that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and "no one shall be subjected to arbitrary arrest, detention or exile", however both these articles are routinely broken by law enforcers in Karnataka. While there are no figures given by the KSHRC, there have been numerous reports of arbitrary arrests and torture among minority groups, in particular of those who are poor and socially or politically marginalised. Police officers are known to use unlawful coercion, including torture, to elicit confessions to crimes which may at times be fabricated. Very often the persons being arrested are not informed of the reasons for their arrest, no effort is made towards informing any relative of their arrest, and no memo of arrest is prepared which is a serious violation of their human rights. In an interview with *Human Rights Watch*, a Bangalore police officer admitted:

"We do use some extralegal methods. You might disagree, but we cannot do all the work by the book. Then the police would be completely ineffective." (HRW; 2009)

This attitude of police officers, acting on a complaint with brutal force, without investigating the case first, is evident in HRC No. 7227/10. In this incident three police officers attached to the Vittal Police Station arrested and tortured a school boy, suspecting him of having stolen a mobile phone. Eleven year old Sharath Nayak was illegally detained for five hours, stripped naked, and beaten with a *lathi*. *The Hindu* reported the incident and found that "[T]he police are yet to find any evidence linking him to the theft" (*The Hindu; September* 4, 2010). A complaint was made to the KSHRC who ordered the SP Dakshina Kannada district on October 18, 2010 to investigate the incident and submit a report; however no further action was taken. If the KSHRC does not exercise its powers pro-actively to provide justice to the victim, such police atrocities will continue to occur (HRLN, 2010: 71).

26. HRW, 2009
27. HRC. 4741/SM – 956/08 to HRC. 4759/SM – 974/08 C/W HRC. 4740/08

VIOLATION OF HUMAN RIGHTS OF WOMEN AND CHILDREN

The violation of human rights of women and children has been of growing concern in Karnataka. The NCRB recorded a total of 6569 incidents of crime against women in Karnataka during 2007. These included 463 rapes, 390 kidnappings and abductions, and 251 dowry deaths, among others. Unfortunately, in many cases brought to the attention of the KSHRC, the police have been accused of the violations, however prosecution of the culprits rarely occurs.

Consider the case of Smt. Savitha, (HRC No. 3174/2010) who was verbally and physically abused on the street in Bangalore by an ASI police officer, and threatened with arrest, even though she had committed no crime. On May 3, 2010, a complaint against the officer was registered with the KSHRC, which than asked the police to conduct an enquiry into the matter. "The report submitted by the police denied the entire incident; however, there has been no proceeding thereafter."

The *National Crime Records Bureau* recorded 191 cases of crimes against children in Karnataka during 2005, including 42 murders, 48 rapes and 35 abductions (ACHR, 2006). In 2007, this figure rose to 266 crimes against children, including 50 cases of murder and 84 cases of rape, during the same period (ACHR, 2009). The rise in the number of rape cases is particularly alarming. HRC No. 1030/2008 deals with the abduction, rape and murder of a three year old girl. The crime was brought to the attention of the KSHRC based on a newspaper article in the *Deccan Herald* on January 29, 2008, which had reported the case under the heading 'Child Raped, Killed'. The complainant sought the intervention of the KSHRC as he believed that the state government and police department were not taking necessary action on such a serious matter. The KSHRC registered the complaint, but did not take any further action as they believed the case was being investigated by the police department, and therefore that there was no need for them to intervene. So, by not carrying out an independent investigation, the KSHRC will lose the public's confidence in their ability to protect the human rights of children. It has to ensure that those who have committed such heinous crimes are brought to justice.

VIOLATION OF HUMAN RIGHTS AGAINST MINORITY GROUPS

Dalits

Although the caste system was abolished by the Indian Constitution in 1950, an estimated 160 million dalits (Scheduled Castes) are denied access to land, forced to work in degrading conditions and continuously abused or even killed by the police and higher-caste groups (HRW, 2010). The NCRB recorded 1,844 incidents of crime against dalits in the state during 2007. These included 15 cases of murder, 20 cases of rape, 165 cases of hurt, and 1016 cases under the SC/ST (Prevention of Atrocities) Act, of 1989 (ACHR, 2009). As has been documented throughout this report, the perpetuation of human rights abuses against Karnataka's dalit population is intimately connected to police abuse. Local police officials routinely refuse to register cases against caste Hindus, or to enforce relevant legislation that protects dalits. (UNHCR, 1999)

This is evident in HRC No. 1748/2008, which deals with the case of a 23 year old Brahmin girl, Prathima, who was kidnapped by her father, uncle, a BJP leader, a JDS leader and others, and taken from her home on May 3, 2008. Her husband, Ravi, a 23-year-old dalit boy and his mother were assaulted by the intruders before the girl was taken away. In a PUCL report, it was alleged that the concerned police did not file an FIR and the Yellapur police were protecting and supporting the culprits. The commission sought a detailed report from the SP, North Kanara District, which stated that

a counterclaim had been made against the dalit boy. The KSHRC disposed of the complaint, claiming that it was being dealt with by the police. This is a good example of the KSHRC referring a complaint to the same jurisdictional police officers against whom the complaint was made. The KSHRC has the power to independently investigate any human rights violations and when complaints are made against the police it would be negligent of them not to do so.

As this chapter shows, the KSHRC does act with diligence on some occasions, and where it does act it never tries to exercise its full powers to deliver justice to the victims. It often provides a satisfaction of due process but without meeting desired ends. Little wonder then that it is often termed a 'toothless tiger', which is even reluctant to roar!

CHAPTER-II

Testimonies

Case of Torture and Ill-treatment

Panambur PS, Mangalore

ROHINI S

Testimony 1 (Case of Arbitrary Detention on January 4, 2009)

My name is Rohini S, aged 45, Managing Director of Chitra Publications (P) Ltd. Wife of B.V. Sitaram. On January 4, 2009, I was travelling with my husband to visit my ailing father at Kundapur. On our way from Karkala to Kundapur, at about 6:45pm, a few people dressed in black with red *tilaks* (like Bajarangdal) tried to stop our vehicle. I advised my husband not to stop the vehicle and we continued for another three kilometres. Then, six to eight police vehicles followed us and stopped us. This police force was lead by DSP Santhosh Kumar. He placed my husband under arrest upon confirming his identity, without offering any explanation or warrant. When my husband asked if the police had an arrest warrant, one of the police officers said "You can check about the warrant at the court. Now get into the jeep". Then my husband refused, saying "I am not ready to come unless you produce the warrant". We were made to wait till 9pm so that they could produce a warrant. We protested this warped procedure and undue detention, as my husband is a diabetic.

Meanwhile, we contacted our home to learn that there had been an attack on our residence by the police, and that my son was hurt. The police team first went to my house in the Kulai locality of Mangalore at around 5pm, and was informed that we are not at home by my son, Karthik, yet they barged in. They ransacked the house, entered my home office, bolted it from the inside and took away important files and Rs. 50,000 in cash before leaving the premises.

By the time we were taken to the JMFC Magistrate it was 11pm. In spite of our explanation, the magistrate refused to pay us any heed and sent us into remand. Due to hypertension, my husband collapsed on the way to the jail. Despite the judge advising the police to take us to the hospital if needs be, the police refused to provide any medical assistance. The ordeal continued as, when the Udupi custody date expired on January 17, 2009, the police held him illegally in Mysore forcing me to file a *Habeas Corpus* Petition No. 5 of 2009 in Karnataka High Court on January 27, 2009. The high court, after considering my petition, acquitted my husband on February 3, 2009 and slapped a fine of Rs. 10,000 on the police for illegal detention. The KSHRC has registered as many as ten complaints received from public organisations and individuals in connection with the arrest and handcuffing of my husband.[1] All these complaints were clubbed into two cases (HRC 42/2009 and HRC 3878/2009).

1. HRC 55/09, HRC 57/09, HRC 82/09, HRC 83/09, HRC 84/09, HRC 130/09, HRC 187/09, HRC 230/09, HRC 290/09, HRC 649/BC-7/09

In my written submission to the KSHRC on May 6, 2009, I had requested the commission to order the following:

1. All the police officers involved be held responsible for the violation of human rights through illegal detention.
2. Payment of compensation to the tune of Rs. 50 lakhs for the harassment suffered by my husband, family and myself.
3. Restraining the authorities from registering any further cases. According to the Press and Registration Act, only the editor, printer and publishers are responsible for any report or article printed in a newspaper. Since my husband and I do not hold any of the above offices, there is no basis for registration of cases.

On May 7, 2009, my husband, in his written submission before the KSHRC sitting in relation to the above cases, had requested the commission to:

1. Recommend to the chief minister to drop Mr. VS Acharya from the council of ministers for the misuse of ministerial powers, and acting against 'Ministerial Oath of Secrecy'.
2. Consider action against SP of Udupi, Dakshina Kannada districts and the IGP of Western Range, for not taking disciplinary action against those working under them for:
    a. ransacking of my home and committing theft
    b. for issuing orders to handcuff and chain me
    c. for denying medical attention when I needed it most
    d. for forcibly taking me from place to place even though my health condition did not permit it
    e. for denying timely food to me in captivity
    f. for illegally detaining me beyond January 17, 2009 till the Hon'ble HC released me on February 4, 2009.
3. Responsibility be fixed on police officials for every offence committed against me
4. Disciplinary action against all the police officers involved in this police atrocity.
5. Recommend a compensation of Rs. 50 lakhs to be paid for all the damages (mental torture and physical discomfort suffered by me)

In response to this the KSHRC, which considered the cases with a full bench on June 3, 2009, passed the following order:

> "The commission vide its Order dated January 12, 2009 had directed the Home Secretary, Government of Karnataka, to submit a detailed report. Despite service of notice and number of adjournments, the home secretary has not yet submitted the report nor sought any extension of time to submit the report. In the meanwhile, the commission has received a copy of the letter dated May 13, 2009 of the DG and IGP, Government of Karnataka, addressed to the Addl. Chief Secretary and Prl. Secretary, home department. The allegations made against the state authorities are very serious in nature and therefore, the reply of the government at the highest level is necessary. That is exactly the reason why the commission had directed the home secretary to submit the report. Furthermore, the victim of the

alleged harassment, Sri B.B. Seetaram has submitted a detailed written representation/submissions on May 6, 2009, before the commission at its sittings in Udupi conducted on 6th & 7th of May 2009. As per the written submission, the arrest and harassment of Sri B.V. Seetaram was deliberate and politically motivated. Sri Seetaram has also made serious allegations against the home minister of the state and higher up in the police department. In the circumstance, the commission wishes to have response from the Government of Karnataka at the highest level before proceeding further in the enquiry".

It further directed that the copy of the written submission of B.V. Seetaram dated May 6, 2009, with enclosures, be transmitted to the addl. chief secretary and principle home secretary, home department, Vidhana Soudha, Bangalore, for his detailed report with regard to all averments/allegations made in the written submission of Sri Seetaram positively within a month, in addition to the report sought by the commission vide its order dated January 12, 2009. In this regard, the final report and the verdict are yet to be pronounced in spite of repeated requests.

TESTIMONY 2
(Case of Arbitrary Detention on March 3, 2007)

My name is Rohini. I am the Managing Director of Chitra Publications (P) Ltd. The Panambur police of Mangalore arrested me along with my husband Mr. B.V Seetharam, in the dead of night on March 3, 2007, on a complaint from one Mr. Rajavarma Ballal under section 153 a & b r/w 34. According to the FIR, we had "published offensive write-ups against the Jain community and Digambara ascetics of the community in the *Karavali Ale* newspaper dated January 27, 2007, and with a view to abuse the ascetics and the religion, had made a comparison with nude dancers..." Neither I nor my husband is an editor or publisher of the newspaper. Hence, as per the Press and Registration Act 1867, there was no basis for the police to arrest us.

We were allowed to have some food before our arrest and to receive our daughter home, who was to come from the hospital after treatment. We were taken to the magistrate's house at around 2:30am, and he denied us bail. For the next five days, we were sent to Mangalore jail where we were denied proper medical care. My husband was taken to the hospital but soon discharged under pressure and brought back to jail. We were allowed to see family members, well-wishers, relatives and friends. However, the food served to us was inedible, medication was denied us, and the jail staff were obnoxiously rude. There was an attempt on our life in the jail, by sneaking a poisonous creature into our respective cells. After our release from Mangalore jail on March 8, 2007 following court orders, we were taken to Shimoga jail for the same alleged offence citing a case registered in Sagara Police Station. We were handcuffed and made to travel for seven hours, and paraded on the streets of Shimoga. We were kept in custody for another five days. All of this evoked state wide protests.

A complaint was made to the KSHRC on August 10, 2010, detailing this police atrocity, and explaining the violations of human rights and women's rights that had happened in its course. In my complaint to the KSHRC (HRC 5008/10), I had demanded the suspension of the police officials of Sagara Police Station for my illegal detention, and asked for proper compensation. Thereafter I did not hear from the KSHRC. The KSHRC, as I understand, has so far, not conducted any investigation in connection with this complaint.

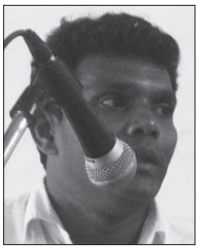
Case of Police Harassment

Udupi District

B.V. SITHARAM

I am B.V. Sitharam, President & Director of Chitra Publications Pvt. Ltd based in Udupi district. On January 4, 2009, the police arrested me in a pending case. In spite of my voluntary surrender, the police handcuffed me while arresting me. This is clearly in violation of the norms set by the Supreme Court of India, according to which, an individual can be handcuffed only if that person is declared guilty and then tries to escape custody. While being arrested I did not resist, yet the police insisted on handcuffing me. This is a clear violation of my human rights, and this came as a direct consequence of my highlighting the issues of 'Special Economic Zones' and 'Communalism' in the Karavali Region in the newspaper *'Karavali Ale'*.

The violations of my human rights by the Udupi Police had been brought to the notice of the KSHRC by Prof. Ramesh, convener of the *People's Democratic Front* (PDF), through a complaint on January 6, 2009 (HRC 57/2009). In the complaint, PDF had expressed its apprehension that the recent communal activities of the Sangh Parivar may be linked to the violations of my rights and the rights of many other individuals and groups. Further, PDF requested that the commission consider the violations of my rights and the communal situation of Karavali Region, and take necessary action. The KSHRC had ordered an enquiry and sought a report when this issue was placed before it on January 13, 2009. The government did not send any report to the commission, thus the commission summoned PDF on April 21, 2009, to present necessary evidence related to the cases at 11am on May 6, 2009, in front of the division bench at Udupi District Collector's office. It summoned the police officers related to the arrest on January 4, 2009, and the police officers who escorted me to the court on January 5, 2009, to be present for enquiry on May 7, 2009 at 10am. The police officers were ordered to bring with them all the documents and evidence related to the arrest and to my presentation before the court, for submission during the probe. We do not know clue what, if any thing followed this.



Case of Torture by Police

Kadri PS, Mangalore

HARISH PUTRAN & PUNITH KRISHNA

I Harish Putran and Punith Krishna, staff of newspaper *Karavali Ale*, were arrested by Kadri Police in Mangalore on September 6, 2010, at 5pm, upon the complaint of Mr. Lancy Menezes, without any investigation. Mr. Lancy Menezes, owner of Asha Bar & Restaurant in Mangalore city and Nishanth Bar & Restaurant in Heleyangadi, filed a complaint alleging that on the evening of September 1, 2010, a person named Punith, claiming to be a reporter of *Karavali Ale* newspaper called his mobile phone and demanded an amount of Rs 1,00,000 to be paid, failing which, Punith would publish a fabricated news report about Mr. Lancy in the newspaper. Out of that Rs 1,00,000 cash, the sum of Rs. 50,000 was to be paid to the boss, Rs 40,000 was to be paid to madam and the rest, a sum of Rs. 10,000 was to be paid to Punith himself. At 5:15pm on September 6, 2010, Punith is said to have instructed Mr. Lancy to bring the money to the petrol station near Kadri hills KPT, where Punith would approach Mr. Lancy on a Bajaj CT-100 motorbike with Registration No. KA19U7842. It has also been alleged that Mr. Lancy had recorded the phone conversation with Mr. Punith on his mobile voice recorder, copied this onto a CD and submitted the CD at the police station along with the complaint. The facts of the case are otherwise. In fact, it was Mr. Lancy who had called us saying he wanted to place an advertisement in our newspaper, so he had invited us to meet him to further discuss this at the aforementioned above spot.

Once in custody, we were stripped, made to sleep on the floor, denied food and tortured with third-degree methods. We, complained to the magistrate regarding this, on production before him. When questioned about such brutality, the police officials replied saying "It is the procedure of the police department", and in spite of the judge warning the police against resorting to violence against prisoners, the police did not relent and continued with their brutality. The police were outraged by the fact that we apprised the judge of custodial police torture. They retaliated by beating us up in the police vehicle on the way to the police station. Even though during our medical examination we complained to the duty doctor that we were being tortured and were suffering from pain, the doctor did not record our complaint, and gave a clean chit to the police, which helped them to defend themselves before the KSHRC. It has to be noted that my name did not figure in the complaint, and was not there in the FIR either. Yet, I was kept in detention for over a week and subjected to third degree treatment in custody. I was finally released on court orders.

On the very next day after our arrest, on September 7, 2010, Ms. Rohini, Managing Director of *Karavali Ale* had personally filed a complaint on our behalf with the KSHRC, with complaint number HRC/Va. Sa./6724/2010(B2). It requested that the commission investigate and take action against Mr. Seemanth Kumar, the Commissioner of Police, Mangalore and Inspector Mr. Niranjanaraje Arasu, ASI Sudhakar, Kadri Police Station, for violating human rights. The complaint also demanded the filing of criminal cases against the police involved in custodial torture, their arrest, and a compensation of Rs. 100,000 each to me and Punith.

In addition, Mr. B.V. Sitharan had submitted a memorandum to Justice Nadoja S.R. Nayak, KSHRC, on September 9, 2010. Later, on October 23, 2010 another reminder of the same was sent. In response, the KSHRC assigned the investigation to the IGP, Western Range, Mangalore who in turn entrusted the enquiry to the very same police officer against whom we had complained (police commissioner). The result is thus a foregone conclusion. The CP did not even make an effort to balance the inquiry by recording evidence of the complainant and the victims. He just took the police evidence on record, which denied the allegations, and sent a report to the KSHRC. We have challenged the commissioner's report, on the grounds that the culprit cannot be the enquiry authority. The KSHRC decision is awaited.

Harassment of Human Rights Defender

Kolar District

SUSAI RAJ BABU

My name is Susai Raj Babu, staff member of SICHREM, and I have been coordinating the activities of the District Human Rights Centre in Kolar since 2006. I have been conducting fact-findings into various cases of human rights violations in the Kolar district, such as atrocities on against dalits, violence against women, corporal punishments, and torture by the police. I have facilitated several complaints of police torture with the KSHRC.

I recently helped one Nava Kumar, who was subjected to custodial torture by Robertsonpet police of KGF to file a complaint before the KSHRC. Nava Kumar's arrest was a consequence of a property dispute with his father Mr. Venkatesh. It is known in the locality that Mr. Venkatesh and others in the family are angry with me for helping his son in the torture case. It is also a known fact that the Robertsonpet police also have a grudge against me for taking up several cases of rights violations.

On February 5, 2011, Mr. Venkatesh's wife Mrs. Krishnama called me to their house for a talk. Though initially I was reluctant to go there, due to repeated calls I finally went along with an advocate Mr. Manohar, who is a family friend of Mrs. Krishnama. Once I reached their home, I realised that it was a trap to hand me over to the police and I left the place immediately. Later, it came to my knowledge that at the complaint of Mrs. Krishnamma, the Robertsonpet police had filed an FIR against me under Crime no. 22/2011 U/s 448, 384, 506, r/w 31 IPC.[1]

On February 9, 2011, Nirmal Das, Coordinator of District Human Rights Center of SICHREM had filed a complaint with KSHRC on my behalf, requesting that the commission "look into the matter and restrain the Robertsonpet police from proceeding against me on a false complaint". But no response was received from KSHRC, though this is a case where my life and reputation as a human rights defender is threatened.

1. Section 448 (house-trespass) - the punishment being imprisonment of either description for a term, which may extend to one year, or with the fine, which may extend to Rs1000, or with both.
Section 384 (extortion) – the punishment being with imprisonment of either description, which may extend to three years or with fine, or with both.
Section 506 (criminal intimidation) – the punishment being with imprisonment of either description for a term, which may extend to two years or with fine, or with both.

Case of Illegal Detention and Torture by Police

Ranibennur Taluk, Haveri District

KIRAN KUMAR

My name is Kiran Kumar, aged 31. I work as a coordinator for Arunodaya, an NGO in Haveri, Ranibennur Taluk. I coordinate about 150 self help groups, started by the organisation in Ranibennur.

I was arrested and tortured by the police. On the day of my arrest, I was in the house of my colleague, at Gudihobali town. Soon after I arrived at her house, she received a distress call saying, "My name is Hanumanthappa Gangapura and I live in Gangapura village, there has been violence against my daughter and there has been torture. I need your help and I want to submit a complaint to you, where are you?" Since the news was about violence against a woman, my colleague, without thinking, just said, "I am at home sir" The person on the other side said, "Yes Madam; I cannot share things over the phone. I would like to tell you what happened, in person". Being concerned about the violence, my colleague gave him her address. After 15 minutes the person called back and told her that he had reached the bus stop. Since, she was just back from Bangalore she asked me to go and fetch this person.

Only when I went to meet this person did I realise that the call was made by Mr. Gandagdhar, the police constable. I was arrested and my bike was confiscated. I was carrying my colleague's mobile which she called when I had not returned for a long time, but I could not receive the call. Worried, she went searching for me. Two hours later someone called my colleague saying, "Madam, Mr. Kiran is drinking here in the car, so please come to our place". So she went to this place and found one lady police office and four policemen in a Tata Sumo vehicle, who asked her to get into the car. When she enquired about the reasons for her detention and demanded a warrant, they replied saying, "You know everyone at the station, so why are you worried? We just want you to come to the station". She refused to get into the car and she immediately called her home and the SICHREM office.

Finally the police forced her and took her to the police station. Meanwhile, at the police station, the police had verbally abused, beaten, and tortured me, and put me in a corner I was not allowed to meet my colleague at the station. When they brought my colleague to the police station, the DSP questioned her; "What work do you do? If you are a district coordinator, why are you not staying at Haveri? What is your relationship with Kiran?" She said, "Kiran is one of my colleagues". When my colleague asked why I had been arrested, the police replied that, "Kiran was arrested based on a complaint received by Kiran's Father". When they checked with my father, he denied

this, saying, "Why would I file a complaint against my own son?" They kept us in custody until 11:30pm.

In fact, I had never had any clashes with the police in my work before. So I was puzzled by the arrest. However, when I learned that my colleague was involved with the police, I realised that it was because I had been working with her that the police had illegally detained me along with her. Later, my colleague, on my behalf, had approached newspapers and faxed a complaint to the KSHRC. Registering my complaint the commission had directed the SP to conduct an enquiry and to submit a report.

The police prepared and sent a false report to the commission stating that the complainants were involved in illegal activities, claiming that many men and women visit their houses etc. When we sent our comments denying these allegations, the police forced my colleague's brother to sign a statement they had prepared which said that she was involved in illegal activities and is of a bad character etc. We submitted our statements twice, appearing before the commission, furnishing them with enough evidence including medical certificates. But the police, time and again, refused the allegations, stating that the complaints are false. Many police stated that they had never seen the complainants, some stated that they just took us to the station based on an anonymous call. There are no records of our arrest, notice or warrant at the station.

With the hope of receiving justice from the KSHRC, we have continuously approached the commission, but it seems justice is still a distant dream. In fact, the failure of the commission in providing justice results in increased atrocities being committed by the police. If the decision of the commission solely depends upon the reports of the police, then the commission is clearly redundant.

Case of Torture by Police

Haveri PS, Haveri District

NAZIR AHMED

I am Nazir Ahmed, alias Abdul Rehamansab (49), resident of Sangur, Haveri. My father willed his property to me. The will is silent on the subject of sharing it with my siblings. On June 14, 2010, Mr. M.B. Holi, PSI, Haveri Rural Police Station, arrested me in connection with a civil suit filed with Haveri Civil Court by my brothers and sisters over the property. At the police station, the police verbally abused me and beat me. Demanding justice, I approached the KSHRC who registered my complaint as HRC No. 6185/2010.

Having tabled the complaint on August 27, 2010, the commission, in its notice to the SP, Haveri District dated August 30, 2010, had directed for an enquiry to take place and for a report to be submitted. Subsequently, the commission received the report of the SP, Haveri district on January 7, 2011.

The report submitted to the commission denied all the allegations based on the statements of SHO HC 1085, who in his statement said that on June 14, 2010 the complainant was brought to the Haveri Rural Police Station by the PSI in relation to the criminal cases booked under:

168/2010 U/s 323, 324, 504, 506 IPC,

184/2010 U/s 323,420,465,467,468,471, 504, 506 IPC, and

225/2010 U/s 436, 506 IPC;

And on 14 June 2010, was arrested under 168/2010 and produced in the court. Later, the complainant was released on bail. He further stated, "The complainant was neither abused nor beaten. He was released as per the law. So, the complainant, holding a grudge against the PSI for producing him in the court, has filed a false complaint". The report concluded, stating that the PSI had been instructed to take up preventive action against my family and myself.

Despite my submitting the medical report from the Haveri District Hospital, which had advised me to have an X-Ray of my injury, the report had made no admission of it, and the commission, which reviewed the report and directed me to send my comments within four weeks, did not consider it as a proof of any violation.

Extrajudicial Killing

Bangalore District

VAGARAGERE RAMESH

My name is Vagaragere Ramesh. I am the convener of the *People's Democratic Front*. I filed a complaint with the KSHRC (HRC No 7153/2010) on September 29, 2009, about an encounter killing of two 'rowdy-sheeters', and the killing of an alleged sandalwood thief, by a civilian, Mr. Jayaramaiah. We brought to the notice of the KSHRC the statement of appreciation towards the police and promises of giving necessary freedoms to the police, department in taking action against such anti-social elements which had been issued by the home minister and the police commissioner felicitating Mr. Jayaramaiah for his "brave act".

We pointed out in our complaint that the right of punishing the guilty shall rest only with the judiciary. If each person possessing a gun, be it police officer or civilian, starts executing the death penalty, the rule of law is undermined. Hence, the above cases have to be treated as murder, thoroughly investigated, and necessary action must be taken as per the law. To this the KSHRC sent its response stating, "On October 5, 2010, the KSHRC deliberated on the complaint and instructed the office of the commissioner of Police, Bangalore to investigate and submit a report. Upon reviewing the submitted report on February 28, 2011 the KSHRC has directed that the report be sent to the complainant for response". Thus, the KSHRC had requested me to send my response on the report within six weeks.

The investigation was carried out by the DCP, south east zone through the ACP, Mico Layout Sub-Division, Bangalore. The report submitted by the office of the CP, Bangalore says, "Mr. Jayaramaiah had used his licensed gun for self-defense, and the death of the alleged thief was a mere accident..." But there was no mention or clarification on the encounter killing of the two rowdies. Having reviewed the report I sent my response on April 18, 2011, apologising for not being able to respond within the stipulated six weeks period. My response pointed out two key points:

- The report submitted by the police has no mention or report of the two police encounters and I am not sure whether or not this is deliberate;
- The report states that the killing of the alleged thief by Mr. Jayaramaiah was in self-defense. I feel that shooting at thieves who are running away can be avoided. However, I am deeply concerned about the message sent to society by the police department through felicitating Mr. Jayaramaiah, about which there is no clarification in the report

Hence, I requested that the KSHRC reconsider the investigation of the incidents

and take action.

After reviewing the report I am forced to wonder why the KSHRC can't conduct an independent enquiry, rather than assigning it to the police department, when the police department is one of the accused parties pertaining to the complaint? Secondly, the fashion in which the commission functions is reminiscent of a post office. It only forwards complaints, from one end to the other, and makes decisions on a certain report which usually happens to have been prepared by the perpetrators themselves". However, I am still waiting for the response of the KSHRC to my comments.

TESTIMONY 2

RELIGIOUS VIOLENCE

Sangh Parivar Attacks on Churches

I Vagaragere Ramesh, convener of the *People's Democratic Front* (PDF), along with the other office bearers of PDF, personally appeared before the KSHRC on March 24, 2009, and filed a complaint (HRC 1542/09 C/W 182/07 C/W 507/07) against the Sangh Parivar's series of attacks on churches/minorities, enclosing a fact finding report, 'From Kandhamal to Karavali: The Ugly Face of Sangh Parivar'.

In the complaint, we strongly expressed our protest and frustration against the attacks on minorities, and submitted that if these attacks on minorities continue, the very fabric of Indian polity would be torn to pieces, resulting in violence and disharmony in society, and be requested that the KSHRC conduct a probe into the incidents highlighted in the fact-finding report, and book the culprits, so that the people's right to live in peace is adequately protected.

To this, the KSHRC on March 28, 2009, directed that the copy of the petition dated March 24, 2009, with the copy of the report submitted by the petitioners, be transmitted to the Chief Secretary, Government of Karnataka, for response of the government within six weeks from the date of the receipt of the notice, and listed a further hearing on June 1, 2009. Further, the KSHRC also directed for the personal appearance of the Chief Secretary, Government of Karnataka. However, upon receiving the report and the written request, the commission relieved him of making a personal appearance before the commission.

In response to the petition the KSHRC, upon hearing the case on July 9, 2009, and reviewing the report received from the Chief Secretary, Government of Karnataka, forwarded the copy of the report to us for comments to be made within a month from the date of receipt of the notice and listed it on August 27, 2009.

The report submitted by the DG and IGP, narrated the actions taken by the police to provide protection to the churches.

Later, the Soma Sekhar Commission probed the matter, and no proceedings were initiated by the commission.

Violation of Minority Rights

Uttara Kannada District

HASAN MANSOOR

I am Hasan Mansur, aged 80, president of the *People's Union for Civil Liberties*, Karnataka. In my complaint to KSHRC (HRC No. 556/2008), dated Feb 20, 2008, against the harassment and the violation of human rights of the minorities in Karnataka, I brought to the notice of the commission that in most of the incidents that had taken place in Uttara Kannada and the southern districts of the state, the media and the police had invariably pointed the finger at the Muslim minority, thereby giving a violent image of the Muslim youth.

Simultaneously, there have been concerted efforts to pick up members of the Muslim youth and charge them with acts of alleged terrorism. For instance, even remote incidents like the killing of Haren Pandya in Gujarat, the following bomb blasts in Mumbai, and also the shooting of an academic in the Indian Institute of Science in Bangalore, have been attributed to the Muslim youths here. The mainstream media has run berserk, quoting unnamed intelligence and police sources, tarnishing the image of Muslim youths and creating a fear psychosis. For example, three Kashmiri youths collecting funds for a *madarasa*, were detained for four days, though they were carrying a letter from a J&K magistrate; they were released without any charges and peremptorily ordered to go back to Kashmir.

A report in *The Hindu* dated February 7, 2008, stated that Bangalore and Central Intelligence Agencies have stepped up surveillance on a network of IT professionals concentrated here, which is alleged to have links with radical Islamic outfits. Students Islamic Movement of India (SIMI) is alleged to be linked with *Karnataka Forum for Dignity* and *Kerala's National Development Front*. All these charges are baseless.

Another instance is that of Shri. K. A. Adoni, of the irrigation department of the state government, who was described as having contacts with terrorists. This was a trial by media, which claimed that he was detained and arrested. This whole incident was completely fabricated by the media, and Mr. Adoni has vowed to take them to court for defamation. In response to these vile rumours and charges Shri.Shakara Bidari, director-general (intelligence), accused the media of exaggeration and deplored the fact that innocent people were being victimised. Shri. Satyanarayana Rao, IGP (East) in Mangalore said there was no evidence of terroristic activity in Dakshina Kannada. Despite these clarifications from police officers, the media continues with its vilification campaign.

Therefore, we approached the KSHRC and demanded:

- Police propaganda that claims that vehicles like motorbikes are allegedly stolen to be used for bombing etc. should stop. After all, thousands of these are stolen everyday all over the country, yet impending mayhem has yet to take place.
- Visitors to the state should not be targeted by intelligence and police agencies for investigation and harassment without any basis.
- Mischief of media, working in concert with intelligence agencies to create a fear psychosis must be checked.
- Unauthorised methods of investigation such as narco-analysis and brain-mapping that invade bodies and undermine personal liberties that have been ordered by the magistrates, despite a suit pending against these in the Supreme Court, should be stopped.
- Practice of giving awards to policemen for arresting suspects even before investigations are completed, should stop.
- Political parties should show restraint and stop whipping up hysteria over so-called terrorism to frighten and distract people from priorities like democratic governance.
- Arbitrary detention of youngsters from the Muslim community should stop.

The commission referred this complaint on March 29, 2008 to the Chief Secretary, Government of Karnataka, for a detailed enquiry and report. Accordingly, a report dated June 30, 2008 was submitted to the commission after an enquiry by the ADGP, intelligence. This report was forwarded to me for comments.

In this report the AGDP states:

"Sri Hasan Mansoor is basically a teacher, who later became a President of the People's Union of Civil Liberties (PUCL) which is a front organisation of Left Wing Extremists (LWE) and the present CPI (Maoist Party). Earlier, he was also associated with the People's War Group (PWG) a militia wing of LWE. After his (Hasoon Mansoor's) retirement in 1991, he has been residing at 46 Wellington Street, Richmond Road, Bangalore City and is actively associated with LWE activities."

"A criminal Case was registered against Mr. Mansoor in Ulsoor Gate Police Station, Cr No. 06/07 u/s 143, 147, 341, 295 & 149 IPC, on January 3, 2007, which was charge sheeted on June 6, 2007 and pending trial in CC No. 16020/07 in the 6th Additional Munsif & Magistrate (ACMM) Court, Bangalore. The case is posted to August 14, 2008."

"Mr. Hassan Mansoor is a converted Muslim, and his original name was Rama Murthom S/o Venugopala Naidu"

Further clarifying the complaints, the report added:

The interrogation of Asadulla, alias Basha of Chapparadahalli, in Bellary District, where by a criminal case no. 14 of 2008 under Section 120 (B), 153(A) (B) and under Secs. 3, 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 and also under Section 4 and 5 of the Explosive Substances Act, 1908, was registered and the interrogation of said Asadulla by the investigating officer revealed that he had committed the theft of two wheelers for the purpose of using the same for bomb blasts; and fur-

ther that another person by the name of Nazir had committed theft of a Hero Honda Motorbike for the same purpose. Similarly, other motorcycles were also stolen for the same purpose as was revealed during the interrogation.

The report further shows that the arrested persons had hatched a conspiracy for terror acts in different parts of the state targeting Infosys at Mangalore, and IBM and DEL at Bangalore, as was revealed from a secret meeting held in Uttara Kannada District at Castle Rock. The said arrested person, Asadulla, had volunteered before the investigating officer, and in pursuance of which a hand grenade, electrical detonators, gelatin sticks, etc., were recovered. Seventy two books containing Jihadi material and two CDs were also recovered from the house of Yahya and four pistols with 17 live cartridges were recovered from the possession of Mohammed Asif.

The allegation that Kashmiris and outsiders visiting this state have become fair game for intelligence and police agencies, which need to be monitored etc, is unfounded. The visitors do not attract any violation of human rights as these allegations are rather vague, and are not supported by any specific complaint. This appears to have been made as a mere suggestion.

State or central intelligence has no access to the media. Whatever information the press collects about an incident, or information furnished by investigation officer or his supervisory officer, cannot be constructed as information published for creating fear psychosis. Often events reported by the press are to create awareness among public.

Announcing awards for arresting suspects even before the start of investigation is a matter pertaining to the internal administration of the police department and in no way does it pertain to the violation of human rights. The political parties whipping up hysteria over the so-called terrorism to frighten and distract people from priorities like democratic governance is once again not a matter pertaining to violation of human rights.

The allegation that there have been concerted efforts to pick up youth from Muslim minority community, and charge them with acts of alleged terrorism, is baseless and unfounded for the simple reason that those who are engaged in terrorist activities are dealt with under the law. The petitioner has failed to mention even a single instance where a Muslim youth was picked up illegally.

As a matter of fact, Adoni was not detained illegally or arrested by the police, nor had any case registered against him under terrorist laws. Hence, it in no way attracts the violation of human rights.

The report concluded by stating that, "By shooting up of such petition with false allegations, Sri. Hassan Mansoor has wasted the time of the chairperson of the SHRC as well as of the government officers".

In my comments on the report submitted to the KSHRC on August 23, 2008, I had narrated my involvement with PUCL and human rights work as an educator and activist. I was in fact shocked to read the number of cases that I was booked in and had asked my advocate to get the details on the cases, and was surprised by the baseless allegations leveled against me. However, I had requested my advocate to take legal action with regard to the said cases.

Further clarifying the allegations in the report of ADGP, I had stated the following:

"My conversion to Islam is of absolutely no relevance to the matter at hand, and it clearly points out the manner in which ADGP – intelligence, is attempting to malign my name, while using this as an excuse not to address the real issue at hand"

Responding to point 2 of the report: What needs to be recognised is that a number of Kashmiris, merely because of their geographical background, are being monitored, illegally detained and arrested, thereby violating the fundamental right to equal treatment and right to movement which is in effect a clear violation of human rights. For instance, as reported in the press dated February 4, 2008, the arrest of Kashmiris in Hampi who went back to Kashmir, after being illegally detained when they were found to be absolutely innocent.

Any information regarding investigation of a case is left either with police or the court until the end of the trial. The secrecy of the investigation with respect to the crime and the person should be maintained. However, the kind of information that is floated to the media by the police portrays the accused as the criminal long before the courts pronounce any decision in such matters. The report refuses to answer the question on the role of the police in allowing for a trial by media to take place

A number of questions continue to be raised by many scholars and scientists, including Prof. Chandrasheker, former director of Forensic Science Lab, Chennai, who has written letters to the prime minister requesting the ban of narco-analysis tests, and has argued that the tests are dangerous to the person on whom they are conducted. The Apex Court is currently hearing a number of cases in this regard. The court is also considering whether such tests should be conducted without the consent of the accused. Given this, I do not see that my statement should amount to contempt of the court.

With regards to the giving of awards to policemen for arresting suspects, the ADGP intelligence has merely stated that it is a matter pertaining to the internal administration of the police department. It is submitted that any decision or matter aunder internal administration of the police is still bound by the Constitution of India, and the police are required to function within its purview. Further, the giving of such awards compromises the right of the accused to a fair trial.

The NHRC has held in Guideline G, dated December 2, 2003, that:

"No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards should only be given when the gallantry of the concerned officer is established beyond doubt."

With regard to point 6, the ADGP intelligence has not responded to the question in any way, and has merely stated that it doesn't constitute a violation of human rights.

Our plea to the police is to ensure that victimisation on the basis of religion or geographical background does not take place. It is common practice that persons are picked up and illegally detained by the police merely because of their religion or geographical background. It would be difficult for us to give specific instances of such violation here as it is a threat to the security of such individuals.

In a press report dated February 5, 2008, it was specifically mentioned that Adoni was detained by the police for his alleged links with terrorists. If such detention did not take place, why was such a report published, and if the report is false why was no action taken against the paper, or why was a clarification not made in the media? A delegation of various human rights groups comprising of the *Alternative Law Forum, Human Rights Law Network, SICHREM, People's Democratic Forum* and PUCL, Karnataka, met the DGP COD on February 26, 2008, seeking information on these arrests, and he clarified that these arrests were few, and that "these are just suspects" and details regarding progress on the cases were confidential. He also stated then that it was "unjust that all suspects were being called Muslims by the Media". PUCL as an organisation has a strong stand with respect to issues of violence, which may be committed by organisations like PWG, CPI (Maoist Party).

Having reviewed my comments on the report, the KSHRC, on January 29, 2009, passed the order that

"The collective consideration of the contents in the body of the complaint, the report with enclosures as well as comments of the complainant, shows that there is no substance showing that the police in the state of Karnataka are intentionally pointing at the Muslim community with regard to terror acts but, on the other hand, the commission finds, in regard to the material before it, that such suspects were apprehended and interrogated by the police officers showing the criminal intention for terror acts. It is on such information and in accordance with the law of the land, that the police officers have arrested and interrogated the persons irrespective of religion or community to which such persons belong, in protection of the law of the land and the society"

In its conclusion the commission in its order stated that:

"The collective considerations lead to a conclusion that the allegation made by the complainant that only the Muslim community persons are pointed at is unsubstantiated and as such the commission finds that there is no substance showing violation of human rights of the persons of such community. Consequent upon the same, the complaint deserves to be dismissed. Accordingly the complaint in HRC 556 of 2008 is dismissed."

Subsequently, when I filed a complaint along with the KSHRC's order, with the NHRC, dated September 15, 2010, it passed the order on October 25, 2010 stating,

"The complaint is not entertainable in accordance with the provisions of section 36 of the Act, read with regulation 9 of the NHRC (Procedure) Regulations 1994, as amended. Hence, no action is called for and the file is closed."

The commission could have called me for an inquiry in person for further comments or clarification, but by allowing such a response from the AGDP, targeting the individual's personal life and therefore morphing the real issue and the subsequent dismissal by the KSHRC of the complaint filed, indicates a tragic failure to appreciate the concept of human rights itself. The legal procedure of the case seems to be the only way irrespective of how the judiciary would look at this case.

Case of Illegal Detention and Harassment by Police

Hebagodi Police Station, Bangalore Urban

MANI (DECEASED)

I am Rukminamma, aged 55, W/o Late Chandrappa, of Veerasandra Village, Attibele Anekal Taluk. I am a daily wage labourer. I have four children, two boys and two girls. Both my daughters are married and my sons are still single. My first son C. Mani is physically challenged, and my second son is Mohan. Both used to run two chicken shops that my husband had started.

Mr. Nagaraj, working at a security agency and living in the same village, had taken a loan of Rs. 3200 from my son Mani. On June 13, 2009, Mani and Nagaraj fought over the loan repayment. On June 14, 2009 at around 2:30pm, the SI Mr. Narayan, and a number of other policemen from Hebagodi Police Station, picked up Mani from the house and took him to the station, stating that a complaint had been made against him by some security agency.

When I spoke to my son-in-law Kumar, my relatives Sampath Kumar and Babu assured me that they would take care of the matter. Hence, I did not go to the Police Station. Mani was detained at the station in police custody until the following day June 15, 2009. At 10am, Sampath Kumar brought Mani home. When Mani reached home he only said "The people who used to eat from me, beat me up" but he did not mention which police officer had beaten him. When I checked my son, his palms, thighs, hip and feet were swollen. I could not take Mani to a doctor as I was preoccupied with my second daughter who had just had a baby, so I scolded him for getting into a fight and left to see my daughter. When I came back home on June 16, 2009 at 7pm, I heard the news that my son Mani had consumed poison at 6 or 6:30pm due to depression, and was admitted to St. John's Hospital by my son-in-law Kumar, Sampath and others. When I went to the hospital at 9pm, I found my son admitted in the ICU. Eventually, on June 18, 2009, between 10 and 11am my son Mani passed away.

On June 18, 2009, with the help of SICHREM, I filed the complaint with the KSHRC (HRC No. 2989/09) against the SI and other police officials of Hebagodi Police Station, for the arrest of my son Mani, for illegally detaining him, subjecting him to harassment and abetting his suicide.

I had pleaded with the commission to initiate a transparent investigation and:

To look into the exact cause of death, the role of the police personnel of Hebagodi Police Station, and especially the SI and others who apprehended Mani.

To inquire whether the procedures and guidelines laid down by the NHRC in its letter No. 66/SG/NHRC/93, dated December 14, 1993, on reporting custodial deaths

and also with reference to the letter vide No. 40/3/95/LD, dated June 21, 1995, had been adhered to and followed?

To also inquire, if the guidelines laid down by the NHRC, as per the letter addressed by the chairperson to the chief ministers vide letter dated August 10, 1995 on the video filming of post-mortem examinations in cases of custodial deaths had been followed?

To inquire if the guidelines laid down by the NHRC, as per the letter addressed by the chairperson to the chief ministers vide letter no. NHRC/ID/PM/96/57, dated March 27, 1997, had been followed?

As there were other complaints concerning the same incidents, the commission has clubbed them together in HRC No. 2989/2010 CW 3067/2009 and 3036/SM - 633/2009 to 3041/ SM – 638/2009. On June 19, 2009, the KSHRC had referred my complaint to the SP, Bangalore Rural District, for an enquiry, and asked for a report within eight weeks, listing the case for consideration on August 31, 2009. The police sought extension twice and finally submitted the report on November 10, 2009, a good three months later. Upon receiving the report from the Superintendent of Police on November 10, 2009, the KSHRC forwarded the report for our comments within four weeks, thus listing the case for reconsideration on December 22, 2009.

The investigation report stated that, "Other than the complainant, the rest of the witnesses have said that Mani's mother had thrown him out of the house, and without the help of the relatives, Mani had become an alcoholic, and used to engage in gambling and other bad habits. Meanwhile, having experienced losses in the business and having debts to people, and being depressed by the fact of being physically challenged, and having no other livelihood options, Mani had consumed poison with the intention of suicide. Hence, nobody should be blamed for his death". According to the police station documents, the accused police officers were not present at the police station on the day of the incident as they were attending other cases elsewhere.

Having received no comments on the investigation report, the commission, pursuing the complaint and reviewing the report, had ordered that in the absence of any proof of violation, this incident of suicide resulting in death cannot be considered as a violation of human rights. Hence, the complaint of HRC No. 2989/2010 CW 3067/2009 and 3036/SM - 633/2009 to 3041/SM – 638/2009 has been disposed of.

Case of Police Atrocities

Bajpe PS, Dakshina Kannada District

RAHEEM UJIRE

In an email sent to the KSHRC by Mr. Suresh Bhath Bakrabel, he complained about the police atrocities committed against Mr. Raheem Ujire on February 13, 2010. On February 13, 2010, SI Pramod Kumar of Bajpe Police Station confronted Mr. Raheem at Kaikamba Junction, and started asking why he was there, adding that he had seen him the previous night as well. When Mr. Raheem informed him that he was TV reporter for Kasturi Channel, the SI refused to believe him, and forcefully took him to Bajpe Police Station, where he detained him, and made him sign a false statement.

The KSHRC, having registered the complaint as HRC No. 1710 (A)/2010, directed the IGP, Western Range, Mangalore, to conduct an enquiry and submit a report on the same.

The report submitted by the IGP, Western Range, Mangalore, claimed that on February 13, 2010, Sri Ramasene had called for a bandh. Bajpe Police Station SI Pramod Kumar, who was on rounds at Kaikamba Junction, seeing the same person at the same spot whom he had seen the previous night at the *Kuppepadavi Jaatre* (festival), confronted the person on account of his suspicions, and asked the person for his contact details. The person is believed to have behaved indifferently to the questions of the SI.

Later, as there were too many people at the spot, the PSI took the person to the station to determine whether he did belong to the Kasturi TV Channel. At the police station, the SI held him for 15 minutes and recorded his statement. Further, the report claimed that the eyewitnesses at the spot of the incident had confirmed the misbehavior of Mr. Raheem towards the SI.

The KSHRC, having not received comments from the complainant, had upheld the report of the IGP, Western Range, Mangalore, and disposed of the case, stating, "In absence of any comment on the report and having reviewed the enquiry report, the complaint cannot be treated as that of a violation".

Case of Torture and Ill-treatment by Police

Marikuppam PS, Kolar District

A. BABU

I am A. Babu, aged 54, a dalit, residing at 'B' Hosahalli Village, Mulbagal Taluk, Kolar. On March 7, 2010 at about 12pm, two constables in civil dress entered the house and asked me to report to the Marikuppam Police Station. As soon as I stepped into the police station, ASI (crime) Arasappa, started abusing me, and ordered me to strip off my clothes. When I protested, the ASI and two constables started beating me with *lathis,* and asked me where I kept the stolen goods. This brutal torture carried on continuously for about half an hour. All the while I was handcuffed and was chained to the window bar. Unable to handle the pain, I fainted and collapsed. Later, I was released by the local *panchayat* member. Due to the torture I was bedridden, and was unable to move or do anything. On April 3, 2010, the police officials of Marikuppam Police Station entered my house and ransacked it. Then, they took my son and son-in-law into custody, and they released them only on April 4, 2010. After this incident, unable to bear the indignity caused by the action of the police, my son Suresh attempted suicide and was admitted to the government hospital.

With the help of SICHREM, I filed the complaint with the KSHRC on April 23, 2010. The commission responded by sending a notice to the DC, Kolar, directing for a detailed enquiry and the submission of a report within six weeks from the date of receipt of notice. SP, Kolar had submitted the investigation report to the commission but no action/order has been initiated after this.

In spite of this the police continued to raid my house in January 2011, and the same torture has been continuing since then. On January 18, 2011, I approached the commission and filed another complaint against the police's continued torture and abuse which has made my life difficult, and hence requesting the commission to intervene as a priority. I am still awaiting a response from the commission.

Case of Police Harassment

Ullal PS, Dakshina Kannada District

SHAHUL IBRAHIM

I am Shahul Ibrahim, aged 10 (on the date of the incident). I was then studying in 5th standard at Barry's Public School, Dargah Road, Ullal. On March 18, 2009 at about 4:30pm, I was returning home after attending tuition. I was on my bicycle near the primary school when Mr. H Shivaprakash, SI, Ullal Police Station, approached me and started beating me mercilessly, without giving me any reason. On account of the severe beating, I suffered shock and injury and I was rushed to a private hospital for treatment. Due to the incident I was unable to attend my annual exam, which started on March 19, 2009.

The commission has taken cognisance of the offence as per my father's complaint vide HRC No: 1627/09 and HRC No.1596/2009 dated March 21, 2009, which directed the IGP with KSHRC to conduct an enquiry and submit a report. The commission subsequently received the report on May 21, 2009.

The report revealed that during the enquiry by the SP, Dakshina Kannada District, SI Shivaprakash, said in his statement that "On June 18, 2009, on my way to attend a meeting at Tahsildar's office in Mangalore at about 4 pm, I found a boy riding a bicycle erratically, and who was on the verge of falling off in front of my jeep. So, I stopped the Jeep, got down and told the boy not to ride a bicycle like that. The boy left the bicycle in the spot and ran. Later I continued on my way and attended the meeting at Tahsildar's office and then went to the police station for my duty". He added, "The people whom I had arrested at an earlier date related to the communal violence case have used this opportunity and have filed false complaints against me". The report disclosed that having compared SI Shivaprakash's statement with the disciplinary action document it had come to the conclusion that SI Shivaprakash should have followed caution while dealing with the boy. Hence, on March 24, 2010, the order in the report stated that SI Shivaprakash has been warned to continue his duty with caution.

The commission, having reviewed the report of the IGP, KSHRC, stated "the commission, having carefully considered the evidence recorded by the IGP, KSHRC in the course of the enquiry and the findings recorded by him, thought it fit to give an opportunity of being heard to Sri H. Shivaprakash, SI, before making appropriate recommendations to the state government".

Accordingly, the commission, on June 2, 2009 directed Sri H. Shivaprakash, PSI, to appear before the commission on June 22, 2009 to give him an opportunity of being heard in terms of Section 16 of the Act. Sri H. Shivaprakash, PSI, sought an

adjournment. Ultimately, Sri H. Shivaprakash, SI, appeared before the commission on August 4, 2009, and his statement was recorded, and he also filed his written comments.

IGP, KSHRC, recommended the Government of Karnataka, represented by his secretary, home department, to initiate the proceeding of prosecution of SI, Shivaprakash, to initiate disciplinary proceeding, to transfer him out of Dakshina Kannada district and to award a compensation of Rs 25,000 towards injuries sustained by the victim, with the said amount to be recovered from his (SI Shivaprakash's) salary. The said recommendations have been upheld by the KSHRC, and thus been intimated to the Secretary, Home Department, Government of Karnataka, through an order on November 20, 2009. An 'Action Taken Report' on this recommendation was to be submitted within two months from the date of receipt of this notice.

We followed this up with an RTI, and monitored the implementation of the KSHRC's final orders in this case. The information received from the public information officer, district police office, Dakshina Kannada District, dated December 4, 2010, states that, according to department disciplinary action no. 08/2010 dated March 24, 2010, SI Shivprakash was warned. Further, following the Government Order - HD/25/EFS/2010 dated March 11, 2010, the victim of violation has been paid compensation of Rs. 25,000 under account 2055-00-1-9-1-01-051, of general expenses, on June 18, 2010. The amount is to be deducted from the salary of SI Shivaprakash.

In a second RTI petition dated January 3, 2011, we asked for the following information:

- Departmental punishment given to SI Shivaprakash and proof thereof and copy of warning letter issued to him with his acknowledgement.
- Proof for having deducted from his salary Rs. 25,000, by way of penalty.
- Transfer order for the human rights violator, following the orders of the KSHRC.

In response, the 'public information officer' sent us the copy of the warning letter and proof of deducting Rs 25,000 from his salary as penalty. The statement of deduction revealed that only Rs 5,000 has been deducted till August 2011. The information on the transfer cannot be furnished as the information sought is beyond the jurisdiction of the information officer, superintendent's office.

Case of Police Torture

Ullal PS, Dakshina Kannada District

KABEER

I am Kabeer, aged 45, resident of Sagar Compound, Hale Kote, Ullal Village, Mangalore. I am the Vice-President, PUCL, Mangalore, and Secretary of PUCL, Karnataka. I have been a victim of continuous police brutality and torture since 2006.

On October 6, 2006 there was a small commotion at Ullal. Even before the incident I had phoned the SP and had informed him that the members of Bajarang Dal were attacking people who were going to the Mosque. But when the police came they started beating up people going to the mosque, and later in the middle of the night the police arrested the Muslims, dragging them out of their households.

On account of such police atrocities to the Muslim community, I had organised a protest in 2007, and Ullal Circle Inspector Jayanth Shetty called and told me, "You shouldn't be protesting against us. If you do, members of Bajarang Dal will start their protest and it might turn into a communal clash. If there is any communal incident, I will make sure to arrest you and you will see what would happen to you". I asked Mr. Jayanth Shetty "If we protest against you, why should the Bajarang Dal come here and create a commotion?" Then Mr. Jayanth Shetty replied, "Ok, you protest. I shall show you what I can do".

Once again, on January 8, 2008, at Bharath High School, Ullal, there was a fight between students and later it resulted in a small communal clash between the Hindus and Muslims. On January 24, 2008, all those who had participated in the earlier protest against police brutality were arrested. The SI came to my house at 2am, and arrested me saying, "Bastard, how dare you complain against us with the higher officers?", later registering me on a false complaint with FIR No. 41/08, U/s 143, 153 (A), 114 & 149 IPC. A total of 32 persons were arrested and they kept us overnight at the police station, and the next day they took us to the house of the judge and presented us in front of the judge in three batches. First, two batches of 14 persons each and the third batch of four persons.

The judge asked us whether the police had beaten us. To this I said that, "I have been beaten and have sustained injuries on my chest and legs". The judge reported my statement and directed the police to take me to the hospital for treatment.

The police put us in the bus. I was the only one handcuffed in the bus. Protesting this, I shouted to the judge, saying that I alone had been handcuffed; the judge stood and saw this. The police told me to stop screaming. So I asked them "What

wrong have I done for you to handcuff me alone?" The police began talking amongst themselves, one said, "Let us take him to the police jeep" but the other policeman said "No, let us take him in the bus, since all are there. If we take him in the jeep, he might complain that we took him alone in the jeep to the police station and beat him"

After eight days, I was released on bail. So I approached the KSHRC, filing a complaint against the Ullal Circle inspector Mr. Jayanth Shetty, of abduction, wrongful confinement and causing hurt in an illegal police custody. The KSHRC, registering my complaint with HRC No. 519/08, on February 26, 2008, directed the SP to conduct an enquiry and submit a report.

On April 24, 2008, the SP submitted the report, which only narrated in detail about the communal violence that took place at Ullal, from 8 to 25 January 2008. But no mention of my arrest and the reasons for that arrest were made in the report. When I brought this to the notice of the commission, the IGP, Western Region was directed to conduct the enquiry and his report, submitted on May 21, 2008, was the same (almost word for word) as the report submitted by the SP. Again I brought this to the notice of the KSHRC on July 15, 2008. However, the commission, without further enquiry, dismissed the complaint on February 12, 2009 stating that it saw no human rights violation.

On October 20, 2008 at 1am, the police, on an issue of a family matter, once again arrested me. The PSI said , "You are going around complaining about me, I shall make you disappear from the record of being born here", then took me to the police station, tried stripping me and beat me. I have a broken bone in my hand due to the beating. Later, the pressure built up from the PUCL on the IG, SP and other police officials. Since it was a holiday, that afternoon the police took me to the house of the judge. I told the judge that I had been arrested and booked on a false case by Jayanth Shetty and SI Shiva Prakash because I had filed a private complaint with the court (Code PC 16/08 and 26/08) about them. The judge asked me who the PSI was and I responded it was SI Shiva Prakash. So, the judge asked me to inform PSI Shiva Prakash to come to the court the next day. Furthermore, the judge recorded all the details about the police atrocity conducted against me, and he later advised me to file another private complaint against SI Shiva Prakash. I filed another private case against SI Shivaprakash.

In retaliation, SI Shiva Prakash, on October 30, 2009, opened Rowdy-sheet 'C' on me. I approached the KSHRC repeatedly, requesting that they intervene and revoke the same. Finally, registering my complaint with HRC No. 2599/10, the KSHRC directed the IGP, Western Region to conduct a detailed enquiry and to submit a report. The IGP, Western region, later referred the complaint to the SP, Dakshina Kannada, and further it was referred to DySP, Panambur Sub-Division. Having received the report, the commission forwarded me the same on June 28, 2010, directing me to submit my comments within four weeks from the date of receipt of the notice.

The report stated, "The area under the jurisdiction of Ullal Police Station is highly sensitive. As the complainant is of the character of creating disturbance and disharmony using any small incident for his selfish motives, it is crucial to monitor his movement within the area. Similarly, among two cases, one has been settled but another

case is still pending. Hence, it is appropriate and advisable to keep the rowdy-sheet opened on him"

In my response to the report I held that the report was biased. Hence, I requested the commission to conduct an independent enquiry into the complaint. Furthermore, I had brought to the notice of the commission that in response to a PUCL representation, the SP and the IGP had promised to withdraw the rowdy-sheet. Further, it is already established that Jayanth Shetty has continuously harassed me and my fellow Muslims and PSI Shiva Prakash has already been penalised Rs. 25,000, and ordered to be transferred out of Dakshina Kannada (DK), by the commission in a separate case. Both officers have a clear saffron link. Jayanth Shetty's father-in-law belongs to the BJP. As their superiors are trying to protect them repeatedly, through misleading reports, I requested that commission make the report submitted by SP, DK, Mangalore, available to me.

Acting on this, on September 17, 2010, the commission directed SP, DK, Mangalore, to send me a copy, and instructed me to submit my comments within four weeks. PUCL, pursuing my cases, had written to the KSHRC on September 20, 2010 narrating the facts about the saffron links of Jayanth Shetty & Shiva Prakash, the number of criminal cases filed against Jayanth Shetty for his torture and encounters of the minority etc., the wealth amassed by Jayanth Shetty hidden in *benami* names and controversies around it, all of which needed to be probed into before taking a final decision on the case. PUCL also requested that the commission club together the Cases No. 519/08, 7942/09, 1023/10 and 2599/10, for the benefit of the investigation as all are connected to me. Subsequently, I wrote another letter to the commission on February 2, 2011, stating that I was adopting the statement dated September 21, 2010, filed by the PUCL. Unfortunately, there has been no response from the commission to these letters to date.

Case of Police Atrocities

Ullal PS, Dakshina Kannada District

ISMILE

I am Ismile, aged 41, resident of 268, Delarakatte Road, Madur, Kotekar Post, Mangalore, Dakshina Kannada. I work as a real estate agent. On August 13, 2010, at about 11am, Mr. Gangadhar, K. Praveen, and two other police persons from Ullal Police Station came to my house looking for my brother Raheem. I told them that he was working abroad.

All of a sudden, the police held my shirt and started tugging me into my house and searched my house saying, "Tell us the truth. Where is your brother? Where have you hidden him?" Looking at the women of the household they said "If you do not tell us where you have hidden him, we will take all of you to the station and book you. We will kill Ismile in a false encounter if you do not tell us the whereabouts of Rahim". Thereafter, Mr. Gangadhar abused my wife Hamida, and took her into custody. She was nine months pregnant then.

At the police station, Gangadhar kicked me with his boots and tortured me. The police had not given any reasons or shown any warrant for my arrest. While I was at Ullal Police Station, Mr. Ningappa Pujari, Police Inspector, arrived at around 2pm, and denied any knowledge of my arrest and left the station. It was claimed later that I was brought to the police station upon the instructions of SI T.D. Nagaraj.

Meanwhile, my wife got in touch with a family friend, Mr. Mohammed Kabeer, and was advised to engage a lawyer and approach the court. She filed for a 'Search Warrant' at III JMFC Court under M.C. 78/2010. She petitioned the court to issue a search warrant against the police involved in the illegal custody, and to appoint a practicing lawyer as a court commissioner to execute the search warrant, find me, and produce me in front of the court, and to authorise the court commissioner to search Ullal Police Station or any other place where I might be illegally confined. When the police learned of this, they brought me back home in a rickshaw on the same day at 5.30pm. After being released from custody, as per the instruction of my lawyer and Mr. Kabeer, I went to get medical treatment at Yenepoya Hospital.

On August 14, 2010 at about 7:30pm, having learnt of Mr. Kabeer's intervention, PSI T. D. Nagaraj of Ullal Police Station threatened him saying, "Ismile has gone to the court to file a case against me and I heard you were the one helping him. If Ismile manages to file a case against me, I shall not leave you. I will book you for every criminal case in Ullal and put you in jail forever. I will add your name to the Madur Yousuf's gang's crime lists".

We reported this sequence of events to the KSHRC on August 15, 2010 and they registered a complaint, HRC No. 6270/10. It directed the CP, Mangalore to conduct a detailed enquiry and to submit a report to the commission. The KSHRC received a report from the CP, Mangalore on November 19, 2010, and forwarded me the same on December 8, 2010, for my comments within four weeks from the date of receipt.

The investigation report submitted by the CP, Mangalore is obviously biased. It states, on August 11, 2010, that the police had received a complaint from one Mr. Abdul Rauf against my brother Raheem, claiming that Raheem had taken Rauf's brother Ashraf abroad for work and had not paid him. So in the complaint, Rauf had asked the police to arrest Raheem, and to help Rauf to collect money from Raheem. The report further claimed that, following the procedure as per the law, SI T.D. Nagaraj had sent Gangadhar (PC-819) and Praveen (PC-829) to my house to enquire about Raheem and had requested me to update them on Raheem's whereabouts, and had left the place.

The report added that "Mr. Ismile reported at the station in relation to the complaint about his brother and clarified that he had no information about the issue of money between Raheem and Rauf or his brother Ashraf. Mr. Ismile promised that he would inform his brother about the complaint and would ask him to report at the police station. Ismile then submitted the statement stating that he had nothing to do in relation to the complaint of Abdul Rauf."

Commenting on the role of Mr. Kabeer, the police in their report had stated, "Mr. Kabeer has been falsely accusing the dutiful police officers in many such cases. It has been reported that Mr. Kabeer had conducted meetings of 40 to 45 human rights activists. Addressing the gathering, he had invited them to unite against the police, claiming that former CI Mr. Jayanth Shetty, in his police station jurisdiction, had arrested civilians on false cases and tortured them. Hence, he had said that it was important for people to unite in large numbers and stop the police in such cases."

Further, the report said that Mr. Kabeer had been rowdy-sheeted, and that he had filed complaints with different bodies to close the rowdy-sheet. Moreover, there have been a number of private complaints against Mr. Kabeer. Mr. Kabeer, being angered by this, has joined hands with Mr. Ismile and has coaxed Mr. Ismile and his family into filing false cases against the police.

In our reply to the enquiry report dated January 8, 2011, we had commented that, "the report of the commissioner is *mala fide* and written with a view to protect the guilty policemen. The truth is that T.D. Nagaraj and his men illegally arrested me. If the arrest was *bona fide*, what was the need for the police to release me and drop me at my house? The commissioner's report indirectly proved that two constables were indeed sent to my house to call Raheem to the station for the enquiry. If so, what was the need for the police to pick up me by force and take me to the station? Though they deny this, the search warrant filed by my wife and the medical certificate proves the illegal detention.

The police version of the incidents is liable to be rejected. Police in India are not angels. No proof is required about their behavior, as every citizen in India knows their crude behavior. It is not known why they should take a statement from me when I

have no connection whatsoever with the complaint the police received. It is true that Mr. Kabeer organised an awareness program about human rights in his capacity as vice-president of PUCL, but that cannot be held against him. The police cases filed in the report of the commissioner are false cases cooked up by the police to discourage him from doing human rights work in the Ullal area, which constitute a large number of the Muslim population, and is where police atrocities are greatest. The court had already dismissed one such false case against him. Hence, I requested that the KSHRC carry out an independent inquiry."

After receiving my comments, the IGP and KSHRC, on February 11, 2011, directed Mr. Kabeer and myself to be present in person in front of the commission on February 28, 2011, at 11am. As per the notice, Mr. Kabeer and I were present at the commission and submitted our written statements.

Similarly, the IGP and KSHRC issued a notice to SI T.D. Nagaraj, Gangadhar and Praveen to be present before the commission on March 8, 2011, and they appeared before the commission and submitted their statements. No final view has been taken of the matter. However, we have little hope in a process where one policeman sits in judgment of the conduct of another policeman.

Case of Illegal Detention and Torture by Police

Banashankari PS, Bangalore District

YASHODA

We, Madesh, Diffaraz, Savitha, Sahana & Kokila, are the crisis team members of Sangama. One of the activities of the Sangama is 'crisis intervention' – providing emergency support to sexual minorities in crisis situations. Sangama's crisis intervention is recognised as an effective practice by the Indian Government through its National AIDS Control Plan III, 2006 – 2011, to be emulated by organisations working with sexual minorities or sex workers across India.

After receiving a call on October 20, 2008, at around 11am, about the illegal detention of five *hijras* by Girinagar Police, we went to visit Girinagar Police Station to inquire about the detention. Upon the request of the police, we proceeded to Banashankari Police Station and met the ACP and PI Shivashankaramurthy, in order to try and to the problem. Without any provocation, the ACP and PI behaved in an abusive and derogatory manner, and passed remarks like: "Are you a man or a woman?", "Take out all your clothes. Let me check what you have there" and "Is he wearing underwear? Strip them". Then he shouted at us "How dare you come to my area to support hijras? Do you make blue films? Are you beggars?" then threatened us by saying, "If you talk too much, we will put you in a cell". The ACP slapped Diffaraz and asked the police to arrest us and book us under the Ganja/Afeem case. The PI slapped Madesh twice while Shivashankaramurthy brought a block of wood and placed it on Madesh's head, and the ACP threatened to break Madesh's head.

Taken aback by this, we made a call to Chandini and Rosy (activists from Sangama). They arrived at the police station at around 3pm. At that point the Banashankari police brutally attacked Madesh and Diffaraz by hand and *lathis*. Madesh and Diffaraz were kicked and dragged into a police van and moved to the Girinagar Police Station by force. When policemen approached three of us, in order to hit us, we warned them of the serious consequences of policemen touching women, and the police backed off.

At Girinagar Police Station, Madesh and Diffaraz were kept in the lock-up, and the rest of us were detained. All of us were booked under IPC Section 143 (unlawful assembly), 145 (joining unlawful assembly ordered to dispersed), 147 (rioting) and 353 (obstructing government officials in performing their duty). We were produced before the magistrate at 8:45pm, and were sent into judicial custody. We were released on bail on October 27, 2008.

After the news of our detention spread, many human rights activists and lawyers from various organisations gathered outside the Banashankari police station. They

tried to negotiate with the ACP and PI Shivashankaramurthy, unsuccessfully. As a last recourse they started a peaceful protest in front of the police station and shouted slogans against police atrocities. At 7:30pm, at the ACP's request, a delegation of six activists started a dialogue with a police officer inside the station. The delegation included Manohar, *Karnataka Sex Workers Union*, Founder of Sangama, Yashoda, *Karnataka Dalit Mahila Vedike,* Sumathi Sufi Singer, Jayaram, *Garment and Textile Workers Union*, Chandini, Sangama and Sowmaya, Samara. The ACP and the PI said, "It was wrong to hit people in our custody, but we cannot release the people in our custody as we have instructions from the senior officials to round up all *hijras* on the streets of Bangalore and book them under extortion cases. You may protest in front of the police commissioner's office". When the delegation persisted in its questioning of the unlawful action of the police, the ACP shouted, "Arrest these people and beat them up". Upon this, ACP, PI and a few other policemen hit the delegation members with hands and *lathis* on their neck, legs, and back and pushed them into the cell. At around 8.30pm, ACP and PI got the six delegates out of the cell, hit them brutally and assaulted four women and *hijras*. The activists had a hard time even accessing drinking water and toilets. At around 11pm, the police freed these delegates without any charges.

Meanwhile at 7:45pm, police officers came out of the station and started beating up people, especially those who were holding cameras, to prevent recording of the evidence of police brutality. Police declared that they were arresting protesters and asked them to get themselves into the police vehicles. When protesters demanded the release of the six delegates, the police mercilessly attacked them. Later, they pushed 31 activists (one hijra, three female to male transsexuals, nine women and 18 men) into a small van and they were forced to spend seven hours inside the van, with the police refusing to provide food. At midnight, the 31 activists were provided with some water. All of them were booked under section 143, 145, 149 and 353 of the IPC. They were taken to the magistrate's residence. There, the police tried to prevent the protesters from complaining against police brutality before the magistrate. After the strong protest by the advocates representing the arrested, the 31 members were eventually produced in front of the magistrate. The advocates were informed by the II Addl. Chief Metropolitan Magistrate, Bengaluru, that the police sought his permission to produce the accused before the court at 11am on the next day as the size of the accused contingent was large and there were no lawyers to represent the accused. The reasons given by the police to the magistrate were all blatant lies. The persons who had suffered at the hands of the police were later examined by the doctors of Bowring and Victoria Hospitals. The reports indicate bodily injuries sustained in the police attack.

The *Coalition of Sex Workers and Sexual Minorities Rights* took the matter to the KSHRC in a complaint (HRC No. 4228/2010) against the police atrocities and a violation of human rights, and requested for an intervention, and recommended that the SHRC:

- Dismiss the guilty police personnel, including H.T. Ramesh (ACP), M Shivashankaramurthy (PI), Doddarayanna and Vijay Kumar, and prosecute them for the crimes of assault, abuse, sexual assault and illegal detention committed against human rights defenders.

- Stop the brutal police violence (physical and sexual) against *hijras* and sex workers in Bengaluru, and punish the perpetrators of violence
- Protect the rights of the *hijra* community for their traditional livelihood options including sex-work and cross-dressing. Provide them with a reasonable option.
- Initiate immediate measures to fulfill the obligations of the government, so that *hijras* and other transsexuals have access to education, employment, health, housing, sex-change procedures, savings and credit facilities etc.

In spite of the complaint, no action has been taken so far.

Case of Extrajudicial Killing by Armed Forces

PRAKASH KARIYAPPA

My name is Prakash Kariyappa. I am the fact finding coordinator SICHREM. On 29 December 2008, the major dailies had reported that a 19-year-old boy, Mohammed Mukkaram Pasha, a drag racer, was shot dead by army sentries at Flag Staff House around 1:45am on the intervening night of 28 and 29 December 2008. The press raised many doubts about the death of the unarmed hapless youth.

In the event, the KSHRC took *suo motu* cognisance of the issue, based on news reports in papers dated December 29, 2008 and clubbed this together with my complaint filed with the KSHRC, as HRC No. 4741/SM- 956/08 to HRC No. 4759/SM- 974/08, and C/W HRC No. 4740/08.

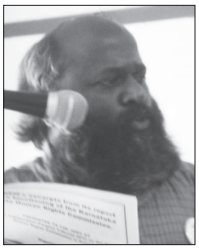
In my complaint I had brought to the notice of the commission that:

> "The traffic police ought not to have pursued the two youths. They could have simply taken their vehicle registration numbers and issued notices later. It is not their responsibility to chase people suspected of traffic offences, and,
> "The army personnel on guard were extremely reckless in their use of gunfire. Mr. Mukaram was unarmed, and therefore their conduct could in no way be considered self-defense. Furthermore, six shots were fired, one of which caused Mr. Mukaram's death. This is an extremely excessive use of force where warning shots or non-fatal shots would have been appropriate."

On December 31, 2008, the KSHRC passed the following order after investigation:

> "The commission, having considered the issue in great elaboration, thought it appropriate that the commission itself should conduct investigation into the shooting before fixing liability on anyone. In that view of the matter, the commission unanimously authorised Sri R.H. Raddi, Member of the Commission, to conduct investigation and enquiry into the shooting and submit a fact-finding report to the commission, for further consideration, within a period of one month and list it on Febuary 16, 2009."

The above order was communicated to me. So far no further details have become available about the case.



Case of Custodial Death

Hennur PS, Bangalore District

MANOHAR

My name is Manohar R., Head of Programmes at SICHREM. In my complaint filed with KSHRC (HRC No. 4489/2010), dated June 21, 2010, I had brought to the notice of the commission the death of Mr. P. Lokesh, aged 25, resident of Narayanapura, while in custody of Hennur Police Station, Bangalore, on June 20, 2010, which was reported in the major English and Kannada newspapers on June 21, 2010.

It was stated that Lokesh was arrested on saturday at around 11:30am by the police of Hennur, on charges of a burglary case registered in May 2010. The police stated that on questioning, he had revealed that his accomplices were in Salem, and that the stolen articles were sold there. It was further stated by the police that they took him to Tamil Nadu and on the way he became ill and suffered from diarrhea, and was taken to a local hospital in Dharmapuri. They then decided to return to Bangalore and he was admitted to a private hospital, Mediscope. He died at around 11:30pm, on Saturday.

There were many conflicting statements around this smooth narrative, by the local police as well as senior police officers, DCP and the commissioner. The *Deccan Chronicle* states that Lokesh was arrested four days ago (the statements of the DCP also corroborate this fact, who in his statement has said that he was not produced).

In the light of these inconsistencies and violations of norms we demanded that:

- The police department should be directed to place all the concerned police from the station level to the higher level under suspension for their direct or indirect role in this incident and then probe into the exact cause of death.
- It should also investigate when he was taken into custody and why he was not produced before the jurisdictional magistrate?
- Why was he taken to a private hospital in Tamil Nadu and what was the reason for bringing him to Bangalore? And why was he not referred to any other government hospitals on the way and had to come all the way to K. G. Halli, Tannery Road?
- To inquire further, whether the procedures and guidelines laid down by the NHRC in its Letter No. 66/SG/NHRC/93, dated December 14, 1993, on reporting custodial deaths and also with reference to letter vide No. 40/3/95/LD, dated June 21, 1995, has been adhered to and followed?
- To inquire, if the guidelines laid down by the NHRC, as per the letter addressed by the chairperson to the chief ministers vide letter dated August 10,

1995, on the video-filming of post-mortem examinations in cases of custodial deaths, has been followed?

- To also inquire, if the guidelines laid down by the NHRC, as per the letter addressed by the chairperson to chief ministers vide letter No. NHRC/ID/PM/96/57, dated March 27, 1997, had been followed?
- Why, in violation of D. K. Basu guidelines, were Lokesh's relatives not informed about his illness?

The KSHRC ordered an enquiry on June 22, 2010. In its order dated June 24, 2010, the commission stated that "In order to ensure impartiality in the enquiry, this case is transferred to the IGP, KSHRC, Bangalore, for enquiry and the submission of a report within six weeks from the date of receipt of the notice". And the order also stressed that, "This case shall be dealt with on priority basis". The commission also issued a notice to the DG and the IGP, Nrupathunga Road, Bangalore, with a direction to send a detailed report leading to the death of Lokesh, and the action taken by the state police within six weeks from the date of receipt of the notice.

The DC, in his report dated June 26, 2010, says that according to their investigation, Lokesh was taken by PSI Laksmikanth, Shivanna (HC-2583), M Kumar (PC-5370) and Manjunath (PC-7858) to Salem on June 19, 2010. On their return from Salem to Bangalore via Mettur, at around 10pm, near Hosur, the accused, Lokesh, had diarrhea 6 to 7 times. Police bought him some medicine from the nearby pharmacy. Similarly, while transferring him through Shivaji Nagar Road near Tannery Road, he had difficulty in breathing. Immediately, the police admitted him to the Mediscope Hospital at 11:45pm. The treatment failing at the hospital, Lokesh died at 12:35am on June 20, 2010. Having recorded this incident as UDR 17/2010, it has been declared as a custodial death and his body has been kept at Ambedkar Hospital Mortuary. On Sunday, June 20, 2010, SDO, Bangalore North Sub-Division, Bangalore, with the permission of District Collectorate, had left the center, and post mortem of Lokesh, custodial death, Case No. UDR 17/2010 (Hennur Police Station) was assigned to N Maheshbabu, KAS, Assistant, District Collectorate Bangalore District, Bangalore and Tahasildar Bangalore North Taluk, Bangalore, under Cr.PC Section 176. Accordingly, on June 20, 2010, the post-mortem of Lokesh was conducted by the officers along with the trained doctors. This post-mortem was video-recorded.

Further, the IGP, KSHRC, issued a notice on December 2, 2010, requiring me to appear before the commission for recording my statement on December 10, 2010, at 11am. I had sought the postponement of the date due to prior engagements. In response, the IGP, KSHRC, in the notice dated December 7, 2010, stated that "having considered my request for postponement dated December 3, 2010" had indicated December 15, 2010 at 11am as the alternative date for the recording of my statement. After this, I did not receive any further communication. There has been no information from the KSHRC.

Case of Police Inaction

Chinthamani PS, Kolar District

JAGADISH

My name is Jagadish, living in Chinthamani, Kolar. On February 13, 2008, I called the Chinthamani Police Station, complaining to the police that some unknown persons were moving around in my house. I suspected that the accused persons on the Kambalahalli case may have come to harass me for being a witness in that case.

Mr. Narasimma Murthy (HC-90), Moulasab (PC-631) and Rajanna (PC-99), were on '*bandabast*' duty and had finished their rounds, and were taking rest, when they received my call at 3:20am. Having received the phone call, they questioned me as to why I called the police station instead of informing them. Further, Mr. Mathews, Director for SICHREM, filed a complaint on my behalf with the KSHRC on May 6, 2008, HRC No. 2334/2008.

The commission forwarded the complaint to the SP, Kolar District, along with a request for a detailed inquiry and report. The investigation report dated October 30, 2008 was submitted before the commission. The investigation report showed that the allegations made in the complaint were in no way supported and that there was no case of a violation of human rights.

On March 25, 2010, the KSHRC, in its final order claimed that:

"The collective consideration of the report before the commission in the absence of any comments on it would be such that the allegations made in the body of the complaint are not in any way supported and, therefore, the commission finds no violation of any human rights and consequently upon the same, the complaint deserves to be disposed of. Accordingly, the complaint in HRC No. 2334 of 2008 stands finally disposed of."

The KSHRC did not approach me and ask me to appear before the commission to record my statement. Instead, the commission has passed an order on the basis of the 'investigation report', by dismissing the complaint. In my case, the culprits are from the police department. In such cases Why has the KSHRC not adopted any strict guidelines, to see that the justice is delivered to the victims?

Case of Illegal Detention

HSR Layout PS, Bangalore District

NAYAZ PASHA

My name is Sabiha, wife of Nayaz Pasha, resident of Banashankari 2nd Stage, Bangalore. My husband, Mr. Nayaz Pasha, aged 30, an auto driver by profession, left home at 9am on July 22, 2010, and did not return home. When I tried to call him on his mobile phone it was just ringing, but no one answered. I searched for my husband at our relatives' houses, his friends' houses, but my efforts were futile. Later, I suspected that HAL Police or HSR Layout Police Station must have detained him on July 22, 2010. I assumed they might have mercilessly assaulted him, and therefore, would not allow me to see him. The police threatened me not to inform anyone about the illegal detention, saying that if I did, they would book my husband on false cases. The HAL police had collected my phone number and told me that they would inform me of my husband's whereabouts later, which strengthened my suspicion.

Hence, I approached the KSHRC and filed a complaint on July 30, 2010 requesting that the commission intervene, and direct the concerned authorities to release my husband in the interest of justice. The KSHRC, having registered my complaint with HRC No 5510/10, transferred my complaint to the CP, Bangalore City, Bangalore, directing for him to conduct an enquiry and to submit a report within eight weeks from the date of receipt of this notice, thus listing the case for reconsideration on November 3, 2010.

On December 23, 2010, having received the investigation report from the CP, Bangalore City, they asked me to offer my comments on the report within three weeks from the date of receipt of the notice. Thus listing the case for further consideration on February 3, 2010.

According to the report, HSR Layout Police Station has denied the allegations of arresting or detaining my husband Nayaz Pasha. The HSR Layout police further added that they had not booked my husband under any case. Hence, they denied any violation of human rights.

On March 9, 2011, the KSHRC issued the 'order' disposing of my complaint.

Case of Torture and Ill-treatment by Police

KR PS, Mysore District

RANGAMANI

I am Rangamani, living at J.P. Nagar Mysore. My son, Yadunandan, an engineering student of Vidyavikas College, was staying with my sister at Belavadi, New Extension, Mysore, due to health problems.

On November 29, 2010, 3:30pm, Srikantha and Shuu came to my sister's house, and told her that they would take Yadunandan with them and then would come back within ten minutes. Since my son had not came back for a long time, my sister called Mr. Srikantha, in order to discover the whereabouts of my son, but his mobile was switched off. My sister also tried calling my son but he could not be reached. After a long time, my son, Yadunandan, called my sister and told her that he had been taken to KR Police Station and had been tortured and beaten up by the people who took him. My sister called me and informed me about the incident and I immediately rushed to the KR Police Station. At KR Police Station I was informed that they had taken my son to Vidyaranyapura Police Station.

At Vidyaranyapura Police Station, he had been subjected to custodial torture by Mr. Parashuram, SI and Srikantha, and the police station staff. I saw my son crying and his mouth was bleeding. He had been beaten up severely. At the police station my son's legs were cuffed and he had been tortured by the police the whole night. My son told me that the police had threatened him and had taken his signature on a blank paper. When I asked Mr. Parashuram, SI, why they had beaten my son, he misbehaved and even held a mobile to my sister's face and started recording our voices. After the incident, my son was so scared he even contemplated suicide. I am holding Srikanth and Parashuram responsible if something happens to my son for he was physically and mentally tortured.

I have filed my complaint with KSHRC under HRC No. 8112/2010 and requested that the commission take action against Mr. Parashuram and Srikantha, and deliver justice to my son, Yadunandan, and to me. The KSHRC sent a copy of my complaint to the Police Commissioner, Mysore City, asking him to conduct an enquiry and submit a report to the commission. On March 28, 2011, the Police Commissioner, Mysore City, had submitted his report to the commission. The commission had forwarded the copy of the report to me for my reply, and posted the matter on May 17, 2011. The matter has not moved forward since then.

Case of Illegal Detension

Kamakshipalya PS, Bangalore District

SRINIVASA

My name is Lakshmama, w/o the Late Ramaiah, living at Kamakshipalya, Bangalore. I work in a mosquito net factory, and my mother is a domestic worker. I live with my mother and children. Among my children, one son is mentally challenged, and the other son, Srinivasa alias Shina, works at an engineering workshop.

On June 22, 2010, at about 8pm, a few men claiming to be the police had taken my son, Srinivasa, from Kamakshipalya Main Road, Vrushabhavati Nagar Road. On the morning of June 23, 2010, when I visited the Kamakshipalya Police Station, Basaveshwara Nagar, and inquired about my son, the police denied all knowledge of anyone by this name.

Earlier, police from Basaveshwara Nagar Police Station had detained him for three days and then released him. Later on the same day, police came to my house in the middle of the night and abused us and instructed us to send my son to the police station. The police said, "If you don't send your son to the police station immediately, we will book him for a theft case and put him in jail". Fearing for the safety of my family and my son at the hands of the police, I filed complaints with the CP, State Women's Commission and the KSHRC on June23, 2010.

In my complaint to the KSHRC, I had requested that the commission intervene and direct the police to at least inform me of the reasons for my son's arrest.

The commission, having registered my complaint with HRC No. 4478/10, had directed the CP, Bangalore City to conduct an enquiry and to submit a report within eight weeks from the date of receipt of the notice. After not receiving the enquiry report from the CP, Bangalore, the commission sent reminders on September 29, 2010, November 25, 2010, January 10, 2011, February 14, 2011 and March 25, 2011, and listed the case for consideration on 11 May 2011. I am still looking forward to the enquiry report, and further action by the commission.

Case of Custodial Death

Mangalore and Udupi

P. B. D'SA

I am P. B. D'sa, President of the *People's Union for Civil Liberties,* Dakshina Kannada (PUCL-DK). On December 5, 2009, I filed a complaint with the KSHRC about the death of Rakesh and Prakash Sorannanavar in the Sub-Jail of Mangalore and Udupi respectively. Along with the complaint, I enclosed copies of two newspaper cuttings:

Karavali Ale dated November 13, 2009

Canara Times dated 1-15 November 2009

The first newspaper report spoke about the death of Rakesh, alias Rajesh, due to the negligence of the jail authorities of Mangalore to provide him with timely treatment. The second newspaper report spoke about the death of Prakash Sorannanavar of Haveri by hanging in Udupi Jail. According to the news report, Mr. Rakesh, alias Rajesh, a Kerala-born person, had complained of severe stomach pain, but the jail authorities had refused to take him to the hospital giving an excuse of unavailability of an ambulance. When probed, the jail authorities complained that on several occasions when the ambulance has been available the police squad has been unavailable and vice versa.

In the case of Prakash Sorannanavar from Haveri, he was arrested and kept in the sub-jail of Udupi, where he was found dead, apparently having hung himself. The cause for the same was not made available.

In my complaint I expressed my doubts about the *bona fides* of the jail authorities, as their past record did not give us enough confidence to trust them, and even the newspaper reports had expressed doubt about the police version of events.

I added that on several occasions in the past we had also written about the sorry state of affairs existing in the jails, and of criminal activities going on without any control, and hence, requested the commission to probe into both the deaths critically, even by exhuming the bodies if need be, and to collect evidence from the newspaper reporters who took pains to probe into such incidents.

The KSHRC registered the case as HRC No. 8090/09 and on January 18, 2010 directed APC and jail authority, Bangalore, to conduct a detailed enquiry and to submit a report within eight weeks from the date of receipt of the notice.

The outcome of the enquiry and further actions are unknown.

Case of Torture and Ill-treatment by Police

Mangalore Rural PS, Mangalore

ABDUL RAHIMAN

My name is Abdul Rahiman. On July 7, 1991, SI Mr. T.R. Jagannath and others of Mangalore Rural Police Station forcibly abducted me and brutally tortured me for five days. They produced me before the court only on July 11, 1991, on fabricated charges, just to cover up their crime, vide CC 8063 of 91. The police indulged in heavy damages, theft, and assault at the time of my abduction. Later, on November 4, 1995, I was acquitted by the JMFC (III Court), Mangalore.

Since no other remedy was available, I filed a private complaint on August 6, 1991 vide PC 8/91 against the four policemen concerned. I had sustained heavy losses, both financially and physically, because of the police atrocities.

On July 7, 1991, the police ransacked my shop and the following damages were committed:

1. Loss of articles in shop destroyed by the police worth Rs. 50,000
2. Cash taken from my staff, Rs. 318
3. My wrist watch taken by SI Jagannath Rs. 600

A total of Rs 50,918.

Further losses/expenses on account of medical treatment:

a. Hospitalisation / medicines Rs 15,000
b. Court expenses Rs.1,000
c. Pursuing C.O.D complaint Rs. 5,000
d. Miscellaneous Rs. 2,000

A total of Rs. 23,000

Thus I suffered losses to the tune of Rs. 73, 918. I am completely lost and forlorn, and my leg and health have been permanently damaged. My business has been lost completely, as I was forced to sell it on August 17, 1992, and collect Rs 29,000 which I had spent for my treatment and living. Whatever retirement benefits my father had, have been drained on account of my abduction. My family is facing starvation, besides heavy damage to our reputation.

The PUCL carried out a detailed investigation and found that the police had committed serious atrocities. The COD, in its investigation, had confirmed that the abduction took place, and that atrocities were committed and a false case was registered in order to hoodwink the law.

I did not pursue the case on the advice of my friends so that I could approach the NHRC. Besides, I had no physical and financial clout left with which to continue the

private case. The complaint was closed on July 6, 1996. In my complaint, dated February 8, 1997, to the NHRC, I narrated the incident and enclosed the following documents, requesting that the commission investigate, and order for at least Rs.500,000 compensation to be paid by the accused policemen from their personal accounts.

The documents enclosed with the complaint were:

- Xerox copy of letter dated August 4, 1992, from COD to Government of Karnataka
- Copy of receipt dated August 17, 1992, to prove the sale of my shop, my only source of livelihood.
- Xerox copy of letter dated December 3, 1992 addressed to my father, P. Mohamad, which clearly states that the police had fabricated a false case.
- Newspaper cutting dated December 17, 1992 from issue '*Mangalore Mitra*' reporting about the COD enquiry
- Copy of complaint dated April 3, 1993, addressed to Home Minister by my father.
- Copy of judgment in CC No. 8063 of 1991, dated December 4, 1995, acquitting me
- Copy of order sheet in PC 8/91
- Complainant copy dated October 21, 1996, from my father to the Secretary, Government of Karnataka

I added in the complaint, that in view of the brief facts stated in my complaint, I desired that they order necessary relief, found suitable by the NHRC, to me and my family.

No further notification of action taken by the NHRC has been communicated to me to date.

Case of Police Torture

Mangalore

ABDUL RAUF

The PUCL, Mangalore, in its complaint dated September 30, 2001, stated that on 21 August 2001, Mr. Abdul Rauf, a bus driver, was murdered by one Madhav and others, resulting in the '*Bandh Call',* by the Bus Worker's Union.

On August 23, 2001, a posse of police officials led by Shri H.R.S. Shetty, C.I. came to Katipalla, burst tear-gas shells open, and assaulted innocent people. They ransacked a number of houses and arrested a number of persons, who were taken to the police station at Panambur, where they were subjected to severe torture. The police, who had an ill will against Muslims, turned the incident into a communal issue and a reign of terror was unleashed. The petitioner has prayed for appropriate action to be taken against the errant police officials.

Later, the NHRC, registering the complaint with Case No. 369/10/2001-2002 had directed the IGP, Western Range, Mangalore to conduct an enquiry and submit their report. The report received from IGP, Western Range, Mangalore states that on August 22, 2001, at about 10:15pm, the accused, Keshav, and others assaulted Abdul Rauf, the driver of the city bus, and caused his death. A case Cr. No. 106/01, U/s 143,147,148,302,149 IPC, was registered, and after investigation, a charge sheet was submitted to the court. As a result of the murder of Abdul Rauf, the situation in the neighboring area became tense. Hence, as a precautionary measure, a striking force of one KSRP (Karnataka State Reserve Police) platoon and policemen was deployed to the sensitive areas. On August 23, 2001, some youngsters under the leadership of Abdul Aziz and Abdul Salam blocked the road and forced the shop owners to close down their shops. They started pelting stones and soda bottles at the police. As the situation got out of control the police fired tear gas shells and resorted to mild *lathicharge* to disperse the mob. The situation was thereafter brought under control.

A case Cr. No. 108/01, U/s 143,144,147,148,332,427,506,186,353,149 IPC was registered against 27 accused persons and they were produced before the magistrate. A number of policemen also sustained injuries. None of the arrested persons complained of ill treatment to the magistrate.

The commission, on December 26, 2002, passed a final order stating that, "in view of the police report, no further action by the commission is considered necessary and the case is closed".

Case of Police Torture

Udupi PS, Udupi District

ATUL RAO

Mr. Atul Rao, who is in judicial custody in Udupi Jail as an accused in the case of the murder of Padma Priya, wife of a sitting MLA, was assaulted in jail. The PUCL lodged a complaint to the KSHRC dated 4 July 2008, regarding criminal assault.

The jailor made a public statement claiming that "He is not in a position to control this" which means the accused is not safe under the said jailor. Both the judiciary and the government are responsible for the safety of Atul's life. His right to life and liberty are in danger. In fact the husband of the dead, Padma Priya, who appears to be a prime suspect, or so it appeared in newspaper reports, has not even been interrogated, while Atul, whose role does not appear to be as crucial as that of the husband, has been taken into custody, simply because the husband is a MLA.

The PUCL demanded that this matter be taken up immediately in the interest of Atul's safety as the top most politicians are involved in this issue.

The KSHRC registered our complaint with HRC No. 2200/2008. The commission, on tabling the complaint for consideration on July 11, 2008, directed the IG, Western Range, Mangalore, to conduct an enquiry and submit a report within two weeks from the date of receipt of the notice. Accordingly, a report dated August 19, 2008 was submitted by the IG, Western Range, Mangalore, and stated that the enquiry conducted by the DySP Udupi Sub-Division had stated that Manipal Police had arrested Atul Rao on June 23, 2008, in Criminal case no. 109/2008, U/s 365,306 IPC, and that he was later produced at CJM Court, Udupi, and then kept at the Udupi Sub Jail as per the direction of the court.

The report showed further that the Udupi Superintendent-in-Charge of Sub-Jail, Sri Laksman Shettigar, submitted a report to the Sub Jail Superintendent stating that two prisoners kept in the cell along with Atul Rao were playing *carrom* while Atul Rao was sitting in one of the corners. At that time, some other inmates in another cell, named Anand, Srinivas Pradhu, Madhu, Yuvaraj and others, had entered the cell in which Atul Rao was being kept, in order to play *carrom*. As the DySP of Prison had instructed them that more than a certain number of prisoners should not be kept in one cell, the said prisoners, on seeing Atul Rao, said that he had murdered the MLA's wife and in that regard there was a fight.

It was reported in the newspapers that Atul Rao was tortured in the prison and that there was a threat to his life. But, as per the police reports, there was no such case

of torture of Atul Rao, either by the jail staff or the prisoners. And further, the report had quoted that Mr. Venkatayya Ballal, Jail Superintendent, had made a public statement that he was unable to control the incident at the jail, which he has clearly denied. Hence, the complaint is far from truthful. As per the orders of the Court, Sri Atul Rao is being shifted from Udupi Sub-jail to Mangalore District Jail.

The commission forwarded us the report for our comments on September 10, 2009, and requested us to submit the comments within two weeks from the date of receipt of the notice, and the case was then listed for consideration on October 15, 2009.

Having reviewed the report, we are forced to doubt the extent of the honesty with which the enquiry was conducted, as the report itself stated that the court had ordered Mr. Atul to be shifted from Udupi Sub-Jail to Mangalore, as there was enough evidence in the report to prove that he was tortured in jail.

However, the commission, in its final order dated March 11, 2010, disposing of the case HRC No. 2200/2008, stated:

> "The collective consideration of the materials before the commission would show that the contents of the complaint before the commission are not substantiated, and therefore, the commission finds no violation of human rights and subsequent upon the same, the complaint deserves to be disposed of."

Atrocities on Minority Community

Karavali District

C. N. SHETTY

I am C.N. Shetty of the Mangalore Secular Forum. In our complaint dated July 31, 2009, filed with the NHRC, President of India, Prime Minister of India, home minister, Chief Minister of Karnataka, Home Minister of Karnataka, KSHRC, and minority commission, by Mangalore Secular Forum in public interest, we listed the following occurrences in our petition:

- On the pretext of forced conversion, as many as 15 churches and prayer halls have been attacked in the Karavali districts alone. The police have refused to take any action against the perpetrators;
- There have been a number of attacks at pubs, college campuses, bus stands, markets and other areas on hapless youngsters, on the pretext of safeguarding Indian culture;
- Incidents like throwing raw pork on the mosque at Puttur, physical attacks on Muslims in various districts of Karavali, and looting the properties of the victims during the attacks, have become rampant in Karavali;
- In a press conference held by Mr. Pramod Muthalik, the chief of Sri Rama Sena announced that about 158 youths from all over Karnataka had been brought together and had been trained to carry out such attacks. Out of this number, 31 youths have already committed themselves full-time for a year's period. In spite of such public announcement, there has been no action taken against Muthalik or his cadres;
- The police have been arresting only one or two persons in communal incidents where there have been more than 20 people involved in attacking the innocents. Moreover, the miscreants arrested have been booked under petty crimes, facilitating their easy release on bail;
- There are also incidences where the victims themselves have been arrested and booked under false cases;
- In most of the communal incidents, bus agents, drivers and conductors have played the role of informants for the communal forces, thus helping them to plan and carry out systematic attacks. This made safe movement of students from minority communities very difficult.

Further, we had stated that from 13 to 20 July 2009, we reported 17 communal attacks, and not much has been done concerning these. Hence, we requested that the commission and other bodies consider this as a priority, and take action against these

communal forces to help maintain peace and harmony within the Karavali districts.

In response to our complaint, the NHRC passed the following order on September 3, 2009,

"The complaint is not entertainable in accordance with the provisions of Section 36 of the Act, read with Regulation 9 of the NHRC (Procedure) Regulations 1994, as amended. Hence, no action is called for and the file is closed"

However, the Department of Personnel & Administrative Reforms had sent notices to the Director General and Inspector General of Police, Karnataka, on November 7, 2009, with Ref. No. 1235/pos/2009, and on November 11, 2009, with Ref. No. 1305/pos/2009. Both the notices asked for a response to the complainants within 30 days from the date of the receipt of the notice. No information is available on any action so far related to our complaint.

Also, the SKHRC, having registered our complaint with HRC No. 4454/09, issued the notice on September 16, 2009, directing the Addl. Chief Secretary and the Principal Secretary of the Home Department, Government of Karnataka to conduct an enquiry and submit a report.

Thereafter, the matter was referred to the DG and IG of Police to carry out a detailed enquiry and submit their report. The report was submitted on January 8, 2010 to the commission. The commission, which tabled the case and the enquiry report for consideration, issued the notice to us on April 1, 2010, directing us to comment on the enquiry report within a month from the date of the receipt of the notice and thus listing the case for reconsideration on May 18, 2010.

The report had stated the following in response to our complaint:

- Related to the attacks on churches.
- Mr. Mahendra Kumar, State Convener of Bajarang Dal, Karnataka, resident of Chikmagalur district, was arrested within five days and booked at Mangalore North police under 226/08, U/s 120 (B), 114, 153 (A) of IPC, and was produced at the court with CC No. 4634/09; and the hearing was listed on January 15, 2010.
- Baindur Police Station has arrested nine persons, who are on bail, and the case is at the court with C.C No 996/08, listed for hearing on December 30, 2009.
- Udupi Police have arrested 13 persons, who are on bail, and the case is at the court with CC No 2338/09, listed for hearing on December 29, 2009.
- Kollur Police have arrested five persons, who are on bail and the case is at the court with CC No 1009/09, listed for hearing on December 31, 2009.
- Kundapur Police have arrested two persons, who are on bail and the case is in the court with CC No 1466/08, listed for hearing on December 31, 2009.

Related to the claims of Pramod Muthalik, Chief of Sri Rama Sena, the report states that from 17 to 19 July 2009, Sri Rama Sena had conducted a training camp in which over 100 youths had participated from eight districts of Karnataka. According to the report, the police had recorded the following speech of Pramod Muthalik through informers. Muthalik, addressing the camp, had said to the youths, "In future we should condemn such disorders. Sri Rama Sena, should mobilise youth and make

this country a Hindu Nation. Muslim boys coax Hindu girls, and marry & convert them. After sometime they leave these girls and get married again. Muslims are allowed to marry seven times, but the poor Hindu girls are not allowed to remarry by our society. Hence, we should oppose this". The report claims beyond this speech. There were no public announcements of 158 youth cadres being trained. And as the camp was organised in secrecy, police could not collect further information; however, security arrangements are made to avoid any attacks by the group.

Related to the attacks on the pub, the report claims that on January 24, 2009, as per the complaint recorded from the owner of the pub, Mr. Bhaskar Kamath (HC-525) & and other police of Mangalore North Police Station arrested one Mr. Subhash Patil (aged 32) who was among the 25 to 30 youths who had attacked the bar and subsequently escaped when the police arrived at the spot. The report further claimed that after interrogating the accused Subhash, based on his information, 25 other members of Sri Rama Sena who were involved in the incidents were arrested.

Responding to the complaint of attacks on Muslims and mosques, the report claimed that

"In the case of the pig flesh being thrown at Fouzia Mosque, around 9:30 pm on July 17, 2009, two persons have been arrested on 28 July 2009, and we are waiting for the permission of the government for submitting the crime sheet. However, it is not ascertained as to which animal's flesh was thrown at the mosque".

The report claimed that responding to the gross communal incidents in July, section 144 of Cr.PC was imposed on 20-21 July 2009, and later, adequate security was provided to the sensitive areas of Karavali.

The report states that as there was no information available on the alleged informants such as bus agents, drivers and conductors, the allegations have not been proved

The report alleged that "the complainant has only mentioned the attacks on minorities by the Sangh Parivar organisations such as Bajrang Dal, Sri Rama Sena, ABVP etc., But, by the end of July, there had been 44 cases of attacks on minorities by majority community organisations, and amongst the 205 accused, 168 persons had been arrested. Similarly, 55 cases of attacks on the majority Hindu community by the minority groups had been reported and among the 311 accused 277 persons were apprehended. Hence, it is established that the majority community groups have attacked minorities and vice versa."

In conclusion, the report submitted to the commission concludes, "After receiving complaints from each victim the FIRs have been filed and the culprits have been booked under necessary sections. All the organisations that are instigating communal violence in the region are closely monitored by the police and strict action will be taken against any person and organisation that disturbs communal harmony. Recently, Navaratri, Krishna Jayanthi, Ganesha Chaturthi, Ramzan and Christmas were celebrated peacefully."

After reviewing the report, we are disappointed that the KSHRC had referred the matter to the same agency that has been accused in the complaint, to carry out the enquiry. How could one even comment on such a report, which has masked the issues of violation and has created a rosy picture of the actions taken by the police?

Violation of Minorities Rights

Mandya District

MOHAMED FOUSE

I am Mohamed Fouse, an advocate by profession. I am a resident of Agasarahole Road, Nagamangala Taluk Kamabellur, Mandya District.

In my complaint dated January 16, 2010, I had brought to the notice of the KSHRC that on December 13, 2009, on the pretext of road expansion and further action as per the law, Muslim households and mosques were attacked by a group of 20 government officials, led by Nagamangala Tahsildar, Mr. R. Rangswamiah. In this action, women, children, and old people were dragged from their century-old households, and forcefully taken to the police station. Meanwhile, the officials have caused considerable destruction to households and to the mosque. People who questioned them were threatened.

Further, I added in my complaint that this was done with the particular intention of destroying the Muslim community in the area. My complaint was registered by the KSHRC on February 16, 2010, with HRC No. 962/10. The KSHRC, on February 24, 2010, directed the SP, Mandya District, to conduct a detailed enquiry and to submit a report within eight weeks from the date of the receipt of the notice, and listed the case for consideration on May 4, 2010.

Having received the investigation report by the SP, Mandya District, on July 9, 2010, the commission directed me to review the report and submit my comments within four weeks from the date of receipt of the notice, and listed the case for consideration on September 14, 2010.

According to the report of the SP, the accused Mahadevu, Assistant Tahsildar, Taluk Project Officer, Nagamangala and S.B. Tamannagowda, Assistant Tahsildar, Bellur Town, had said in their statement that they were present, and had cooperated as per the instruction of Tahsildar R. Rangaswamaiah for the road expansion work.

Further, the report stated:

> "On December 3, 2009, Nagamangala Tahsildar requested protection from Nagamangala Circle Inspector, for the eviction work of illegal constructions on Mysore-Tumkur Road via Bellur, on December 13, 2009. To this, the complainant and a few others had protested. Hence, as per the complaint by S.B. Tamannagowda, Bellur Police had arrested them and booked the complainant and others under Cr. No. 208/2009, U/s 143, 353,149 IPC. Later the same day they were released on bail. There have been no reports of violence against children."

In my comments submitted to the KSHRC dated September 14, 2010, I expressed my disappointment over the biased enquiry conducted by DySP, Mandya District, and also complained about the abuse by the concerned officers in relation to the case.

Reviewing this, the KSHRC, on September 17, 2010, transferred to the IGP the complaint, investigation report and my comments, for further enquiry into the matter and the actions of the concerned officers, requesting the submission of a report within eight weeks from the date of receipt of the notice. On November 30, 2010, the IGP-KSHRC requested an extension of two months, which was granted, and the case was listed on January 12, 2011. On January 12, 2011, the IGP, KSHRC, requested another extension of one month, which was granted. On February 14, 2011 when the case was tabled in front of the commission, once again the IGP, KSHRC, requested another extension of one month to submit the report. Finally, on March 3, 2011, the commission received the report from the IGP, KSHRC. The report of the IGP, KSHRC upheld the earlier report submitted by the SP.

Further, it added that "the complainant and his family have disrupted public work, and earlier they filed a PIL with the Karnataka High Court with Writ Petition No. 13617/2006. In relation to which the DC, in his reply to Karnataka High Court, stated that the road under litigation is connected to the state highway no. 19, which is under use, and came under Mandya district jurisdiction. Hence, to reduce the number of accidents, the expansion of the roads and evacuation of the households was inevitable". The report concluded that the DC, Mandya, had visited the place for inspection and had advised to take action as per the law in case of disruption of public work.

The KSHRC, having considered all of this, in its final order dated March 9, 2011, instructed that the road expansion work in the Nagamangala was to be inspected by the DC, Mandya, within three months, and that he/she was to take action as per the law. Hence, HRC No. 962/10 is disposed of.

Case of Police Inaction

Yeshavantapura PS

DEEPA

My name is Deepa, aged 28. I earn my living by ironing clothes near Subbiah Hospital, Mattikere. I used to work as a domestic helper in the house of Smt. Gayathri, residing at 3rd Cross, Near Subbiah Hospital, in front of Karnataka Rakshana Vedike office, Mattikere. When Smt. Gayathri asked me to buy her condoms, I refused. Upon this, she became angry and threatened me saying, "I will spread false information to the neighbors that you are involved in illegal activities at home and use my influence to make your life unbearable, and make sure that you are not employed in the locality". She said I should leave and work elsewhere. She runs a brothel with the help of *Karnataka Rakshana Vedike*. She incited Mr. Prakash alias Pachchi, a member of this organisation, to assault me. On January 10, 2011, at around 8pm, I was severely beaten with a stick in the public road by Mr. Prakash and Smt. Gayathri. My hands and arms were swollen because of the beatings.

On the same night, at about 9pm, I went to Yeshavantapura Police Station to file a complaint and seek help from the police. But the police refused to register my complaint, stating that they would not be able to record any complaint since I had no proof of being physically abused. On January 20, 2011, at about 11am, two lady police officers, Ms. Manjula and Ms. Chandramma, came to my house and asked me to go with them to the police station. When I asked why, they replied, "To inquire into the complaint filed by Mrs. Gayathri against you."

At the police station, I told the police that I had done nothing wrong and had been brought to the station for no fault of mine. But Mr. Prakash and Smt. Gayathri intervened and instructed the police to teach me a lesson. Later, the Inspector, two lady officers and two other officers took me to the room upstairs in the police station, tied my hands and legs, and then hung me. Then, they started hitting me, injuring my hands, legs and back, for more than an hour. Subsequently, they demanded me to pay Rs. 400 as a fine. In addition to this, they threatened me saying, "You immediately vacate the place with your ironing board and iron box….If you try to complain anywhere, we shall book you in four or five false cases…", and then they asked me to report at the police station the next day.

However, in spite of the continued threats to my livelihood and thus my life, I have not vacated the locality. On January 20, 2011, I wrote to the State Women Commission and the KSHRC. The KSHRC did not even register my complaint, nor have they given me any acknowledgement.

Case of Violation of Human Rights

JP Nagar PS

Geeta Menon explaining the details of the case

AMARAVATHY

My name is Amaravathy, aged 25, resident of Ragigudda Slum, JP Nagar Police Station. On January 3, 2009, at around 8pm, three youths named Bala, Madan, and Ramesh, forcibly dragged me to a house at knife point, stripped me and attempted to rape me. However, the neighbours heard my screams and came to my rescue. I managed to escape. The youths were noted criminals and hand-in-glove with the police. However, the women in that area took courage and lodged a complaint on my behalf on the same night, at JP Nagar Police Station. On November 4, 2009 I went to the police station along with women from the area and representatives of *Stree Jagruthu Samithi* and lodged an FIR. A case (No. 663/09) has been registered under section 323, 354, 576 IPC. Even after that, the police did not visit the scene of the crime, nor take any action, although the youths are roaming around freely.

We waited till November 6, 2009, and than went to DCP Krishna Bhatta to update him. No action was taken in spite of the DCP instructing Mr. S.K. Umesh Inspector of Police, JP Nagar Police Station.

The slum is well known for many notorious slumlords, who harass the women and the public. Many of the culprits are well known to the police. These youths and their political leaders are making it unsafe for women and girls to live there, and have been targeting single women. Many of the women have to work long hours to survive. Often their daughters and sons are left alone, and women live in fear.

Finally, due to the inaction of the police, Ms. Geeta Menon of *Stree Jagruthu Samithi,* filed a complaint on November 10, 2009, with the KSHRC (HRC No. 6967/2009) on my behalf. The complaint clearly expressed our anguish against the indifference and the negligence of the police at JP Nagar Police Station.

The case was placed in front of the commission on November 16, 2009, and stated that, "Neglecting to provide security to individuals, as contended by the complainant, amounts to a violation of human rights. State representatives, i.e., public servants, are duty bound to protect human rights relating to the safety of human beings, and any negligence in that regard would be a violation of human rights". The commission directed the CP, Bangalore City, to take needful action, and send a detailed report within four weeks from the date of receipt of the communication, since the case was listed for further consideration on December 30, 2009.

The Asst. Commissioner of Jayanagar conducted an investigation as per the

direction of the KSHRC. The KSHRC received the report from the CP, Bangalore City, only after a reminder, and a summons to personally present himself before the commission. The report reads that, "The accused have been booked under FIR No. 663/09, under section 323,354,506 r/w 34 IPC, and the investigation is underway. During the investigation the police arrested Ramesh and opened a rowdy sheet on him. Meanwhile, police protection has been provided around the house of the victim to avoid any further casualties…the other two accused, Balu and Madan are on the run. A special investigative team has been formed to speed up the investigation and bring the culprits to book…"

The KSHRC then forwarded the report dated February 1, 2010, received from the Commissioner of Police, Bangalore City to me for comments. It directed us to send our comments on the report within three weeks since the case was listed for further consideration on April 1, 2010. As we were unable to send in our comments within the stipulated period, the commission reversed the proceedings for final orders. Presently, I have been forced to shift my house out of the locality, while the accused remain free and continue to harass others.

After having undergone such injustice, I noticed that the KSHRC is not ready to listen or deal with violations of human rights, especially against women, as there are no senior women staff to handle complaints. So, I am starting to lose hope of any justice that I might have possibly looked forward to.

Case of Illegal Detention and Violence Against Women

Bangalore

Y. J. RAJENDRA

My name is Y. J. Rajendra, Vice President of the PUCL, Karnataka. Over the last few months we have received as many as eight complaints from women (the identities of the victims have been hidden for certain reasons), who have been illegally detained, transferred to the Beggars Home, Bangalore, and later released, often on a payment of an amount of Rs. 250 to 300.

On two occasions, women who have been working as peer educators for the prevention of HIV/AIDS, were taken by the Upparpet Market police while they were at the Majestic bus stand, and taken to the beggars' home and left there. It is only upon taking letters from their organisations that they have been released from the beggars' home.

On several occasions Shanty (name changed) was asked by the Superintendent of the Beggars' Home and the watchman to perform sexual favours, if she was to be released the same night, or even if she needed better food. In addition to this they have also asked her lurid and humiliating questions, alleging that she was a sex worker, and asking as to how and what sexual acts she performed. Further, she has been subjected to vulgar and filthy language alleging that she is a woman of immoral character. The complaints of eight women who were inside the Beggars' Home reveal the pathetic, unhealthy and immoral treatment given out by the officials of Beggars' Home.

Having pursued the complaints, on August 3, 2009, PUCL, Karnataka, file a complaint with the KSHRC, as HRC NO 4259/2009. In the complaint, we brought the following violations in relation to the illegal detention of women sex workers and the people living at the Beggars' Home, to the notice of the KSHRC:

The police are arresting people, including women, despite knowing that they are not beggars, as defined by the Karnataka Prohibition of Beggary Act, 1974. In fact, the Act is being used as a method of harassment and torture by the police to evade due process prescribed in the law. In the above instances the women have merely been kept in the Beggars' Home so that the police don't have to lodge an FIR or take them to the State Home for Women. This has become an easy way of making money by the police and Beggars' Home.

Demanding sexual favors at Beggars' Home is itself a gross violation of human rights. This clearly amounts to custodial rape.

Several persons in the beggar's home are, in fact, not beggars but are homeless, such as construction workers. The fact that they stay on the footpath has resulted in

them being detained at Beggars' Home.

Section 11(2) of the Karnataka Prohibition of Beggary Act, 1975, requires the officer-in-charge of the receiving centre to conduct an enquiry and release the beggar with or without surety. However, this has become a money-making scheme.

Officials have seized personal belongings like mobile phones, cash and other articles of women who have been brought to the home.

There are several persons who are mentally ill, and may therefore not be in a position to give details of their homes. The beggars' home is not an appropriate place for them and they need proper medical care and attention.

People forced to stay for lengthy periods in the Beggars Home are forced to shave their heads. This degrades their human dignity.

The persons detained for longer durations receive no elementary education or training as mandated by the Act.

The inmates of the Beggars' Home are made to sweep the home and also undertake tasks that are not prescribed in the act.

The complaint also asked the KSHRC to:

- Conduct an enquiry into the condition and functioning of the Beggars Home, Bangalore.
- Ensure that persons who are not beggars are released unconditionally and immediately.
- That the KSHRC make recommendations of strict and immediate disciplinary actions to the government against those who are misusing and abusing their powers, asking for sexual favours and not performing their duty under the Act.
- Strict warnings should be issued to the police to ensure that the false arrests of persons are not made under the Act.

When we approached the KSHRC in person, we were asked to organise for the victims to be present while filing the complaint. Hence, we mobilised 5 to 6 victims and approached the KSHRC. On August 5, 2010, the commission, as an immediate act, conducted a raid on Beggars' Home, Bangalore.

Similarly, on December 8, 2010, pursuing the complaint, the KSHRC responded on December 13, 2010, stating that Mr. Chandrappa B. Gokak, the Superintendent, Mr. Hanumantharayappa, the Head Warden, Smt. Bhagyalakshmi, the Chief Warden of Beggars' Home, and A.N. Manjunath, Sub-Inspector of police, Upparpet Police Station, had appeared before the commission in person and had filed their written statements. They were placed on record and their sworn statements were also recorded. It further transmitted the written statements and sworn statements to us for comments, within a month from the date of receipt of the notice, listing the case for further reconsideration on February 14, 2011.

In response to this, we requested further documents mentioned below to provide our comments.

At the time of visit on August 5, 2010 by the chairperson, the KSHRC and the team, it was observed that proper records were neither found nor maintained, and concerned officials were not available to show the records and files locked in almirahs.

Subsequently, it was opened upon the instruction of the chairperson, who found that records were not maintained; this has not been mentioned in the written statements of all three staff members of the Beggars' Home. This, in turn, has forced us to suspect that the documents were subsequently prepared and produced before the KSHRC.

We requested that the KSHRC provide us with the copies of:

- Annexure 1: Letter from police producing 15 women beggars and other particulars,
- Annexure 2: Eecutive magistrate's order copies in respect of these women, and
- Annexure 3: The list of 15 women beggars with their addresses and other details, for further observation for us to submit our comments to the KSHRC

The statements found in the written statements are contradictory to the statements submitted by the police, and the staff of the Beggars' Home, who are blaming each other. This needs to be seriously examined by the KSHRC and an appropriate order should be passed.

It is important to note that after the raid was conducted personally by the chairperson, the KSHRC and the team on August 5, 2010, there was no official recording available at the commission on the findings of the raid, and no comments were offered by the commission when we enquired about it. We are still waiting for the further details and the verdict of the KSHRC.

Case of Torture by Police

Bangalore City Market PS

SAVITHA PRAKASH

My name is Savitha Prakash. I am a field worker with the *Sadhana Mahila Goompu*, a collective of women involved in street prostitution, which works to fight violence in their lives, including harassment and abuse on the streets and at the hands of the police. As part of my work, I travel to various places of the city including KG Road, Kalasipalya, Majestic Market, BVK Iyengar Road, Bale Kaymandi and City Railway Station, speaking to women working on the street and spreading awareness about their health, including HIV/AIDS and issues related to their rights.

As part of my regular work, on April 29, 2010 at about 9:40pm, I was near Ganesha Temple and was sitting at the footpath near the Ganesha Temple, taking a break, when all of a sudden a Hoysala Vehicle came towards me and stopped next to me.

The police officer sitting inside the vehicle, whom I recognised as the ASI, since his uniform bore a single star, rudely asked me why was I sitting there, and I told him that I was tired from work and so was taking some rest by sitting down. This is not the first time that the said police officer has done this to me, and previously he had stopped me from doing my work and accused me of being a cheap prostitute and demanded money from me. I am not aware of the name of the ASI. He is whitish in color with a moustache, his front two teeth are big, and the front part of his hair is white in colour. I could identify him if I were to see him again (later, during the investigation, the ASI was identified as Mr. Anandappa, ASI, City Market Police Station).

The ASI then demanded money from me. I asked him why I should pay him any money. Suddenly, the ASI started shouting at me saying, "You should get out of this area if you cannot pay". I replied that I was just taking some rest by sitting down. Despite my explanations, the ASI continued to abuse me and got out of the police vehicle. He then asked the driver to take out the *lathi*. I questioned him as to wrong that I had committed, that should cause him to react the way he did.

Approaching me the ASI threatened me saying, "You have the guts to talk about the law with me? Women and girls get frightened when they see us but you have the guts to retaliate", and continued verbally abusing me.

He then held me by my neck and pushed me over to the road. The fall hurt both my knees very badly. Luckily, I managed to pull myself out of the road before any vehicle could go over me. Badly bruised, I asked the ASI to at least take me to the hospital.

Further, since I am HIV+, I was under threat by falling and hurting myself on the road, and so asked the ASI to take me to the hospital. The ASI then told me that he would bring a female police officer and arrest me. He then sped away in the Hoysala while I was lying on the road with bruises all over.

Having no option, I sat on the footpath, crying in pain. After ten minutes I managed to find an auto-rickshaw and went to Victoria Hospital where I got myself treated. Being an HIV+ person, I have been working for the rights of women on the streets for the past three years. This is not the first time I have been abused while conducting my work with the women. On May 13, 2009, I was brutally assaulted by a dafedar from the Cottonpet Police Station, and on May 14, 2009 a complaint was also filed on my behalf by *Vimochana,* an organisation working for the rights of women.

On May 3, 2010, with the help of Mr. Rajendra, Vice President of PUCL, Karnataka, I filed a complaint with the KSHRC (HRC No. 3174/2010) demanding justice. The KSHRC, having pursued the complaint, had directed the IGP, KSHRC to conduct an enquiry and submit a report within six weeks, listing the case for reconsideration on June 30, 2010.

The IGP, KSHRC, requested our appearance and the production of records and information on both the cases, and also to identify the ASI, at 2:30pm on May 19, 2010. In the meantime, we received a notice from the Police Inspector, City Market Police Station, Bangalore. The notice was received on May 26, 2010, personally delivered by the police, stating that we had to appear before him. So, in a letter dated 27 May 2010, we brought this to the notice of the IGP, KSHRC, and sought advice as to whether it was right to appear before the Police Inspector while the case was pending before the commission. We did not receive any response. During the investigation one of the police officers in the commission asked us, "Why are you behind the police officers all the time, they wear *khaki* and they too get angry. What is the big deal if they slap once or twice, you should adjust and work."

Having received the report from the IGP, KSHRC, the KSHRC sent the report to us on July 5, 2010, for comments within one month from the date of receipt of the notice, listing the case for reconsideration on September 13, 2010.

The report submitted by the IGP, KSHRC, noted that:

- It is advisable per the law that Mrs. Savita should carry out her social work between sunrise and sunset.
- It is against the law for a woman to be out of her home after sunset, with the exception of emergency situations.
- It is advisable that Mrs. Savita, wishing to do social work, should conduct her awareness activities among the public only during the day.
- City Market Police station ASI has only carried out his duty and the said assault by the ASI on Mrs. Savita has not been proved at the time of investigation;
- The petitioner has misunderstood the statement of Mrs. Savita and has filed the wrong complaint

In our comment on the report, we pointed out that:

The complaint was related to the police harassment suffered by Mrs. Savita, but

the recommendations of the report were targeted at the work being performed by Mrs. Savita.

The comment on the report, "It is illegal for women to be outside their homes after sunset", is an unconstitutional statement made by a police official working for the KSHRC.

The findings of the investigating officer reflect forms of gender discrimination, as practiced by society, which is a clear violation of human rights and the rights of all women.

The finding in the report clearly indicates that Mrs. Savita herself, who, although a victim of the police atrocity, has been treated like a criminal. The KSHRC has only considered the statements given by the ASI, and therefore it's a one-sided investigation.

Finally, our comments recommended that stringent action be taken against Mr. Anandappa, ASI, City Market Police Station, and also that appropriate action be taken against the IGP, KSHRC, for producing a false, biased and unconstitutional report.

There have been no proceedings thereafter.

Violation of Women Rights

Siddalinge Gowda Deposing as complainant

BABY ARCHANA (DECEASED)

I am Siddalinge Gowda, resident of Mavinakere, Turuvekere Taluk, Tumkur. Having read a newspaper (*Deccan Herald*) report dated January 29, 2008, regarding a child aged about three years old, who was raped and killed by some miscreants, I filed a complaint with the KSHRC on March 31, 2008, with HRC No. 1031/2008, seeking the intervention of the KSHRC.

The newspaper report read, "The unfortunate victim has been identified as Archana, aged three, daughter of Narasimhappa, a resident of Bamboo Bazaar. The miscreants, it is suspected, after raping the girl, killed her by squeezing her neck and later threw her body by the side of the road. According to the police, the murder victim's parents had gone to their native place Narayanpura, leaving her behind at her grandmother's house. The miscreants must have kidnapped her and later committed this heinous crime, they added. Inspector Narayanswamy who visited the house, said that there were blood stains in the house, which showed that the victim must have been raped before being murdered. A woman has been taken into custody and investigations are taking place."

In the complaint, I stated that, "This is just one such case among many such heinous crimes, which are repeatedly occurring in our society, and are reported in the newspaper every day. But unfortunately, the state government and the departments concerned, such as the police and women and child welfare departments, have not considered these incidents." I further added that, "these departments have failed to invite experts to discuss and conduct research on creating awareness among the communities and building actions to address such incidents".

Responding to this, the KSHRC replied on April 25, 2008, stating that having considered my complaint dated March 31, 2008, the matter was still being investigated by the police department, and the commission had disposed of the case.

TESTIMONY 2

PERSONS WITH DISABILITIES

I am Siddalinge Gowda, resident of Mavinakere, Turuvekere Taluk, Tumkur. On August 15, 2010, in my complaint filed with the KSHRC (HRC No. 6362/2010), I had sought intervention by the commission to instruct the government to pro-

vide an 'electric lift facility' for physically challenged persons in all the bus stands of the district headquarters and Bangalore City. I had brought to the notice of the commission that in Tamil Nadu, the government has already introduced and implemented this. In my complaint, I stated that, "physically challenged persons have been denied many of the fundamental rights, facilities, government grants, ramps, barrier-free toilets and such other facilities at all key public centres of district headquarters and cities, which would ensure that they lead their life with dignity. In this regard, I have written many letters but in vain".

Addressing this complaint, on September 3, 2010, the commission issued the notice to the director of disability welfare department directing him to conduct an inquiry and submit a report within eight weeks from the date of receipt of the notice. Thus, the complaint was listed for reconsideration for November 18, 2010. Further, the KSHRC, having not received any report from the director of the disability and welfare department, sent a series of reminders dated November 22, 2010, January 6, 2011, February 21, 2011 and April 5, 2011.

As per the reminder sent dated April 5, 2011, the commission directed the director of the disability welfare department to submit the report within three weeks, thus listing the matter for reconsideration on May 20, 2011; but, to-date no, further proceedings have taken place.

Violation of Child Rights

Sheela Ramanathan deposing the case

MARAPPA AND SOUDAPPA

I am Sheela Ramanathan, Director of the HRLN, Bangalore. These are the cases of children who have been abused by the police by being given electric shock etc. We filed a PIL for implementing the Juvenile Justice Act. The high court referred the matter to the KSHRC for investigating the cases of juveniles being abused by the police. An example of one of the cases is enumerated below.

Two boys named Marappa, aged 12, and Soudappa, aged 15, were caught while stealing a mobile phone by the owner. They were taken to Mico Layout Police Station and were kept in custody for two to three days. The boys were tortured and beaten severely with sticks, metal rods and a belt at the police station. They were given electric shocks using a megger to inflict pain.

The *Makalla Sahaya Vani* (Child Helpline) brought the children before the Child Welfare Committee (CWC) on a complaint of custodial torture by the police. The *Makalla Sahaya Vani* people, in spite of seeing the condition of the boys, did not take them to hospital or for medical treatment. They also did not bother to record any medical evidence immediately after seeing the injuries. The Child Welfare Committee heard the children and sent them to a government hospital for medical examination and certification. It further requested the CP, repeatedly, to take action against the wrongdoers.

The CWC later took the children to the police station for the identification of the police constable. The children identified the police constable in front of the CWC members. In spite of such strong evidence, the chief secretary of the women and child development department and CP did not take any action.

Accordingly, I filed a writ petition no. 80/2006, before the High Court of Karnataka for the implementation of the Juvenile Justice Act. The high court on July 20, 2007 directed the DGP to conduct an enquiry into the incident mentioned in the writ petition and to file an inquiry report. According to the report submitted by the DGP before the high court, there was no incident of atrocity committed against any child. We persisted, by filing more documents before the high court, and after hearing the high court order, to approach the the KSHRC to enquire about the allegations, on November 26, 2007. The KSHRC, registered the complaint with HRC No. 691/07, against the Government of Karnataka, for not implementing section 63 of the Juvenile Justice (Care and Protection of Child) Act 2000, which states as follows:

"Section 63: Special juvenile police unit – (1) In order to enable the police offic-

ers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.

(2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in coordination with the police.

(3) Special juvenile police unit, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to coordinate and to upgrade the police treatment of the juveniles and the children.

Later, the full bench of the commission called for a report from the Addl. Chief Secretary and the Principal Secretary, Home Department, Government of Karnataka, regarding the compliance with the requirement of the provision under section 63 of Juvenile Justice Act, 2000, within three weeks from the date of receipt of the notice.

The additional chief secretary and principal secretary submitted the report on September 22, 2008, enclosing the copy of the circular issued by the director general and the inspector general of police where he had instructed all the unit officers to issue necessary instructions to the investigation officers to file appropriate charge sheets and had also given the list of officers who are nominated as juvenile or child welfare officers at the police station level.

I appeared before the commission and stated that the police officer listed in the enclosed copy of the letter dated February 8, 2008 of the DG and IGP, Bangalore, addressed to the Additional Chief Secretary and the Principal Secretary, Home Department, Government of Karnataka, had not been specifically trained to deal with juveniles or children, and that there had been continued harassment by the police, and further that there had been no proper compliance with the requirement of Section 63 of the Juvenile Justice Act 2000.

The full bench of the commission, in its final hearing dated April 30, 2009, had expressed in its order that the perusal of the report of the Additional Chief Secretary and the Principal Secretary, Home Department Government of Karnataka, gave an impression that the police department had not taken serious view of the provisions of Section 63 of the Juvenile Justice Act, 2000, that the nomination of the officer as the Juvenile or the Child Welfare Officer has to be done after careful consideration. The sub-clause (2) of Section 63 specifically provides that an officer with aptitude and appropriate training and orientation be designated as the juvenile or the child welfare officer. Whether this exercise had been done was not clear from the report of the director general and inspector general of police to the additional chief secretary and principal secretary, home department. The home department of the government had not examined whether this circular adheres to the provisions of the Act.

It added in its order that, "the commission, after consideration of the material placed before it, directs the additional chief secretary and principal secretary to government, home department, to have all the cases furnished by the complainant enquired into by a senior officer not below the rank of the inspector general of police and to then file a comprehensive report as to whether the provisions of Section 63 of the Juvenile Justice Act, 2000 have been implemented fully. This enquiry shall be instituted

within one month from the date of the receipt of this order and compliance regarding the completion of enquiry and the report thereon shall be submitted to the commission within three months from the date of receipt of this order.

Further, the additional chief secretary and principal secretary, home department shall review the instructions that have been issued and investigate whether nomination of officers is in accordance with the provisions of Section 63 of the Juvenile Justice Act, 2000. This review shall be completed within one month from the date of receipt of this order.

Action taken on the above directions shall be communicated to the commission within one month from the date of receipt of this order".

By this, the KSHRC has failed to monitor the compliance of its order by directing the additional chief secretary and principal secretary, home department. Moreover, the KSHRC is disposing of cases without any report on the compliance of the concerned departments. This is a mere dereliction of powers on the part of the KSHRC.

Case of Tribal Atrocity

Malavalli PS

MALLIGE

I am Mallige, from *Samanatha Mahila Vedike*. On July 20, 2009 a tribal woman named Savithramma, a resident of Nelamakana Halli, Malavalli Taluk was murdered. This was reported in the newspapers. In connection to the murder of Savithramma, about 20 women's organisations of Bangalore created a coalition called *Mahila Horata Okkuta*. On August 1, 2009, we visited the place on a fact-finding mission.

Savithramma was cultivating a small piece of land belonging to the government. The family involved in her murder had to go through her household to reach their land. For a long time, the culprits had been troubling the women in Savithramma's family. She brought the incident to the notice of the *panchayat* officers and lodged a case of attempted rape at the Malavalli Police Station.

Savithramma's family belongs to a *Sillekyata* community, which comes under the SC category in Karnataka. But at that time Savithramma was the only person from that community living in the village; her sons were sent away for studies and were living elsewhere. Her husband had died due to police torture in an earlier incident. This community goes begging for three months in a year, so while begging, she used to carry Budubudike (rattle/small drum), possibly for getting more alms. The villagers, having noticed this, have had assumed that she belonged to the *Budubudike* community. Hence, the police had registered her as a person belonging to the *Budubudike* community.

The problem is that when an attack and murder of a person belonging to the *Budubudike* community takes place, it does not come under the SC&ST (PoA) Act. As she had no property in the village, there was no *Khata* for the land/house she had lived in, and she had not paid any taxes to the *panchayat*; so it took a long time for the case to be registered. Furthermore, there was no one to register the complaint or appear as a witness on behalf of Savithramma. The person belonging to the family was in hiding after hearing the news through an organisation in Mandya, who had reported the incident in *Lankesh Patrike*. Later, the family had come to live in the village, but was too afraid to talk about the incident or of the witness. Even after the entire investigation was over, when we visited the family for the second time, the villagers did not speak of the incident.

After the *Federation of Tribal Communities* in Karnataka had taken up the case, it was revealed that Savithramma was a dalit. The police registered a case of murder, against the family involved in the murder of Savithramma. The family, which com-

mitted the crime, is a very powerful family in the village. But the culprits absconded and reappeared only after getting bail. We had approached different tehsildars and district collectors through many women's organisations and human rights organisations including PUCL, but all in vain. We had approached the police with the school certificate and an old PDS card which states that Savithramma's family belonged to the *Sillekyata* community, and requested them to accept a new complaint in which Savithramma would be recorded as a person belonging to the *Sillekyata* community. But the police refused to accept.

The Women's Collective organised a protest in Bangalore, holding all the documents about Savithramma's identity, and submitted a memorandum to the Governor of Karnataka. The reason behind sending the memorandum was not just to discuss the brutal murder of Savithramma, but also to discuss thousands of tribal people living in Karnataka who do not get any sort of social security or the protection of the law. There is a need for adequate research on their needs and for the formation of policies that protect their rights. In the memorandum, we also requested that the Governor consider erecting a commission to look into the matters of the tribal people in the state. We presented copies of the same in person to the Ministry of Social Welfare, Government of Karnataka, the KSHRC and SC & ST Commission. The ministry and the SC&ST Commission accepted the same.

But the KSHRC had refused to accept the documents, as the memorandum was addressed to the Governor and only the copy to the KSHRC was mentioned. We had argued that the issue at hand was of much greater importance than the technicality of to whom the memorandum was addressed, and we promised to send the memorandum properly addressed to the KSHRC. Later, we sent the copy of the memorandum addressed to the commission and after about 20 days, we received the response from the KSHRC, which stated that the commission had brought the complaint to the notice of the concerned departments and they would pursue the enquiry of the same.

The bigger question here is, how can the KSHRC proactively come forward and intervene for the protection of these communities that are scattered all over Karnataka? That was the key reason why we submitted the memorandum to the commission; if it had just been a criminal proceeding there would have been no need to go to the commission, rather, we would have pursued the issue through other bodies.

Case of Torture and Harassment by Employee of Hospital

Bangalore

VIKITA HEGDE

I am Vikitha Hegde, aged 26. I had gone to Abaya Hospital for a general checkup along with my parents. At the hospital, the hospital's employees forcibly took me to their de-addiction centre, locked me up there, and were charging me a huge sum of money for the false treatment. At the centre, I was tortured, physically abused and kept along with other male inmates in the same premises. I found that some women as well as several male inmates were also being tortured at this centre.

On December 22, 2010, I called my employer, Mr. Rohit Jain, stating that my life was in danger. Based on my call, Mr. Rohit Jain, along with Madiwala police, tried to visit me at the Abhaya Recovery Centre, but the centre denied that any such person had been admitted at the centre, and when the police asked for the records, only then did they accept that I had been admitted. However, they refused to produce me for the recording of a statement and asked the police to get an order from the magistrate.

On my behalf, Mr. Prakash Kariyappa, fact-finding coordinator, approached the KSHRC with the complaint (HRC No. 8775/10) on December 27, 2010, requesting that the SKHRC intervene into this matter and take necessary action against the Abaya de-addiction recovery centre, for illegally detaining and torturing the inmates. The commission, on December 27, 2010, transferred the complaint to the IGP, KSHRC, for a spot inspection to determine the complaint, and report within a week from the date of the receipt of the notice, thus listing the case for reconsideration on January 10, 2011. The IGP, KSHRC, had requested a two month extension, for the submission of the report on the due date. On January 29, 2011, the commission issued an order stating that before granting the two month extension to the IGP, KSHRC, the report of the investigation carried out by the DSP from the investigating team, which did a spot inspection on December 27, 2010, must be submitted in a week's time, and so listed the case for reconsideration on February 14, 2011.

In its notice dated February 14, 2011, the commission stated that "the IGP, KSHRC has requested for another two month extension for submitting the report related to the case HRC No. 8775/10, and the extension has been granted". Further, the commission stated that, "the reconsideration of the case would be conducted after two months", but the date was not specified.

I am yet to receive an update from the KSHRC.

Case of Police Inaction

Case deposed by Manohar R.

HONAMMA

My name is Manohar R., head of programmes at the SICHREM. I was informed (via telephone and fax) on June 29, 2010, that Honamma, a dalit woman and activist of the BJP and *Dhaba* owner, and resident of Gopalapura Village, Tumkur, had been murdered. Her head had been smashed with stones and she had been thrown into a drain by a group of people on the night of 29 June 2010, following a quarrel over the laying of a drain in the village. The incident was reported in the newspapers on July 1, 2010.

The reports stated that three days prior to the incident, there had been a quarrel between Honamma and the villagers regarding the laying of the drains. So, after recording a complaint by the villagers, Hadinkere police arrested Honamma and sent her to judicial custody. On availing bail, Honamma arrived at the village, but the quarrel started again, during which the victim fell into a drain. Immediately, 10-15 villagers threw slab stones at her and smashed her in the drain and killed her. Later, the body was pulled out of the drain and thrown near the Gopalapura bus station. The reports further revealed that frequent quarrels between Honamma and the villagers had taken place. In this regard, Honamma had sought police protection several times, but the police had failed to provide the necessary protection.

On July 1, 2010, in my complaint filed with KSHRC (HRC No. 5043/10), I brought to the notice of the commission the fact that out of 27 people involved in the murder, only nine people had been arrested, and the rest were said to be absconding. In this regard, the government had announced compensation of Rs. 2 lakh to the kin of the deceased and offered a job to her son Manjunath (aged 26). Police Inspector A. Krishna Naik and two others were suspended for dereliction of duty.

But this does not tell us about the full extent of police negligence in this matter, thus I demanded an inquiry into:

- The exact causes of Honamma's murder
- Reasons for police inaction
- Role of police officials, especially the local police and their relations with the upper caste
- Enquire further into whether the procedures and guidelines laid down in the SC&ST (Prevention of Atrocities) Act, 1989, and the Rules of 1995, were followed by the police and the district officials.

In the complaint I also brought to the notice of the commission that a fact-finding

team was scheduled to visit to collect first-hand information on the incident, and the report would be filed before the commission upon completion. To this, the KSHRC in its notice on July 20, 2010, transferred the complaint to the District Police Office, Tumkur District, to conduct a detailed enquiry and submit a report on the murder case of the victim and whether there was negligence on the part of the police personnel.

On September 14, 2010 the SP, Tumkur District, submitted the report. Having received the report from the SP, Tumkur District, the KSHRC, on October 15, 2010, forwarded the report seeking my comment within four weeks from the date of the receipt of the notice. The report submitted by the SP, Tumkur District, stated that after conducting due investigation, the DSP of Tiptur sub-division, in his report, held that, "Honamma had lodged a complaint with the Handanakere Police Station that some of the villagers had taken trees from her property. On June 28, 2010, at about 7:30pm when she returned from her visit to Huliyur, Meenamma W/o Nagaraju, she heard the accused Ranganath alias Subbanna, and others, who were gathered there illegally, talking about her police complaint, of the trees being taken from her property.

Ranganath slapped Honamma saying, '*Madigiththi*, how dare you complain to the police. Fuck your caste. We have lost respect in the community because of this *madigiththi*…we will not spare your life today'. When Honamma fell because of the slap, Ranganath's wife Manjula and others attacked Honamma, and due to the injury sustained thus, she died. In this regard, Hadanakere police have booked 27 people, under Crime No. 44/10, U/s 143, 147,148, 302 R/W 149 IPC and clause 3 (1) (10) of SC/ST (Prevention of Atrocities) Act 1989. The investigation of the above case is concluded and the charge sheet is to be filed in the court. Two ASIs have been suspended for their laxity in performing the duties relating to the murder of Honamma and Rs. 1 lakh is given on behalf of the government as compensation to the family of Honamma". Responding to the allegations of the police failing to provide necessary protection to Honamma in earlier cases, the report denies such failure of duty by the police and maintains that, "In earlier complaints made by Honamma, on 27 June 2010, against Mr. Nanjundaiah, for troubling her under the influence of alcohol, the police had booked him under the Crime No. 10/10, and had brought him to the police station for enquiry, and had taken a written promissory statement from him stating that he would not trouble Honamma in future. Even in the year 2009, a complaint from Honamma was recorded and booked with Crime No. 44/09, U/s 341, 354, 504, 506 IPC r/w clause 3 (1) (2) of SC/ST (Prevention of Atrocities) Act 1989, and the said case is pending for enquiry before the court".

Case of Torture and Ill-treatment by Police

Vitla PS, Mangalore

SHARATH NAYAK

My name is Sharath Nayak, aged 11, living at Vitla, Mangalore. Three policemen attached to the Vitla Police Station, 60 km from Mangalore, took me to the police station accusing me of stealing a mobile phone from the house of my former employer. I was punished (stripped and tortured) by the police on September 1, 2010, to elicit a confession. At the police station, I was made to sit in the lock-up without clothes for nearly five hours before my parents got me released. I was playing volleyball with my brothers, Sandeep Nayak aged 15, Avinash Nayak aged 14, Pradeep Nayak aged 16, and other friends on the morning of September 1, 2010, when three police personnel came in a jeep. They did not ask me any questions, and ordered me and my three brothers to get into the jeep.

At the police station, I was separated from my brothers and taken to the lock-up where my clothes were removed and was beaten with a *lathi*. The policemen took turns and entered the room after gaps of 15 to 20 minutes for interrogation during the five hours I was kept in confinement, and they kept asking me about a mobile phone about which I had no knowledge. My brothers and I were taken by the police at 11am and they let us go at 4:30pm only, after snatching Rs. 60 from my father, Gopal Nayak, saying that they had fed us *dosas* for lunch.

Further, the police forcibly discharged me from the Bantwal Government Hospital when I was undergoing treatment for my injuries. The doctors at the hospital had tried to brush away the incident by saying that I was 'pretending'. An English newspaper, *The Hindu*, reported this incident on September 4, 2010. When the press visited my house, they witnessed fresh wounds on my back and my inability to walk properly or stand straight due to the injuries. Further, the Circle Inspector of Bantwal had tried to prevent *The Hindu* from publishing this news.

This has left me and my brothers very scared, and we are afraid to go to school because of the fear of being ridiculed by our classmates for being held by the police. Later, the organisation SICHREM, filed a complaint on my behalf on 27 September 2010, with the complaint, HRC No. 7227/10. A similar complaint was also filed at Karnataka State Commission for Protection of Child Rights. To this, considering the case on September 12, 2010, the KSHRC transferred the complaint on September 18, 2010, to the SP, Dakshina Kannada District, Mangalore, for a detailed inquiry and submission of their report within four weeks from the date of receipt of the notice. However, to date, no further details have been received.

Case of Police Inaction

Mangalore

SHANTHI MASCARENHAS

My name is Albert Mascarenhas, living at Ashok Nagar Post, Ganesh Nagar, Kodigal Mangalore. On March 17, 1996, a Sunday afternoon, three rowdies, Nityananda, Lakshmeesha and Ramesh, who live adjacent to our house, kidnapped my 20-year-old daughter, Shanthi. They took Shanthi from a place known as Car Street in Dakshina Kannada, Mangalore. She was taken by car to a place known as Lalit Lodge in Mulky, 30km away from Mangalore. She was raped repeatedly, and murdered with the intention of eliminating the evidence.

I filed a complaint on May 2, 1996, before the Government of Karnataka, along with a copy of the report from the Forensic Science Laboratory (FSL) dated March 29, 1996, a copy of the post-mortem report dated March 18, 1996, and a copy of U.D.R. No. 9/96, dated March 17, 1996; I had approached the concerned departments of the Government of Karnataka in connection with the unnatural death (suspected murder) of my daughter Shanthi. PUCL, Dakshina Kannada, had conducted a private inquiry into the case and this further confirmed my suspicion of the fact that my daughter had been murdered after being raped by the three rowdies.

In my complaint dated May 8, 1997 to the NHRC, I stated that the police, in spite of knowing the facts, had sided and abetted with the culprits, and had prepared a false record, and tampered with the autopsy and forensic investigation with the influence of money. There were no reports or investigations recorded at the Mulky Police Station on Mulky Lalit Lodge where my daughter had died. The car, in which Shanthi was taken to Mulky when alive, and then in which her dead body was taken to Father Muller's Hospital, where they refused to admit her (as she was already dead), was not seized. When I saw my daughter's body at the hospital morgue, I had noticed semen on her private parts. But the doctors at the government hospital, Mangalore, joining hands with the police, had twisted the murder case into a suicide case. Further, I added in my complaint that a number of allegations had already been made by the public against SI Nagabushan, who was involved in the investigation and was under suspension in other cases, at the time of the complaint filed with the NHRC. Hence, I pleaded for the NHRC to intervene, conduct the necessary investigation and direct the concerned departments to take immediate action in order to help my family and me to obtain justice. To date, there is no further information available on the course of action taken by the NHRC in relation to my complaint.

Case of Harassment by Government Officials

Bangalore

RAMANA REDDY

I am Ramana Reddy, an ex-serviceman (Indian Air Force), living at Nanjappa Layout, Doddabammasandra, Bangalore.

My family owns an agricultural property measuring one acre, situated at Sy No. 28/2, Kammagondanahalli Village, Bangalore North, which comes within the jurisdiction of Gangammanagudi Police Station limits. The revenue records stand in the name of my younger brother Mr. Nagireddy. We are the legal, rightful owners and have been in possession of the agricultural property from the year 1992, and, to date, have been cultivating and enjoying the possession of the property.

Smt Akkayyamma John, claiming to be the Secretary of the *Kammagondanahalli Housing Society*, has started filing a series of complaints with the police and has pressurised them to act using her political clout. During our investigation into one such complaint, we found that Akkayyamma John has been fabricating documents and forging the signature in order to claim the rights over the property. The documents possessed by Akkayyamma John *prima facie* evince the act of forgery and cheating. By using the printing facilities, which she owns, she has not only committed fraud against us, but also against the state. We brought this to the notice of the police authorities but they have not responded. We have also approached the High Court of Karnataka, seeking a writ of mandamus against the police department to investigate into the fraudulent act and also to take appropriate action against Akkayyamma John. The police authorities registered the case only after receipt of the notice by the Hon'ble High Court of Karnataka.

Meanwhile, Akkayyamma John, by misusing her political contacts, has filed several complaints against me and my family members, including a recent one against a person aged about 83 years, who has no connection either with the property or the persons involved. The police registered the cases under various serious sections, and are on the lookout for our family members in order to arrest us, with the sole intention of removing us from the property.

On August 23, 2010, the KSHRC registered my complaint with HRC No. 6128/10, against Smt. Akkayyamma John, of harassment and registering false cases against my family and me, using her political pressure, and I requested that the commission investigate the matter and protect my family members from this violation of human rights. Responding to my complaint, on August 24, 2010, the KSHRC directed the CP, Bangalore City to appoint a senior officer to investigate the allegations

in the complaint and to submit a report within three weeks. Thus, the listing of the case for reconsideration took place on September 27, 2010.

Having received the report on November 25, 2010, the KSHRC forwarded the report to me, instructing me to comment within three weeks, hence listing the case for reconsideration on January 10, 2011. Since the report from the KSHRC was sent to the wrong address, the report was resent to me for comments within three weeks on January 10, 2011. The investigation report claimed, "The dispute between the complainant and Smt. Akkayyamma John has been ongoing since 1995. Akkayyama claimed that in 1992 she had carried out a GPA of 117 sites which come under Kammagondanahalli under Survey No. 28/2, 28/3 and 28/4, to the 70 members of Kammagondanahalli Site Owners Association. Hence she started construction work. At the same time, under the Kammagondanahalli Survey No. 28/2, the complainant, having bought and registered one acre of land from the owner Munivenkatappa in 1992, had stopped the said construction. In relation to this, 14 cases have been registered against the complainant and his family from 1995 to date. Similarly, the complainant filed four cases in 2009 against Akkayyama John. All these cases are presently pending at the civil court. Meanwhile, both the parties are disturbing the peace by constantly fighting, and the police inspector of Gangammanagudi police station has filed Cr.PC Section 107 against both. Since the matter of the complaint is pending in Civil Court, both parties have been advised by the police to refrain from any illegal activity. The Gangammanagudi police have remained unbiased in relation to this case."

Having not received any comments on the complaint, the KSHRC, on March 9, 2011, ordered that "as the matter is pending at the civil court, the commission under Section 9 (H) cannot consider the case as violation of human rights. Hence, complaint HRC No. 6128/10 has been disposed of."

Case of Police Inaction

Uppinangady PS

JATHAPPA SHETTY

My name is Jathappa Shetty, aged 60, living at Shibaje Village, Belthangadi. My daughter Vasanthi, studied up to 8th standard and is now staying at home with me.

Udaya Shetty, a primary school teacher at zilla panchayath primary school in Shibaje Village used to visit our house, and started an affair with my daughter, Vasanthi. I warned Udaya Shetty to discontinue his affair. At that time he promised to marry my daughter and swore in the name of Shree Durga Parameshwari Devi of Shibaje Village. In 1996, Udaya Shetty, along with Krishnappa Kannada, Chennappa Kannada, and Ananda Kannada, all residing in Shibaje Village, Belthangadi, demanded a dowry of Rs. 1,00,000 and 20 sovereigns of gold to marry Vasanthi, and Udaya Shetty promised that he would marry her in February , 1997. I had given him Rs 75,000 in cash and promised to pay the balance amount of Rs 25,000 and 20 sovereigns of gold at the time of their marriage. In February 1997, I enquired about the arrangement of the marriage and made all the arrangements to pay the balance of Rs. 25,000 and 20 sovereigns of gold. In spite of having an intimate relationship with my daughter, Udaya Shetty refused to marry her. On February 26, 1997, I lodged a complaint at the Uppinangady Police Station about the matter, but Y. Gangi Reddy, SI, did not look into the matter.

On March 4, 1997 at about 7:30 pm, Udaya Shetty asked Vasanthi to go to his room at Hebbarjal in Shibaje Village. When she went there, he, along with Krishnappa Kannada, Chennappa Kannada and Ananda Kannada took her to a remote place and administered poison to her. Krishnappa Kannada, Chennappa Kannada, and Ananda Kannada held Vasanthi's hands and head while Udaya Shetty, administered the poison. Sanjeeva Shetty, a native of Golithottu saw the incident from afar and rushed to my house and informed me about the matter. My children and I immediately went to the place and took Vasanthi, who was semi-conscious, and rushed her to the hospital. On the way to the Mangalore Nursing Home, Mangalore, Vasanthi lost her consciousness. Vasanthi was admitted to Mangalore Nursing Home, Mangalore for 12 days. On March 16, 1997, she was discharged from the hospital and she registered a complaint in Uppinangady Police station. I had filed a complaint before Y. Gangi Reddy, Sub-Inspector of Uppinangady Police Station and had registered the case as Crime No. 36/97. Unfortunately, Y. Gangi Reddy, the SI, had not taken any interest in investigating the matter and had not arrested the accused persons, who are still

openly roaming in the village. Disappointed with the Uppinangady police, I lodged a complaint before the SP, Dakshina Kannada, Mangalore, requesting that he take the necessary action. The SP, Dakshina Kannada had instructed the DySP, Puttur Sub-Division, PC Ganapathy, to investigate the matter. Unfortunately, DySP, Puttur Sub-Division, PC Ganapathy, had joined hands with Udaya Shetty and his associates, and had threatened us, demanding that we withdraw the complaint. They also asked me to talk to Puttur MLA and MP of Mangalore Lok Sabha Constituency. Furthermore, PC Ganapathy and DySP, Puttur had not even recorded the evidence of the eyewitness Sanjeeva Shetty. PC Ganapathy and DySP Puttur directed me, my son, my daughter and Sanjeeva Shetty to go back to Uppinangady Police station. As per the direction of DySP Puttur, we went back to Uppinangady PS and met Y. Gangi Reddy, Sub-Inspector of Uppinangady PS.

At Uppinangady PS, Y. Gangi Reddy, SI of Uppinangady PS threatened Sanjeeva Shetty and us with dire consequences. Furthermore, Y. Gangi Reddy, SI of Uppinangady PS, took several left thumb print impressions of Sanjeeva Shetty, on many blank papers, by force. In connection to this, my son, Ravindra Rai, aged 28, filed a complaint against the inaction of the Uppinangady SI Y. Gangi Reddy and Puttur Sub-Division DySP, PC Ganapathy, concerning the poisoning of my daughter, Vasanthi. In his complaint, he added that under these circumstances, he suspected that because of the political high-handedness of Puttur MLA and MP, Mangalore, and also Jayaprakash Hegde, Minister of Fisheries, Governmentt of Karnataka, DySP, Puttur, PC Ganapathy, and Uppinangady SI Y. Gangi Reddy had not investigated the matter properly and had fully joined hands with the accused people. DySP, Puttur, PC Ganapathy, and Uppinangady SI Y. Gangi Reddy have violated the civil liberties of the citizens and have not given justice, yielding to the pressure of their political bosses.

In the absence of the KSHRC the complaint was filed with the NHRC, but no information to this effect is available.

Violation of Rights to Land and Shelter

Mangalore

EVICTION OF 62 FAMILIES

On April 27, 2009, PUCL, Dakshina Kannada, filed a complaint with KSHRC, as HRC No. 2105/09. We enclosed a newspaper report dated April 2, 2009 and brought to the notice of the commission the eviction of 62 families from Shakthi Nagar, Mangalore, where sixty huts constructed by the shelter-less people in and around the Shakthi Nagar area of Mangalore Municipal Jurisdiction were forcefully demolished by bulldozers. The affected families belong to the lower-income group. The demolition took place in the presence of both the municipal and state revenue authorities. This act has violated the right to land and right to shelter of the families.

The KSHRC, having tabled the complaint on May 8, 2009, directed the district collector of Dakshina Kannada to conduct an enquiry and to submit a report within eight weeks from the date of receipt of the notice. On July 31, 2009 the DC of Dakshina Kannada District submitted his report to the commission. On September 14, 2009, the KSHRC forwarded the report to us for comments within four weeks from the date of the receipt of the notice.

The report stated that the nine acre area of land under the Padavu Village Survey No. 82 was reserved for the selected landless beneficiaries of the Ashraya Housing Project. The Tahsildar and the Mangalore Municipal Commissioner had clear instructions of safeguarding the land from being misused or being used for illegal occupation by anyone, as the right over the land was reserved only for the beneficiaries of the Ashraya Housing Project.

In response to the complaints received from the people of the locality about the land being illegally occupied, the Tahsildar/Mangalore Municipal Commissioner, after conducting an investigation, had noted that the above 52 plots were illegally occupied and houses were constructed on it. Hence, on April 1, 2009, the Mangalore Municipality evicted the illegal occupants from the reserved land as per the law.

In our comment submitted to the KSHRC on September 24, 2009, we communicated the following:

"DC who represents the state is not only responsible to maintain law and order, but he is also responsible to safeguard the human rights of the citizens, as spelt out in the UN Declaration of Human Rights dated December 10, 1948.

The DC and his administration and the local bodies concerned have actively encouraged the alleged encroachers to occupy government land, build huts and houses

and live there for more than 13 years, peacefully, and provided them with electricity, water, drainage etc. Roads around the place were improved and maintained by the concerned bodies and public transport, and street lighting was also provided. Even ration cards and voter identity cards were provided to many of the occupants.

When the government and the government administration provide basic facility with one hand, they cannot withdraw or destroy or derecognise these facilities with the other hand.

We have provided you with the necessary newspaper reports to prove that squatters' rights, when they occupy government lands, are recognised all over the world.

Various governments have provided basic facilities to squatters in several slums all over India especially in urban areas, cities and metropolitan areas.

Besides, rich people with influence in the right places are allowed to encroach upon government lands and places coming under CRZ (Coastal Regulations Zone) while poor people are tortured and thrown into the streets.

This cannot be allowed to happen. The KSHRC has to protect these poor people by safeguarding their rights to life with dignity, rights to shelter, rights for survival, rights to food etc.

All concerned authorities have allowed footpaths and government lands to be occupied unauthorised by street vendors who are conducting commercial activities, while those who have built shelters are thrown out into the streets with their utensils, cooked food, etc. as well as children's books, slates, etc.

The KSHRC, and NGOs like us, cannot be silent spectators to this crude, rude, unjust, unfair and inhumane treatment."

The commission, in its final order dated January 15, 2010, stated that having reviewed the complaint, news reports, the report submitted by the district commissioner and the comments on the report, had directed:

"It is the duty of the Mangalore Municipal Corporation to check on the landless among the families living for the past 13 years at the said land and to take action. The Mangalore Municipal Corporation is thus instructed to provide shelter to the landless through government programmes, and to submit a report on the actions taken to the commission". There has been no further communication on the complaint from the commission.

Case of Extrajudicial Killings

Uppinangady PS

MOHAMMED ASIF & MOHAMMED MUSTAFA

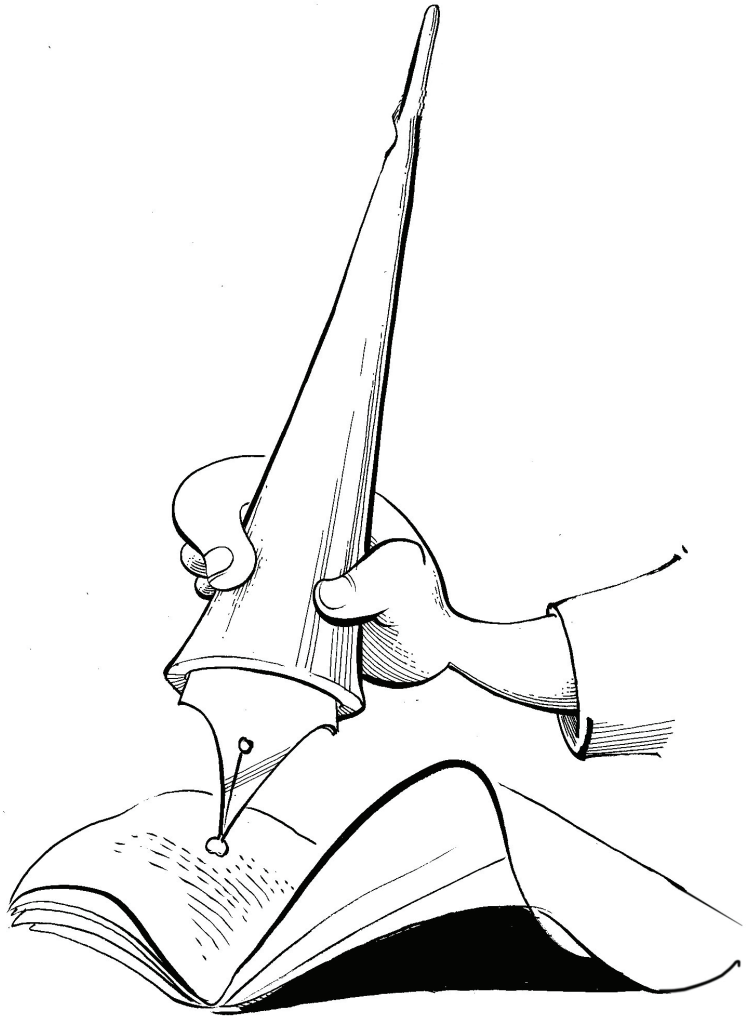
On September 10, 2009 at about 3:45am, SI Mr. Nagesh of Uppinangady Police Station received information about the illegal transportation of cattle in a *Qualis* car. As per the information received, the PSI, along with the other staff at the police station, reached the place called Kootel and started checking all the vehicles.

At about 4:30am, they saw a *Qualis* car coming from Nilyadi and stopped it. The vehicle stopped quite far from them. While the police were observing the vehicle, the people in the car jumped out and ran towards the Nethravathi River. The police teams chased them and succeeded to arrest a Mr. Dodapur, but were not able to find the other three. Later, during the enquiry, the police learnt that all of them belong to Shanthigudde, Bajpe. The *Qualis* car was found to be a stolen one as well as the cattle, which were being transferred with the intention of slaughtering them for meat.

The police claimed that with the help of an expert and five service personnel, they had searched the Nethravathi River and two dead bodies were found. Those bodies were identified as Mohammed Asif and Mohammed Mustafa and it is believed that they had drowned. It is also believed that they were from Mr. Dodapur's group who escaped from the police at the time of the incident. The PUCL doubted that the Muslim youths died due to drowning. Instead, it was believed to be due to a police encounter.

The complaint was filed with the NHRC and a request was made for a detailed enquiry. The SP, Dakshina Kannada District, as per the direction of Mr. Gopal, DIG of Police, Karnataka, carried out the probe into the incident and filed a report. The post-mortem report is the only document to find the cause of death. In one of the reports, it is indicated that the death was due to drowning. The other report is still pending due to the need for chemical analysis by the experts.

It is interesting to note, that among the four accused, two were Hindus, who were safely taken into custody by the police, and the other two were Muslims, Mohammed Asif and Mohammed Mustafa's, whose bodies were found drowned in the river. No information on the outcome of the report, or on any further actions taken, is available.



EXPERT OBSERVATIONS

B V SEETARAM

The KSHRC should come out of the *Raj* mindset and respond positively to the tales of woes of the aggrieved who knock on its doors for justice. But the present trend of the KSHRC and its way of functioning leaves much to be desired in this direction. The commission was brought into being to help the victims of official apathy, brutality and insensitiveness. By the very nature of its existence it has to be pro-victims, and no apology for not being so is acceptable.

The KSHRC often assigns inquiries of rights abuses by police to the officers in khaki themselves, which would in fact tantamount to asking the accused to be an inquiry authority and jury. I have so many times, in my interaction with the KSHRC, pointed to the futility of this kind of handling of the complaints of the victims or those who complain on their behalf. The accused police invariably whitewash everything and absolve themselves of the crimes, and lay the blame at the doors of the victims themselves.

There has to be a certain time limit for disposing of the complaints from the day the case is registered with the KSHRC. At times, it takes years for cases to be inquired into by the KSHRC, let alone for the verdicts to come. This is indeed an untenable situation for the victims. A reasonable span of six months for disposing of the complaints is a fair time frame for the purpose.

Once the KSHRC makes a recommendation to the authorities after the due process of inquiry, there should be some mechanism to monitor the enforcement of the directions given. There is no such thing now in existence, and the KSHRC's recommendations are observed more in breach as I had pointed out in several cases at the IPT.

As Justice S R Nayak, Chairperson of the KSHRC, often complains to the outside world of the inadequacies of his organisation in terms of space and staff, the rights organisations should also take it up with the government to see how best this grievance of the commission can be addressed. The rights bodies can also hold a dialogue with Justice Nayak to measure the extent of the inadequacy of the KSHRC.

It is possible that even after extra facilities have been provided to the KSHRC, it might still lag behind in meeting the people's expectations of it. The efficiency of the KSHRC lies more in the attitude and ability of the commission's members to rise to the occasion when called upon to address themselves to the problems brought before them by the victims or their dear ones. It is therefore desirable to appoint only those who can empathise with the complainants/victims. Therefore, appointments of noted rights activists as commission members, and those who do not have a judicial service

background, should be made possible. If that is possible in the information commissions, why not for the KSHRC?

I also recommend a regular interaction between the KSHRC on the one hand and HRLN led rights bodies and individuals on the other, to investigate what leads to the indefinite pendency of cases at the KSHRC. The services of rights bodies and individuals fighting for victims should be enlisted by the KSHRC in settling the cases in a timely manner.

NAGARAGERE RAMESH

A society, to be called civilised, needs to have certain mechanisms through which it can assure a decent existence for its members, and one such institution should be a body to monitor the human rights situation. In spite of the fact that India has been claiming that it is a democracy since 1947, and also that it is a signatory to the Universal Declaration of Human Rights, for a long time there had been no such mechanism here. But, after much pressure from independent human rights organisations and the civil society, the NHRC at the centre and state human rights commissions in some states were created under the Protection of Human Rights Act, 1993. In Karnataka, the SHRC came into being only in 2007.

It has to be remembered that such bodies came into existence only due to societal pressure. Hence, naturally, there were high expectations of these bodies since it was at least thought that they could function efficiently, being backed by the establishment which provides the necessary infrastructure and financial assistance.

But even a cursory look at the functioning of these organisations reveals that there are more reasons for disappointment than a sense of fulfillment. The KSHRC is a case in point. Since its inception in 2007, the commission has been flooded with petitions of various sorts against the establishment, its officials, especially the police, and at certain times against private individuals regarding the violations of human rights. Also, there are several instances of the commission itself taking *suo moto* cognisance in certain cases, and interfering. One reads about these complaints and such interventions in the newspapers, but what happens next is any-body's guess, as nothing tangible happens. Nothing is heard about any investigation, or about any action taken against the wrong-doers. There are a very few instances of monetary compensation being paid to the victims at the insistence of the commission, but such cases are negligibly few in number. Even in such cases there is no action taken against the offenders.

As a result, the human rights organisations functioning in the state also find it a futile exercise to approach the commission for the redressal of any problems. They therefore come out with their own findings in cases where they have interfered and submit them to the government and the people in the form of reports. The experience of the *Peoples' Democratic Forum* (PDF) is not much different from that of the other HR organisations. PDF, which has been functioning since 1993, approached the SHRC in three cases, and we regret to say that not much has come out of these efforts, notwithstanding the good intentions of the chairman and the other members and officials of the body.

On January 7, 2009, PDF submitted a memorandum to the KSHRC about the harassment in police hands of Mr. Seetharam, editor of *Karavali Ale,* a journal published from Mangalore. The offenders in this case were the police of Dakshina Kannada district, and we also expressed our strong suspicion that they were hand-in-glove with the *Sangh Parivar* forces. But, to date, no concrete action has been taken in any specific case and Mr. Seetharam and his wife are still facing charges filed against them by the police, who also at one time handcuffed him publicly, a matter widely published and condemned in the state. The officers responsible for such blatant violation of human rights are still untouched.

On March 24, 2009, PDF filed a complaint with the KSHRC against the *Sangh Parivar* for its hand in the attacks on churches in several districts of the state, especially in Dakshina Kannada. It also submitted a copy of the report prepared by various national human rights organisations, PDF being one of them, which had recorded the heinous crimes committed by the *Parivar* in Orissa and Karnataka on the pretext that Christians were indulging in conversions. The report is called From Kandhamal to Karavali – The Ugly Face of Sangh Parivar. The commission gracefully accepted the report and sent it to the Chief Secretary of the Government of Karnataka for comments. Some time later, PDF received a report filed by the DGP through the commission about various measures taken by the department to maintain law and order in the state in the wake of attacks on churches. The commission merely sent the report to PDF and that was it.

On September 29, 2010, PDF lodged another complaint with the KSHRC against the police of the city of Bangalore. During the preceding week, two alleged rowdies had been encountered by the police in the city, and there was also the killing of an alleged sandalwood thief by an individual. PDF wanted all these cases to be investigated by the commission. What was most distressing was that the individual who had killed the alleged thief was felicitated by the home minister and the police department for his 'brave act'. We wondered what sort of message such an act by the authorities would send to society about the rule of law. In all the three cases, people, including the police, had taken the law into their own hands, and there was no proper investigation into the case to establish that such killings were necessitated by the circumstances.

As usual the KSHRC sent the complaint to the police and the police in turn filed their reply which was promptly transferred to PDF through the KSHRC. The police had made no mention of the encounters and totally accepted the statements of the individual who had killed the alleged thief. There was no investigation by any competent authority. We received the report dispatched by the KSHRC on March 1, 2011, and we also responded to the report pointing out the incongruities and contradictions contained in the report.

As can be seen in all three cases the commission has only functioned as a middle body, a conduit through which correspondence between different bodies pass. The commission itself has conducted no investigation but has depended solely on the findings of another government establishment.

The KSHRC may plead that it is unable to conduct such investigations due to a lack of the necessary infrastructure. In fact, on many occasions this plea has been put

forth by the commission. One can see a parallel between *Lokayukta* and the SHRC in this regard. In such a situation, there is a dire need to strengthen such bodies, in this case the KSHRC, so that sufferers do not lose faith in the system and in constitutional bodies. Human rights commissions themselves were created after much struggle and pressure by civil society organisations. Now, once again there is a need to reinvigorate these bodies to ensure at least some justice to victims of rights violations.

HARSHA RAJ GATTY

PUCL, Mangalore, and its affiliates, have approached the KSHRC on several occasions, to address concerns on behalf of victims of human rights violation. However, in most of the cases, and to our disappointment, the KSHRC has reverted the matter back to the accused for enquiry, and then the matter has been dismissed. In some other cases it was also found that there was no response by the KSHRC pertaining to our query.

It would be only partly just to express regret for the ineffective functioning of the KSHRC and its inability to deliver value-based human rights justice to its victims, since the major stakeholder of this institution, i.e. the Government of Karnataka, is not proactive in enforcing human rights values in the state. While the Government of Karnataka was still reeling under political uncertainties, it was the High Court of Karnataka that literally pushed the Karnataka Government to establish the KSHRC in the month of December 2006.

In short, it took approximately 12 years for the Government of Karnataka to enshrine the legislation providing a human rights assistance body to the people of Karnataka, legislation that was formulated as early as 1993-94, under the Union Government of India.

However, even today, the KSHRC as an organisation is a body that is plagued not only by infrastructural problems, but which also has a shortage of manpower and other resources; it is literally paralysed due to the lack of proactive state intervention along with mounting responsibilities and the barren deposition of cases from the victims, as a result of which the existence of the KSHRC in the state is prone to the necessary criticism and ridicule of NGOs and civil society.

It is ironic that an organisation left to defend the rights and concerns of people is itself fighting for its right to live, and function with dignity. The KSHRC, which initially proposed several measures in the initial phase of its existence in 2007, such as a district-based cell which would function as an effective mechanism for the SHRC, it is now struggling for its own self-sustenance.

In our opinion, such an ineffective body is more dangerous even than the violators of human rights, since the victims of human rights violations are further exposed to extreme trauma when having to wait and suffer after approaching this bench (it would be like the operation of a patient by an unqualified, ill-equipped doctor).

Such a non-executive or non-empowered body diverts the precious time and resources of the victims during the third-party investigation of the matter, and also di-

verts the victim's efforts to attain justice, while prolonging the victims' suffering. In the wake of police atrocities and other human rights violations in Karnataka there is a need for the revamping of this organisation for the effective performance of its duties.

The KSHRC should be modeled after the central information commission or state information commission, which are not only independent but also have their own sources to generate resources, and the power to appoint their own members, and efficient mechanisms to activate *suo-moto* authority.

It is also crucial that the KSHRC involves members of civil society and NGOs by affiliation, and enrolls members, not only to suggest new mechanisms to make its functioning effective, but also to carry out investigations or fact-findings on matters. It must also employ the services of sociologists and MSW professionals to competently handle counseling or other matters such as creating awareness to matters pertaining to human rights concerns. The KSHRC must have multiple mediums for public grievance, district-wise, that are professionally handled by experts as suggested above, so that people have faith even under this arrangement.

WRITTEN SUBMISSION TO THE JURY

MR. JAVED PASHA
SECRETARY
KARNATAKA STATE HUMAN RIGHTS COMMISSION

JAVED PASHA

I was asked to place before this august assembly the difficulties faced by the KSHRC in effectively discharging its functions. The difficulties faced by us can be dissected, classified into two parts:

1) Shortage of accommodation
2) Shortage of staff

The Government of Karnataka, after a long lapse of 14 years of the coming into force of the Protection of Human Rights Act 1993, established the KSHRC in the year 2007. The Hon'ble Chairperson and Hon'ble Members of the commission were appointed in the month of July 2007 and assumed office in the last week of July 2007. When they assumed the office, the Government did not provide any building or any staff to the commission. Only in the month of 2007 was a skeletal staff and totally inadequate space measuring 1650 sq.ft. in the 4th floor of 5th phase of M.S. Building provided to the commission.

The commission started functioning with such inadequate space and staff and subsequently, some more space in the 3rd and 4th floor of 5th phase of the M.S. Building, in a truncated manner was provided to the commission. 4500 sq.ft of space was provided to the commission, against our demand for at least 20,000 sq.ft. of space. This is insufficient to meet our requirements. The state government has allotted 4634 sq.ft of space to the commission in the 5th phase of the M.S. Building by Order No. DPAR/ 147/DBM/2009, Bangalore, dated June 16, 2010. In light of what has been stated above, the state government has partly considered the request of the commission, and provided additional accommodation in the 5th phase of the M.S. Building. Even though the state government has allotted 4634 sq.ft. of space in the 1st and 2nd floor of the 5th phase of the M.S. Building, actual possession is has yet to be handed over to the commission. For several months we have been running pillar to post to get the vacant possession of the said extent allotted to us, but in vain.

As against a total staff of 491 sought by the commission, the government has sanctioned 105 staff only. Even the sanctioned staff could not be filled by the commission, for want of space. Only 76 employees (51 on contract basis and 25 on deputation) are presently working in the commission.

Although the commission prepared the draft cadre and recruitment rules of the staff of the commission, the terms and conditions of the services of the chairperson and hon'ble members of the commission rules, and sent them to the government for approval, the government has yet to notify the cadre and recruitment rules of the staff

of the commission. Even the terms and conditions of the services of the chairperson and members of the commission rules notified by the government after several amendments remain truncated and impracticable, and do not cover many aspects of services of the chairperson and the members of the commission. The commission addressed several letters to the government for allotment of a proper building and sanctioning adequate staff. The government has not responded the way it was expected to respond. Even the Park House, which was allotted earlier to the commission by the then Chief Minister of Karnataka, appreciating its needs and assigning valid and weighty reasons, has yet to be handed over to the commission. It is trite to state that the commission, in order to function effectively and perform the duties and functions as specified in Section 12 of the Act, requires infrastructure facilities of a 'mini-university' if I may say so. The consideration of the infrastructure needs of the commission ought to have received prompt and top most consideration at the hands of the government.

Despite the many problems of the commission to function effectively for the reasons stated earlier, I may not be wrong in stating that the KSHRC, in relative terms, is the best in the country amongst all SHRCs in terms of performance in various and diversified activities in the domain of human rights. After the commission was established and started functioning, and till end of November 2010, the commission has registered more than 23,000 cases of which roughly 5,000 cases are *suo motto* registered. Of these cases, the commission has already disposed of about 12,500 cases. The cases *suo motto* registered by the commission include the cases of general importance such as harassment and ill treatment of minorities, Schedule Castes and Schedule Tribes, and other backward classes by vested groups, harassment and treatment of religious minorities, attacks on places of worship, suicides of students in educational institutions due to ill-treatment by the management and or teachers, sexual exploitation by male office superiors, social boycotts of Schedule Castes and Schedule Tribes, various kinds of harassment and custodial torture by police, mis-management and inadequate conditions of government hospitals, mismanagement and exploitation of juvenile offenders in juvenile homes, ragging in educational institutions, encounter deaths and attacks by Naxalites on civilians, pollution by industries, factories, municipal bodies etc, lack of civic amenities to be provided by municipal bodies and corporations such as roads, disposal of garbage, dog menace, allowing public places and open spaces to be used as public toilets, potable water, lack of drainage system etc, collapse of buildings and lifts resulting in human losses and injuries to the workers, rape and sexual harassment of minors, lack of infrastructure facilities in mental health care institutions in the state, mining activities and their harmful impact on environment and people, non-maintenance of public parks, trafficking in children and women, encroachment of government lands and the lands of dalits, manual and sexual exploitation of school-going children by their teachers, prevalence of manual scavenging in the state, illegal mining, criminal lapses by doctors in government hospitals resulting in deaths of patients, living conditions and harassment of prisoners in prisons, cleanliness at bus stands and railway stations, unauthorised slaughter of animals in fairs and festivals, illegal lodging of juveniles in police stations and prisons, sexual exploitation of female teachers in universities, child labour and bonded-labour, hooch tragedy, construction

tragedy, manhole tragedy, pathetic conditions of national highways and state highways and other roads in the state, instances of moral policing, endemics and epidemics, droughts and floods and other natural calamities, manual scavenging etc.

The government, public authorities and officers are expected to comply with its recommendations and suggestions without dragging citizens to courts of law for remedies. Promptness in granting remedies shall be a hallmark of modern governance. The Government of India, in its every annual report submitted to the Human Rights Council of the UNO, has been claiming that the Human Rights Commissions in India are highly respected pivotal organisations, that they are totally independent, and that their orders and recommendations are respected. The Government of Karnataka should live up to this claim by spirit and words, but unfortunately, we are not in a position to serve the public the way we want to serve, for want of infrastructure facilities, expert staff and binding rules of governance.

We stand to hope, hope against hope, for the betterment of mankind.

CHAPTER-III

Jury Report

BACKGROUND

The *Human Rights Law Network* organised this event at the Indian Social Institute on May 7, 2011, in collaboration with several other human rights and civil society organisations. During the event, from 10am to 4:30pm, several activists, as well as many victims, provided their testimonies to the panel comprising the following:

- Mr. Subbaiah, Senior Advocate;
- Ms. Hemalatha Mahishi, Senior Advocate;
- Mr. S Mariaswamy, Retd. IPS Officer;
- Ms. Lalita Nayak, Former Minister and Social Activist;
- Mr. Murali Narayana Murthi, Retd Army Officer.

OBJECTIVE

To consider the evidence dispassionately and to comprehensively arrive at suggestions to streamline and strengthen National and SHRCs to function more efficiently and effectively.

It is noticeable, that in the case of complaints of police atrocities inviting violations of human rights, the commission refers the complaint to the delinquent police officer for comments, and on the basis of the comments offered by the police officer accused of the violation of human rights, the complaints are thoughtlessly, and without proper application of mind, disposed of. This procedure is not at all helpful in the matter of safeguarding human rights. In certain cases where those officers against whom allegations of violations of human rights are made assail the complainant's trustworthiness, it is found that the commission was very casual in disposing of the complaint. As though the complainants who suffer from certain social taboos are not entitled to protection under the law relating to the protection of human rights. In our society, social evils are not uncommon, and under compelling circumstances many people have become victims of anti-social activities which are rampant in our society. With this background, unfortunate men and women, who were found to have fallen foul of these social evils, are entitled to more sympathetic treatment than contempt. Generally, police officials are in the habit of exploiting the men and women who belong to the fallen category in society, instead of providing help for them to correct

themselves and redress their grievances. This attitude of the police must be dealt with by the commission in a positive manner, instead of taking recourse to the prejudicial approach.

OBSERVATIONS

Examination of the oral testimonies and documents presented during the event lead to the following observations:

- The majority of the cases pertained to allegations of mishandling of cases of human rights abuses by concerned police authorities.
- There were serious allegations of collusion of police authorities in the alleged atrocities, in several cases.
- Impartiality of police authorities was questioned in many of the cases.
- Glaring instances of alleged lack of sensitivity on the part of officials responsible to deal with the cases exist.
- There are a few cases of custodial deaths allegedly due to manhandling by the police.
- There are cases of harassment of human rights activists, media personnel and of their sympathisers critical of the government, by police authorities.

There is a perception that a section of police officials are colluding with certain militant elements of some Hindu religious groups, particularly in coastal Karnataka and south Karnataka areas, who are harassing religious minority groups. It is felt that these groups are emboldened by the tacit support of political bigwigs. This is vitiating the communal situation in these areas.

Cases of human rights abuses have been brought to the notice of the KSHRC, both by human rights activists and by the victims of such abuses themselves. The commission has examined several of the complaints and has issued directions for corrective actions. However, the general perception is that the performance of the KSHRC has not been effective. The following glaring shortcomings in its functioning have been brought out during the submissions before the panel:

KSHRC directions are only recommendatory. There is no obligation on the part of the state machinery to accept and implement them. As such, in a few cases where the KSHRC has suggested punitive measures against errant officials, no such action has been taken by the concerned departments.

The fact that the KSHRC has recommended the award of compensation to victims of human rights abuses in a few cases is proof of such abuses having been committed. However such cases have not resulted in the prosecution of the guilty.

The KSHRC does not have an independent investigative arm. As such it has to rely on the state investigative machinery. This is resulting in a piquant situation where allegations of police atrocities are referred by the KSHRC back to the police authorities themselves for investigation, violating the principle of natural justice. Some cases have been disposed of based on the comments and recommendations of the very same officials against whom the complaints had been lodged. This has emboldened the errant officers to threaten the complainants and to perpetuate their misdeeds. Particularly in view of the fact that a majority of cases of human rights abuses are against police authorities, it is essential that the KSHRC rely on an independent investigative arm.

There is a perception that in several cases the KSHRC has not applied its mind to the facts placed before it, before arriving at a decision. Several cases have been disposed of or closed without proper investigation.

The KSHRC takes a long time to dispose of cases. A backlog of cases is mounting.

Mr. Javed Pasha, the Secretary to the KSHRC, brought out that the functioning of the commission is severely constrained due to the following:

- A lack of adequate staff, infrastructure and funds. The commission does not have adequate staff for carrying out independent investigations. Efforts of the commission to enlist the services of the directorate of civil rights enforcement for investigation of cases of human rights abuses have not been successful.

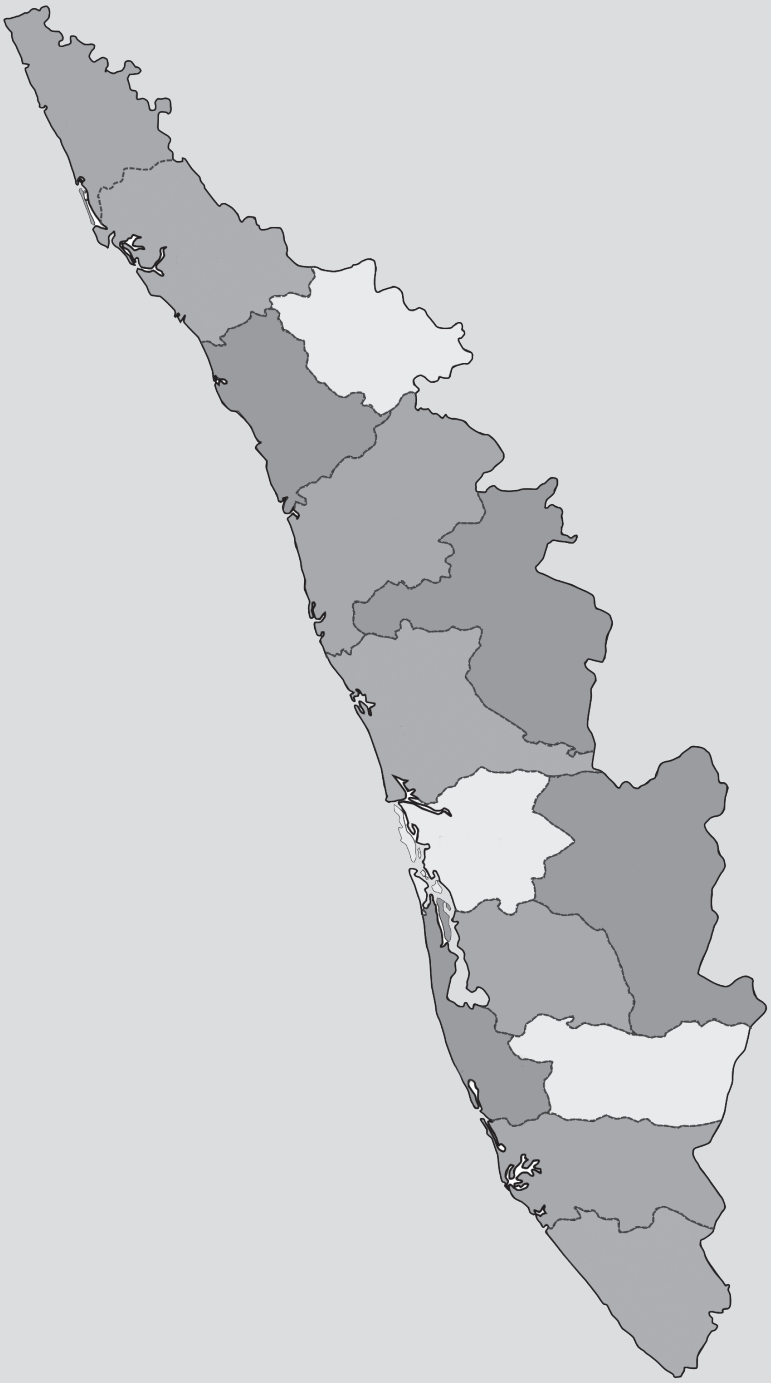
RECOMMENDATIONS

It is observed that the The Protection of Human Rights Act provides for the empanelment of two independent members to the KSHRC. This has not happened. Considering the fact that several cases of complaints pertain to atrocities against women, there should be at least one independent woman member empanelled to the committee.

Suitable representation from women's rights groups, minority rights groups and SC/ST groups on the KSHRC is essential. The KSHRC may take up this issue with the appropriate authorities to have the composition of the commission suitably augmented.

With regards to the investigation of cases referred to the commission, while the constraints under which the commission is operating are understandable, the commission could consider the following:

- Enlisting the cooperation of competent and impartial NGOs for investigative work.
- Having a panel of eminent and dedicated lawyers to assist in its work.
- Exploiting the provisions of the Protection of Human Rights Act, 1993.
- The commission should consider seeking the cooperation of the Minorities Commission, SC/ST Commission and such other bodies for investigative work.
- Exploiting the provisions of the RTI act should be considered.
- The commission may consider approaching the courts by filing writ petitions to compel the executive to act.
- It is felt that the commission should streamline its functioning to ensure faster disposal of cases and to take measures to allay the general perception that cases are routinely disposed of without proper consideration.



KERALA

Heather K Sager | Jerome Belanger | Sandhya Raju

SL.No	04	**City**	Cochin
Total Cases before Jury	24	**Date**	October 8, 2011
Jury: Retd. Justice P.K. Shamsudheen; Ms. Leela Menon, Senior Journalist; Advocate D.B. Binu; Advocate Fr. George Pulikuthiyil; C.R. Neelakantan, Social Activist			
Networking Groups Cultural Academy for Peace; Parivaar Kerala; Pratyasha; People's Union for Civil Liberties; People's Watch; National Domestic Worker's Union; National Network of Positive People; Welfare Service Society			

THE INDEPENDENT PEOPLE'S TRIBUNAL ON THE FUNCTIONING OF
KERALA STATE HUMAN RIGHTS COMMISSION

EXECUTIVE SUMMARY

Located in the extreme south of India, the State of Kerala is often referred to as 'God's Own Country'. Kerala is far ahead of all other Indian states when it comes to the most important indicators of social development: it boasts an adult literacy rate of 90.9 percent, has one of the lowest total fertility rates in the country, at 1.9 percent, a low infant mortality rate and high life expectancy at 75 years. Its district-level Human Development Indices (HDI) is the highest in the country.[1]

However, claims of advancements in overall development are tainted by widespread reports of human rights violations by police and security forces against the most vulnerable populations, including prisoners, children, women, and indigenous tribes. A 2010 study by the *India Crime Bureau* reported that Kerala is among the four states with the highest incidents of violent crimes[2].

INDEPENDENT PEOPLE'S TRIBUNAL

The present report is a statement of the findings of a social audit carried out into the working of the Kerala State Human Rights Commission (KSHRC) in addressing the violations of human rights in Kerala. A well-strategised method was used in the preparation of this report. At first, general research was conducted on the status of human rights in Kerala and the KSHRC's functioning. Then, through the Right to Information Act (RTI), 2005, information was sought from the commission about its functioning. After that, organisations and persons working within Kerala were contacted and they shared their experiences concerning the commission. A visit was made to the KSHRC's office in Thiruvananthapuram, during which the chairperson of the commission was interviewed, and reports, *suo moto* cases, and order samples were gathered. Finally, an Independent People's Tribunal (IPT) was held, in order to provide the opportunity for victims, complainants and experts to speak publicly about their first-hand experiences in approaching the KSHRC.

1. Kerala Human Development Report, 2005
2. Crime in India – 2010, National Crime Records Bureau, Ministry of Home Affairs, Government of India

The main objective of the IPT was to strengthen the commission to function as an effective, transparent, and accountable body addressing human rights violations cases. In the IPT, twenty-four cases, which included cases ranging from evictions of poor communities, to women who have escaped forced religious conversion, to villages fighting against mining activities that threaten their homes, to cases involving livelihoods and health were deposed in front of a panel of five jury members. The cases deposed showed the commission's inaptitude in providing relief to the victims. In many cases where the complaints were filed there was no response from the commission. In addition, in some cases, the KSHRC closed the matter on the basis of the authority's (government department's) reports only, without hearing the other (the victim/complainant) side of the story. In cases of police torture no action was taken against the accused. Meanwhile, the same accused was found to be investigating the complaint, in other words the individual or department against whom the complaint of human rights violations was made were conducting investigations and submitting reports for the cases. Thus, an independent investigation has rarely been performed. This mechanism of investigation of cases shows a lack of clarity in the commission's functioning.

KERALA STATE HUMAN RIGHTS COMMISSION: A PORTRAIT

Kerala's SHRC was established in December 1998, five years after the enabling act came into existence.[3] It is a three-member commission currently comprising of Justice J.B. Koshy, Mr. R. Natarajan, and Advocate K.E. Gangadharan. There are around 21 administrative and support staff working for the commission lead by a secretary, a registrar, a finance officer, an administrative officer, an information officer, and an investigation team. Justice Koshy is relatively new to the position, having taken over as chairperson on September 5, 2011.[4]

The previous Chairperson Justice Dinaker was known for his insensitivity towards victims. One advocate who had some experience with the KSHRC under the previous chairperson noted that he always treated advocates with respect, and victims with disdain. Orders were usually given in English, a language that many of the disadvantaged are unable to read.[5]

FUNCTIONING OF KERALA STATE HUMAN RIGHTS COMMISSION

The role played by the KSHRC in effectively addressing issues faced by the population may be questioned, where its non-coercive recommendatory powers, lack of systematic communication with the relevant parties, lack of technical support and rather bureaucratic attitude impede its functioning. The commission has been heavily criticised for failing to take advantage of its own authority, as well as a systemic inability to keep the public properly educated.

INDEPENDENCE

Section 22 of the PHRA (1993) lays down a procedure for the appointment of the chairperson and members of the SHRCs, but this procedure thoroughly compromises their independence. The committee that appoints the chairperson and the members to the commission comprises of the chief min-

3. As per Section 21 of the Protection of Human Rights Act, 1993
4. http://www.kshrc.kerala.gov.in/thecommission.htm
5. Interview with Advocate Sandhya Raju, on October 7, 2011.

ister, speaker of the legislative assembly, home minister and the leader of the opposition in legislative assembly.[6] This committee, the majority of whom are people from the ruling party only, is essentially comprised of people from the political establishment, with almost no representation from civil society groups active in human rights protection. As a consequence, the selection of the appointees to the commission is always arbitrary and politically skewed.[7]

FUNCTION, POWER AND COMPLAINT HANDLING MECHANISM

The KSHRC's complaints-handling process is a simple, multi-step procedure. Complaints are submitted in written form, directly to the commission. The commission evaluates each complaint to determine if (a) it concerns a human rights violation, or (b) whether it has been handled or is currently being heard in any other court or commission. As long as it concerns a human rights violation, and is not being heard by another court or commission, the KSHRC then orders a report to be submitted from the respondent, the concerned government authority or the KSHRC's own investigations team. Once a report has been submitted, the commission evaluates the information and determines whether a hearing is required. If a hearing is granted, the parties convene as in any other court case. Later, the commission delivers a decision.

Each decision or order issued by the commission is only recommendatory in character. In other words, a KSHRC order is not enforceable. The only way to enforce a KSHRC order is to approach the High Court in Ernakulam, in order to petition for a binding order from the court.

Operational Efficiency

The commission receives approximately ten to twenty complaints per day. According to data obtained during a visit to the KSHRC, it was found that the number of complaints that are filed with the KSHRC hovers between 4,000 and 6,000 annually. Of these, between 600 and 1,500 remain pending, annually. The result being that, as of July, 2011, out of a total of 32,691 cases submitted since its inception, 13,783 cases have been left pending – approximately 42 percent.[8] With such a large percentage of cases unaddressed, the credibility of the commission's complaints-handling mechanism is seriously called into question.

Accountability

The commission is accountable to the public through submission of an annual report to the state government[9]. A copy of all published annual reports (reports the commission is obligated to submit and publish under the Act) was requested from the commission numerous times from January 2011, to October 2011. It was not until a visit to the commission's office in Thiruvananthapuram was made, that the KSHRC annual report of 2001-2002, was obtained. The chairperson explained that the annual reports have not been approved for publication by the state government. Until publication is approved, the commission is unable to make its annual reports public.

This is in contrast to the belief that many local activists hold: namely, that the commission has not actually submitted any annual reports. Ideally, annual reports must be submitted to the government by

6. As per Section 22 of the Protection of Human Rights Act, 1993
7. From Hope to Despair (2006), People's Watch (p.14)
8. KSHRC Annual Case Data, obtained in interview with Chairperson Justice Koshy on October 7, 2011.
9. As per Section 28 of the Protection of Human Rights Act, 1993

the commission, to be subsequently made available to the public. Such reports play a vital role in bringing about accountability of the commission.

That only one report could be obtained (and that not a single one has been published) after the KSHRC's 13 years of existence, is quite disturbing. While the report contained a break-down of the Commission's infrastructure, sample orders, a list of petitions submitted, and information on the educational seminars held over the year, annual case data and income and expenditure, it failed to include any analysis of cases rejected or disposed of, orders issued, or investigations carried out. The non-publication of annual reports clearly reflects a violation of the Act.

Investigation and Transparency

The commission's investigations team is comprised of personnel drawn from the state police forces. The investigative agency is headed by an inspector general of police, assisted by a superintendent of police, a deputy superintendent of police, a circle inspector of police, two head constables, and two police constables.[10] The individual chosen to fill each position on the team is deputed by the government. According to the current Chairperson Justice Koshy, the investigation team has always been comprised only of various police officers and inspectors.

The process of appointment to the investigations team raises questions of undue influence from the government and police force, considering the government's continued hold on all officers on deputation, as well as the fact that every investigation officer has been an active or retired police official, the possibility of the investigation process reflecting a bias towards the state or the police force is very high. When asked about this problem, the chairperson of the commission would only make assurances that the KSHRC's investigations officers conducted their work in the most professional manner possible.

Although the commission maintains that approximately half of all complaints submitted to it are investigated[11], available records tell a different story. Between 2005 and 2006, the commission directed its investigation unit to look into 363 cases. Of these, reports were submitted in just 35 cases.[12]

Accessibility and Dissemination of Information

Despite the commission's failure to regularly publish annual reports, or any significant reports on a regular basis, the commission has maintained one path to public information particularly well. The KSHRC's website is well-maintained, informative and up-to-date. With background information on each member of the commission, samples of important orders, contact information and relevant sections of the Act, the KSHRC's website is perhaps the best maintained among the websites of the SHRCs in India.

Unfortunately, the website is the only link to public information that the commission makes readily available. While helpful, a website, by definition, is available to only those with internet access. Internet access is generally determined by income and education level. The nature of this manner of dissemination automatically excludes several groups: lower-caste groups living below the poverty line, tribal and rural groups, as well as those who are uneducated. Furthermore, the website is in English, rather than Malayalam making its accessibility rather restricted. This clearly reflects the oblivious nature of the commission towards the needs of a majority population.

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10. http://www.kshrc.kerala.gov.in/activities.htm; Confirmed in interview with Chairperson on October 7, 2011.
11. Interview with Chairperson Justice Koshy on October 7, 2011.
12. http://www.kshrc.kerala.gov.in/activities.htm

Arbitrary Arrest, Illegal Detention and Torture

Reports of arbitrary arrest, detention, and even torture are disturbingly common throughout Kerala. Custodial deaths are also a routine occurrence. Six such deaths were reported during the period 2004-2005.[13] In at least one incident, police fatally used '*Urrutu*', a vicious method of torture involving an iron rod that is rolled down a suspect's body. An autopsy of the deceased, who died on September 27, 2005, at the Fort Police Station in Thiruvananthapuram, found that he had 'died of shock after his thigh bones were crushed with an iron rod'.

Article 5 and Article 9 of the 1948 Universal Declaration of Human Rights decrees that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and "No one shall be subjected to arbitrary arrest, detention or exile", however both these articles are routinely violated by law enforcers in Kerala.

The prohibition of torture is formulated in Article 7 of the International Covenant on Civil and Political Rights (ICCPR)[14] which India is a party to. It categorically prohibits the use of torture or ill treatment, not allowing for the possibility of derogation. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a civilised society. The word 'torture' has become synonymous with the darker side of human civilisation. We must remember what was said in D. K. Basu vs. State of West Bengal [1997 (1) SCC 416] "Whenever human dignity is wounded, civilisation takes a step backward – the flag of humanity must on each such occasion fly half-mast".

Instances of such torture were reflected in many of the cases deposed in the IPT. One such case was that of Mr. Anil Kumar, an auto rickshaw driver by profession. The incident is of 1997, when after dropping off his last passenger of the day, Anil was stopped by Police Constable Raghuvarman of Kottayam West Police Station. He was asked to show his license and vehicle registration papers. He did so but the constable was drunk, and ignoring the papers the constable arrested him and brought him to the police station. He was beaten there, held overnight and only released the next day. No case was registered against Anil and no reason was given for his arrest. Angered by the entire incident, Mr. Anil filed a complaint with the KSHRC.

Although no action was taken by the KSHRC, the police officials of the Kottayam West Police Station soon learnt of his complaint to the KSHRC. They now began to book him for minor traffic offenses, none of which he had committed. In total, fifteen cases over seven years were filed by the police against him, but he obtained acquittal in each one. The harassment continues to date. Still no action has been taken by the KSHRC.

This is one such case of arbitrary arrest, illegal detention, false case creation and police torture, as well as misuse of authority by a civil servant, and a typical example of the commission turning a blind eye to such gross violation of human rights. Such is the state of affairs in Kerala.

Police Inaction

The United Nations Human Rights Committee notices the importance of independent institutions such as National Human Rights Institutions (NHRIs), if 'endowed with appropriate powers', in con-

13. Crime in India – 2005, National Crime Records Bureau, Ministry of Home Affairs, Government of India and NHRC Annual Report 2004-2005, http://www.nhrc.nic.in/Documents/AR/AR04-05ENG.pdf
14. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

tributing to the aim[15] of providing effective remedies to victims of human rights violations. In order to achieve this, the ICCPR requires States to investigate allegations of violations, to bring perpetrators to justice, to deliver reparations to victims and to implement measures to prevent recurrence of violations.[16]

"Each State party to the present covenant (ICCPR) undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy";

- Article 2(3), ICCPR

There are many instances of police inaction in Kerala, in which the commission too has failed to act and provide relief to the victim. There was one such case deposed in the IPT in which the police failed to take any action against the accused. The incident is of the year 2000, when the local panchayat of Idduki planned to construct a road, and so an action counsel was formed and the local people collected some money do so. The panchayat was to reimburse the money later.

Mr. Balanchandran was the leader of the action counsel and took some money from Mr. Murugan Vedamanikyan for construction of the road, but even after three months and a district collector order, the construction didn't start. Murugan complained to the police about this situation and also about the fact that the accused Balanchandran was not reimbursing him the money he had lent him. It was clear that the accused had kept the money for himself. But the police dismissed the complaint on the grounds that there was a lack of proof.

Murugan was subsequently harassed by the accused and a false case was registered against him by Balanchandran. Then, on the May 28, 2000, Balanchandran and others attacked the victim's family with knives at their home, and stabbed Murugan. To protect himself and his family, Murugan tried to snatch the knife from Balanchandran but accidently stabbed him in the process. The other attackers ran away. The wounded individuals were later admitted to the hospital. In the hospital the aggressors again tried to attack the victim's family. The police then arrested Murugan for stabbing Balanchandran. The case was registered and the victim was kept in jail for fourteen days.

The victim tried to file a case against Balanchandran but didn't succeed. After the victim was released on parole, they again attacked him, and later filed another complaint with the police. Seeing that they would receive neither relief from the police nor any protection of their lives, the victim filed a complaint with the KSHRC. Despite the fact that the complaint was filed, Muragan's complaint is still pending in the commission and no action has been taken concerning the failure of the police to investigate the issue and protect the victims.

Conditions of Confinement

Kerala prisons suffer from rampant overcrowding and other deplorable conditions. Unsanitary bathroom facilities, lack of nutritious food, and poor lighting are the norm within these alarmingly crowded facilities. By 2005, Kerala's prison system had surpassed its capacity by over 1,500 prisoners.

15. UN ICCPR, General Comment No. 31, [15].
16. UN ICCPR, General Comment No. 31, [15]-[19].

At one time, Thiruvananthapuram Central Prison held 600 prisoners over its capacity.[17] In one jail, over thirty prisoners were being held in a room with facilities sufficient for only three![18]

Prisoners are not only routinely subjected to beatings, sexual harassment, and other kinds of mistreatment, but also denied basic healthcare.[19] The KSHRC conducted on-site jail visits in April 2005 and 'received complaints of lack of medical attention, overcrowded cells and unclean toilets'. The NHRC has also singled out Kerala while expressing grave concerns over conditions of confinement in the country.[20]

Violations of the Rights of the Child

An appalling number of violent crimes are committed against children in Kerala each year. In 2004, 102 children were murdered, 159 were raped, and 74 were kidnapped or abducted.[21] In 2005, there were 386 recorded cases of crimes against children (45 murder cases, 140 rape cases, and 45 abduction cases).[22] In 2010, that number went up to 596 reported cases.[23] While state officials point to a possible increase in families willing to come forward with cases, these statistics could also reveal that crimes against children in Kerala are rising at an alarming rate. Between 2005 and 2010, the increase has been a startling 154 percent.

Women's Rights

The nature of violence against women within the state is alarming. According to the 2005 Annual Report of National Crime Records Bureau, there were 6,762 reported violations against women in Kerala. These included cases of rape (478), kidnapping (129), dowry related deaths (21), and 3,283 cases of cruelty by a husband and/or relatives.[24] The 2010 report compiled 9,463 reported crimes against women, 140 percent more than in 2005. Kerala stands fifth of all states in the total number of crimes against women in the country. Similarly, though the statistics on domestic violence vary greatly, reports from groups working at grassroots paint a dire picture. According to the National Family Health Survey-3, approximately 16 percent of households in Kerala have suffered from domestic violence.[25] Further, data from the *International Centre for Research on Women* and the *International Clinical Epidemiologist Network* show instances of domestic violence in Thiruvananthapuram, Kerala's capital, to be astoundingly high: 64 percent in urban, non-slum areas, and 71 percent in rural areas.[26] Another survey conducted showed a 40 percent domestic violence rate across the entire state.[27]

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17. Increase in strength of custodial staff sought, The Hindu, November 8, 2005
18. SAARC Human Rights Report 2006, Asian Centre for Human Rights http://www.galdu.org/govat/doc/saarchrreport2006.pdf
19. Kerala custody death revives Emergency ghosts, The Indian Express, October 6, 2005
20. NHRC Annual Report 2004-2005, http://www.nhrc.nic.in/Documents/AR/AR04-05ENG.pdf and SAARC Human Rights Report 2006, Asian Centre for Human Rights, http://www.galdu.org/govat/doc/saarchrreport2006.pdf
21. Spurt in crimes against children, The Hindu, October 2, 2005
22. Crime in India – 2005, National Crime Records Bureau, Ministry of Home Affairs, Government of India
23. Crime in India – 2010, National Crime Records Bureau, Ministry of Home Affairs, Government of India
24. India Human Rights Report 2006: Kerala, Asian Centre for Human Rights, http://www.achrweb.org/reports/india/AR06/kerala.htm
25. Violence against women on the rise in literate Kerala, Aleyamma Vijayan, http://infochangeindia.org/women/analysis/violence-against-women-on-the-rise-in-literate-kerala.html
26. Ibid
27. Ibid

In one such case deposed in the IPT, violence against women was highlighted. It showed how women are being harassed in the state, and how the administration as well as the commission are just sleeping on it. The incident took place in September 2009. Minnie Palouse became the only woman auto rickshaw driver at the Pathanadu Junction Auto Stand, Kottayam District. After two months, one of the other auto rickshaw drivers started harassing her. She and her customers were subjected to verbal abuse. Her customers were dragged out of the auto at times. She suffered severe mental torture as a result of this. The reason behind this, according to her, might be that women preferred to ride in her auto owing to the fact that she is also a woman.

Furthermore, on September 30, 2010, another driver crashed into her auto. When she asked why? She was forcefully dragged from her auto and slapped. She fell down. Seeing this, another driver came to the spot and both of them attacked her. Mr. Joy, a social worker who was walking that way, stopped the attack. Minnie was then taken to the hospital where she had to undergo treatment for five days. Karugachal Police came and took her statement the same day. After this, she was unable to carry out her work at the aforementioned auto stand. This is a typical case of denial of the right to livelihood as well as discrimination and harassment of a woman. A complaint was filed with the KSHRC in October 2010. The commission hasn't taken any action in the matter. Such is the apathy of the commission towards such violation of women's rights.

Rights of the Indigenous/Adivasi People

Although Kerala prides itself on its uniform human development advancements, most of the observable inter-district variations could be largely attributed to the fact that Kerala's substantial tribal population fails to receive any of these advancements. Tribal communities consistently lag behind the general population in terms of economic, health, and educational achievements, and are subject to high levels of discrimination and violence at the hands of the State and its security forces. In 2005, there were 82 reported cases of crimes, including rape and murder, against *adivasis*.[28] A simple comparison of the charge-sheeting rate, which stands at 98.8 percent, and the actual conviction rate for crimes committed against tribals, which is a mere 8 percent, shows a strong bias against this section of the population.

For the past five decades, the Government of Kerala has continued to disregard the law and has violated the land rights of its tribal population.[29] On February 19, 2003, this resulted in the Muthanga firing incident, a violent and fatal *adivasi* protest against the government's failure to comply with a 2001 agreement to restore alienated land to its indigenous populations. The Kerala police opened fire at the protesters, killing one protester. However, a CBI probe relieved the government forces of any wrongdoing.[30] In December 2010, the Supreme Court ordered the state government to honour its tribal land agreements but because of a lack of political will the judgment remains unenforced.[31]

In early 2011, several media reports were published related to the forced or coerced sterilisations of tribal men and women in Kerala. Many of these took place in government hospitals. On a particular day, over forty men were sterilised at the Government Taluk Hospital in Sultan Bathery, Wayanad

28. Crime in India – 2005, National Crime Records Bureau, Ministry of Home Affairs, Government of India
29. Ruling shows lack of political will, The Hindu, December 17, 2010, http://www.hindu.com/2010/12/17/stories/2010121752810600.htm
30. India Human Rights Report 2006: Kerala, Asian Centre for Human Rights, http://www.achrweb.org/reports/india/AR06/kerala.htm
31. India Human Rights Report Quarterly, Issue 2, Oct-Dec 2010, http://www.achrweb.org/ihrrq/issue2/ihrrq-oct-dec-2010.pdf

District. By allowing a policy of coercive sterilisation to occur, the government has not only failed to provide tribes full access to health, nutritional, and educational entitlements, but has also endangered their lives and livelihood by implementing an irrational and unconstitutional population control policy. Shockingly, this occurred notwithstanding recognition by the government that tribes are the 'most vulnerable section' because of their 'declining or stagnant population, low level of literacy, pre-agricultural level of technology, and economic backwardness'.

In the cases deposed in the IPT, the discrimination of tribals in Kerala came to the fore. In one such incident, a complaint was filed with the KSHRC on the January 27, 2007, by the Tribal Workers Union against the Pukoode Veterinary College, regarding an unlawful, unsanitary and inhumane working environment. On the February 12, 2007, six of the workers involved in the original complaint were permanently appointed to a different department - a pig farm. One of the workers had allergies and was unable to work on that farm. He therefore requested to work in a different department. That request was made on March 1, 2007. Thereafter, that worker was mentally harassed and denied the right to work for many days because of that complaint.

On February 22, 2007, the President of the Kozhikode Anwashi's Organisation approached the Dean of the Pukoode Veterinary College, seeking justice on behalf of the tribal workers. But, the complainants were threatened and insulted. The Kerala Women's Association and various tribal associations held a press conference regarding these actions. As a result of this, the Tribal Workers Union's President was also denied the right to work. On April 2, 2007, a notice was published in the name of the college in which the victims, the president of the association and other members were condemned and insulted. A case was filed at the Vaithiri Police Station with regard to this but no action was taken.

Furthermore filing the complaint with the KSHRC resulted in a substantial backlash against the victims and complainants involved. Not only did the commission fail to take any action it could not even prevent the ongoing retaliation against the victims and complainants.

Harassment of HIV+ People

There have been many incidents of harassment of HIV+ people in the state of Kerala. One of the cases deposed in the IPT highlighted such insensitivity towards HIV+ persons. An HIV+ individual (who wished to remain anonymous), receives part of his medical treatment at the Antiretroviral Therapy (ART) Centre of Thiruvananthapuram Medical College Hospital. He filed a complaint stating that during his treatments at the ART Centre, he was forced to undergo a time-consuming, embarrassing and mentally traumatic interview without his voluntary or informed consent. The interview in question was in addition to any mandatory counselling in accordance with the HIV treatment guidelines and for the academic purposes of one nursing student.

In the interview, the patient was asked extremely sensitive questions about his experiences with HIV which, according to the victim, were humiliating. The victim stated that he was forced to relive the manner in which he contracted the virus. He further stated that the entire interview was conducted without his consent since the 'consent form' that was signed was not properly explained. He contends that the form was presented in such a way as to make the victim believe that his future treatment at the centre depended on his consent to be interviewed.

The KSHRC requested that a report be submitted by the Health and Family Welfare Department, Thiruvananthapuram. The report submitted stated that the interview conducted was done as part of a research study. That the study had obtained the sanction of the Hospital and Ethical Committee (HEC) but no interviews were to be conducted in the ART Centre. It further stated that only counselling was

conducted within the centre and that any interviews conducted were scrutinised by the HEC, in order to ensure that everything was performed with the utmost sensitivity. The report denied that the consent to the interview was presented in a manner that intimated that further treatment was dependent on such consent, and that all interviews were conducted in a private area.

The KSHRC, in 2009, issued an order. The commission stated that since the HEC was not personally present at the interviews, there is no way for it to know the nature of the questions or manner in which said questions are actually posed by those conducting the study. Hence, any research would in the future be conducted in the Prathyasa Centre or through various recognised networks of HIV/AIDS affected persons, and that any student research within the ART Centre was to be avoided.

Despite the KSHRC's clear response, the order has not been implemented in the ART Centre. A follow up report was requested from the KSHRC by HRLN but no follow up was conducted by the commission. This clearly shows the non-implementation of the KSHRC's orders, and a lack of any follow up done by the commission as well as no action being taken against the accused. These points all clearly reflect the non-serious attitude in matters of violations against HIV+ persons, on the part of the commission as well as the authorities.

Public Health Rights

Gross negligence of public health by the authorities was highlighted during the IPT. One case from the IPT detailed the way in which the commission was approached in the light of the increasing number of deaths on account of poor safety standards at existing and abandoned quarrying mines close to Thrissur. Between 2000 and 2007, 257 people have died due to these unprotected and abandoned mines. From 2008 to 2009, 55 deaths were reported there. Thus, the State was held liable for the negligent maintenance of the mines and non-compliance of the safety protocols essential for the safe maintenance of mines. A direction was sought to ensure strict compliance with mandatory guidelines for the regulation of abandoned stone quarry mines and compliance of the safety regulations for existing mines.

In 2007, a complaint was sent to the KSHRC, detailing the dangers involved in abandoned mines. Also, a report of the 257 deaths which had occurred in Kerala between 2001 and 2007 was presented to the commission. The KSHRC issued an immediate order on October 10, 2007, calling for records. Despite being aware that an enquiry was taking place, no precautions were taken by the respondents to ensure the safety vis-à-vis the mines.

Furthermore, the respondents have not yet fulfilled their duty to maintain a record of the mining sites and conduct periodic investigations. No further action or follow-up has been taken by the KSHRC.

CONCLUSION

Though the Act of 1993 provides for a lot of scope for effective redressal in matters of human rights violations through human rights commissions, the cases deposed in the IPT clearly demonstrate that the KSHRC has failed miserably in that regard. The cases of the IPT establish that each time a complainant/victim has approached the commission it has failed to provide any relief. Furthermore, in most of the cases, the commission has not taken any action. In some cases it has even failed to acknowledge the receipt of the complaint.

There were also incidents where victims were attacked again after having approached the commission. Even there, no action has been taken by the commission against the accused. It has also remained

blind to the atrocities inflicted on the weaker sections of society i.e. women, dalits, tribals, HIV+ persons etc.

The political appointments, lack of financial as well as investigative independence, mere recommendatory powers, staff shortages, its reluctance to approach courts in matters of grave human rights violations – this all clearly indicates that the commission needs a major overhaul, to streamline the justice delivery process, by ensuring that the perpetrators are punished and that victims are provided with requisite relief.

THE INDEPENDENT PEOPLE'S TRIBUNAL JURY PANEL

SOCIAL AUDIT REPORT

CHAPTER-I

Patterns of Violations and Functioning of KSHRC

INTRODUCTION

Located in the extreme south of India, the State of Kerala, often referred to as 'God's Own Country' prides itself on its achievements in human development. Kerala is far ahead of all other Indian states when it comes to the most important indicators of social development: it boasts an adult literacy rate of 90.9 percent, has one of the lowest total fertility rates in the country, at 1.9 percent, a low infant mortality rate, and high life expectancy at 75 years. Its district-level Human Development Indices (HDI) is the highest in the country.[1]

However, claims of advancement in overall development are tainted by widespread reports of corruption among police and security forces, as well as significant human rights violations against Kerala's most vulnerable citizens including its prisoners, children, women, and indigenous tribes. A 2010 study by the India Crime Bureau reported that Kerala is among the four states with the highest incidents of violent crimes.[2] Accounts of overcrowded prisons, shockingly high incidents of violence against women and children, and tribal atrocities have sullied the state's formidable reputation for human development.

The role played by the KSHRC in effectively addressing these issues faced by the population may be questioned where its non-coercive recommendation powers, lack of systematic communication with the parties, lack of technical support and rather bureaucratic attitude impede its functioning. The commission has been criticised heavily for failing to take advantage of its own authority, as well as for a systemic inability to keep the public properly educated. This report is a statement of the findings of a social audit carried out into the working of the KSHRC in addressing this vital aspect of human development in Kerala.

1. Kerala Human Development Report 2005
2. Crime in India – 2010, National Crime Records Bureau, Ministry of Home Affairs, Government of India

A PORTRAIT OF HUMAN RIGHTS IN KERALA

RELIGIOUS TENSIONS

According to a 2001 census, Hinduism (56 percent), Islam (24 percent) and Christianity (19 percent) are the principle religious communities of Kerala.[3] The state is often held to be a haven of tolerance and peaceful coexistence of various religious communities. "While India as a whole has experienced significant Muslim-Hindu tensions, Kerala's Christian and Muslim minorities live peacefully with the Hindu majority."[4]

However, case studies show that there have been occasional flash points. For instance, it is known that relations are not always cordial between Latin Catholic and Muslim communities on the coast, in fishermen villages. An incident involving Muslims and Hindus burning down a church in Panamvilla, in the Thiruvananthapuram area, is a case in point. The same research that investigated these cases reported:

> …the violence can be divided into two types: those between the traditional fisher folk and the new class of speedboat fishermen (quite common in the '70s and '80s), and those of a communal nature. Moreover, Vizhinjam and Poonthura in the south are well known as sensitive areas with occasional outbursts between the different communities.[5]

The authors of the research suggested that that the ruling government favours Kerala's Muslim population over its Christian population. The research cited above, through a compilation of several such instances of religious tension, underlines the fact that these are not isolated cases of violence, but rather, are indicative of enduring unrest between the religious communities. In the light of these findings, the KSHRC has its role cut-out as a mediator and crucial actor between communities through its attempts to uphold human rights.

POLICE CORRUPTION AND BRUTALITY

Reports of arbitrary arrest, detention, and even torture are disturbingly common throughout Kerala. Custodial deaths are also a routine occurrence. Six such deaths were reported during the period 2004-2005.[6] In at least one incident, police fatally used 'Urrutu', a vicious method of torture involving an iron rod that is rolled down a suspect's body. An autopsy of the deceased, who died September 27, 2005 at the Fort Police Station in Thiruvananthapuram, found that he had 'died of shock after his thigh bones

3. Census of India: Socio-cultural aspects, http://www.censusindia.gov.in/Census_Data_2001/Census_Data_Online/Social_and_cultural/Religion.aspx?cki=MJPdz8hYMlF
4. Refugee Review Tribunal (RRT) Research Response (On the general relationship between Muslim and Christian communities in Kerala State), Refugee Review Tribunal, Australia, April 3, 2009, p.2
5. Ibid, p.15
6. Crime in India – 2005, National Crime Records Bureau, Ministry of Home Affairs, Government of India and NHRC Annual Report 2004-2005, http://www.nhrc.nic.in/Documents/AR/AR04-05ENG.pdf

were crushed with an iron rod'. In March 2010, a court ordered a CBI probe and found that another prisoner had suffered 63 distinct injuries and 'had died of internal hemorrhage due to heavy head injuries suffered obviously in torture'.[7] Another allegation of torture was reported in October 2010, when police repeatedly subjected a motorcyclist to physical beatings after he failed to stop when signalled to.[8]

In its 2006 report, the *Asian Centre for Human Rights* stated that the then KSHRC Chairperson Justice V. P. Mohan Kumar alleged that the Government of Kerala did not take any action against certain police officials against whom the KSHRC recommended action after finding them guilty of committing human rights violations.[9] In 2009, Kerala's Home Minister Kodiyeri Balakrishnan publically admonished Kerala's police force and acknowledged its shortcomings. However, the fact remains that the police appear to act with impunity and with the tacit support of the government, despite some past tepid efforts by the KSHRC to rein them in.[10]

CONDITIONS OF CONFINEMENT

Kerala prisons suffer from rampant overcrowding and other deplorable conditions. Unsanitary bathroom facilities, a lack of nutritious food, and poor lighting are the norm within these alarmingly crowded facilities. By 2005, Kerala's prison system had surpassed its capacity by over 1,500 prisoners. Past studies have illustrated the situation on the ground. The Thiruvananthapuram Central Prison had 600 prisoners over its capacity.[11] In one jail, over thirty prisoners were being held in a room with facilities sufficient for only three![12] Prisoners are not only routinely subjected to beatings, sexual harassment, and other kinds of mistreatment, but also denied basic healthcare.[13] The KSHRC conducted on-site jail visits in April 2005 and 'received complaints of lack of medical attention, overcrowded cells and unclean toilets'. The NHRC has also singled out Kerala when expressing grave concerns over conditions of confinement in the country.[14]

VIOLATIONS OF THE RIGHTS OF THE CHILD

An appalling number of violent crimes are committed against the children in Kerala each year. In 2004, 102 children were murdered, 159 were raped, and 74 were kidnapped or abducted.[15] In 2005, there were 386 recorded cases of crimes against children (45 murder cases, 140 rape cases, and 45 abduction cases).[16] In 2010, that number went up to 596 reported cases.[17] While state officials point to a possible

7. India Human Rights Report Quarterly, Issue 2, Oct-Dec 2010, http://www.achrweb.org/ihrrq/issue2/ihrrq-oct-dec-2010.pdf.
8. Ibid
9. SAARC Human Rights Report 2006, ACHR, http://www.galdu.org/govat/doc/saarchrreport2006.pdf
10. A review of KSHRC orders indicates that although former Chairperson Kumar tried to tackle larger human rights issues, the current chairperson is less apt to do so.
11. Increase in strength of custodial staff sought, The Hindu, November 8, 2005
12. SAARC Human Rights Report 2006, ACHR, http://www.galdu.org/govat/doc/saarchrreport2006.pdf
13. Kerala custody death revives Emergency ghosts, The Indian Express, October 6, 2005
14. NHRC Annual Report 2004-2005, http://www.nhrc.nic.in/Documents/AR/AR04-05ENG.pdf and SAARC Human Rights Report 2006, ACHR, http://www.galdu.org/govat/doc/saarchrreport2006.pdf
15.Spurt in crimes against children, The Hindu, October 2, 2005
16. Crime in India – 2005, NCRB, Ministry of Home Affairs, Government of India
17. Crime in India – 2010, National Crime Records Bureau, Ministry of Home Affairs, Government of India

increase in families willing to come forward with cases, these statistics could also reveal that crimes against children in Kerala are rising at an alarming rate. Between 2005 and 2010, the increase has been a startling 154 percent.

WOMEN'S RIGHTS

Kerala has a very high female literacy rate compared to most states in India. However, the nature of violence against women within the state is also particularly heinous. According to the 2005 Annual Report of National Crime Records Bureau there were 6,762 reported violations against women in Kerala. These included cases of rape (478), kidnapping (129), dowry related deaths (21), and 3,283 cases of cruelty by a husband and/or relatives.[18] The 2010 report compiled 9,463 reported crimes against women, 140 percent more than in 2005. Kerala ranks fifth for crime against women in the country.

Similarly, though the statistics on domestic violence vary greatly, reports from groups working at the grassroots level paint a dire picture. According to the National Family Health Survey-3, approximately 16 percent of households in Kerala have suffered from domestic violence.[19] Further, data from the International Centre for Research on Women and the International Clinical Epidemiologist Network show instances of domestic violence in Thiruvananthapuram, Kerala's capital, to be astoundingly high: 64 percent in urban, non-slum areas, and 71 percent in rural areas.[20] Another survey conducted showed a 40 percent domestic violence rate across the entire state.[21]

RIGHTS OF THE INDIGENOUS/ADIVASI POPULATION

Although Kerala prides itself on its uniform human development advancements, most of the observable inter-district variations could be largely attributed to the fact that Kerala's substantial tribal population does not receive these advancements. Tribal communities consistently lag behind the general population in terms of economic, health, and educational achievements, and they are subject to high levels of discrimination and violence at the hands of the state and its security forces. In 2005, there were 82 reported cases of crimes, including rape and murder, against adivasis.[22]

A simple comparison of the charge-sheeting rate, 98.8 percent, and the actual conviction rate for crimes committed against tribal members, eight percent, shows a strong bias against this section of the population. At the end of 2005, there were a large number of cases dealing with atrocities against members of the tribal community, 64 still awaiting investigation, and 414 pending trial.[23]

Health outcomes are worse among tribal populations when compared with the general population. In the hilly Wayanad District, the infant mortality rate among the tribes is twice that of the general population and the tribal community is burdened with higher rates of TB and anaemia. In addition, chronic malnutrition and food insecurity has lead to high rates of thyroid dysfunction (9-11 percent

18. India Human Rights Report 2006: Kerala, Asian Centre for Human Rights, http://www.achrweb.org/reports/india/AR06/kerala.htm
19. Violence against women on the rise in literate Kerala, Aleyamma Vijayan, http://infochangeindia.org/women/analysis/violence-against-women-on-the-rise-in-literate-kerala.html
20. Ibid.
21. Ibid.
22. Crime in India – 2005, National Crime Records Bureau, Ministry of Home Affairs, Government of India
23. Ibid

depending upon the tribe) and thinness (47 percent).[24] Literacy rates among tribal populations are strikingly low compared to the state average. Most alarming is the literacy rate among members of the Kattunayakan Tribe, which remains below 21 percent.[25] For the past five decades, the Government of Kerala has continued to disregard the law and violate the land rights of its tribal population.[26]

On February 19, 2003, this resulted in the Muthanga firing incident, a violent and fatal adivasi protest against the government's failure to comply with a 2001 agreement to restore alienated land to its indigenous populations. The Kerala police opened fire at the protesters, killing one protester. However, a CBI probe relieved the government forces of any wrongdoing.[27] In December 2010, the Supreme Court ordered the state government to honor its tribal land agreements but due to the absence of political will the judgment remains unenforced.[28]

In early 2011, several media reports were published related to the forced or coerced sterilisations of tribal men and women in Kerala. Many of these took place in government hospitals. On a particular day, over forty men were sterilised at the Government Taluk Hospital in Sultan Bathery, Wayanad District. By allowing a policy of coercive sterilisation to occur, the government has not only failed to provide tribes full access to health, nutritional, and educational entitlements, but has also endangered their lives and livelihood by implementing an irrational and unconstitutional population control policy. Shockingly, this occurred despite recognition by the government that tribes are the 'most vulnerable section' because of their 'declining or stagnant population, low level of literacy, pre-agricultural level of technology, and economic backwardness'. The sterilisation procedures were performed without informed consent by unskilled personnel, and conducted in highly inadequate public health facilities. More importantly it amounts to an attempt at exterminating a community over a couple of generations. Thus it is a violation of their fundamental human rights.

THE KERALA STATE HUMAN RIGHTS COMMISSION

BACKGROUND OF THE KSHRC

The KSHRC was established in December of 1998, approximately five years after the institution of the Act. It is a three-member commission currently comprising of Justice J. B. Koshy, Mr. R. Natarajan,

24. 'An Exploration of the Health Divide Between Indigenous and Non-indigenous Populations in Wayanad, Kerala' (2010), Mohindra KS, Haddad S, and Narayana D
25. As per the Socio-Economic Survey of Primitive Tribes 1996-97, in 'The Primitive Tribal Groups of Kerala: A Situational Appraisal' (2005), Kakkoth Seetha
26. Ruling shows lack of political will, The Hindu, December 17, 2010, http://www.hindu.com/2010/12/17/stories/2010121752810600.htm
27. India Human Rights Report 2006: Kerala, Asian Centre for Human Rights, http://www.achrweb.org/reports/india/AR06/kerala.htm
28. India Human Rights Report Quarterly, Issue 2, Oct-Dec 2010, http://www.achrweb.org/ihrrq/issue2/ihrrq-oct-dec-2010.pdf

and advocate K. E. Gangadharan. There are around 21 administrative and support staff working for the commission, lead by a secretary, a registrar, a finance officer, an administrative officer, an information officer, and an investigation team. Justice Koshy is relatively new to the position, having taken over as chairperson on September 5, 2011.[29] The previous Chairperson Justice Dinaker was known for his insensitivity towards victims. One advocate who had some experience with the KSHRC under the previous chairperson noted that he always treated advocates with respect, and victims with disdain. Orders were usually given in English, a language that many of the disadvantaged are unable to read.[30]

The commission receives approximately ten to twenty complaints per day. According to data obtained during a visit to the KSHRC, the number of cases and complaints filed with the KSHRC hovers between 4,000 and 6,000 annually. Of these, between 600 and 1,500 remain pending, annually. The result being that, as of July, 2011, out of a total of 32,691 cases submitted since its inception, 13,783 cases have been left pending – approximately 42 percent.[31] With such a large percentage of cases unaddressed, the commission's complaints-handling mechanism's credibility is seriously called into question.

ANNUAL REPORTS

A visit to the commission's office in Thiruvananthapuram was revealing. An initial request for all annual reports, reports that must be submitted and published under the Act, resulted in reception of only a single report – from the period 2001-2002. The Chairperson explained that the annual reports had not been approved for publication by the state government. Until publication is approved, the commission is unable to make the reports public. This claim is in contrast to the belief that many local activists hold: that the commission has not actually submitted any annual reports. Ideally, annual reports must be submitted to the government by the commission, to be subsequently made available to the public. Such reports play a vital role in bringing about accountability on the part of the government. A copy of all published annual reports was requested from the commission numerous times from January 2011, to October 2011. It was not until a visit to the KSHRC was made that any reports were obtained. That only one report could be obtained for its entire 13 years of existence, after repeated requests, is quite startling. The report contained a break-down of the Commission's infrastructure, sample orders, a list of petitions submitted, and information on the educational seminars held over the year, annual case data and income and expenditure. However, it failed to include any analysis of cases rejected, unfavourably or favourably decided.

INVESTIGATING AGENCY

The commission's investigations team is comprised of personnel drawn from the state police forces. The investigative agency is headed by an inspector general of police, assisted by a superintendent of police, a deputy superintendent of police, a circle inspector of police, two head constables, and two police constables.[32] The individual chosen to fill each position on the team is deputed by the government. According to the current Chairperson Justice Koshy, the investigation team has always been comprised only of various police officers and inspectors.

29. http://www.kshrc.kerala.gov.in/thecommission.htm
30. Interview with Advocate Sandhya Raju, on October 7, 2011.
31. KSHRC Annual Case Data, obtained in interview with Chairperson Justice Koshy on October 7, 2011.
32. http://www.kshrc.kerala.gov.in/activities.htm; Confirmed in interview with Chairperson on October 7, 2011.

The process of appointment to the investigations team raises questions of undue influence from the government and police force; considering the government's continued hold on all officers deputed, as well as the fact that every investigation officer has been an active or retired police official, the possibility of the investigation process reflecting a bias toward the state or the police force is very high. When asked about this problem, the chairperson of the commission would only make assurances that the KSHRC's investigations officers conducted their work in the most professional manner possible.

Although the commission maintains that approximately half of all complaints submitted to it are investigated, available records tell a different story.[33] Between 2005 and 2006, the commission directed its investigation unit to look into 363 cases. Of these, reports were submitted in just 35 cases.[34]

COMPLAINTS HANDLING PROCESS

The KSHRC's complaints-handling process is a simple, multi-step procedure. Complaints are submitted in written form, directly to the commission. The commission evaluates each complaint to determine if (a) it concerns a human rights violation, or (b) whether it has been handled or is currently being heard in any other court or commission. As long as it concerns a human rights violation, and is not being heard by another court or commission, the KSHRC then orders a report to be submitted from the respondent, concerned government authority, or the KSHRC's own investigations team. Once a report has been submitted, the commission evaluates the information and determines whether a hearing is required. If a hearing is granted, the parties convene as in any other court case. Later, the commission delivers a decision.

Each decision or order issued by the commission is only recommendatory in character. In other words, a KSHRC order is not enforceable. The only way to enforce a KSHRC order is to approach the high court in Ernakulam, in order to petition for a binding order from the court.

PUBLIC INFORMATION

Despite the commission's failure to regularly publish annual, or any significant reports on a regular basis, the commission has maintained one pathway to public information particularly well. The KSHRC's website is well-maintained, informative and up-to-date. With background information on each member of the commission, samples of important orders, contact information and relevant sections of the PHRA, the KSHRC's website is perhaps the best maintained among the websites of SHRCs in India.

Unfortunately, the website is the only link to public information that the commission makes readily available. While helpful, a website, by definition, is available to only those with internet access. Internet access is generally determined by income and education level. The nature of this manner of dissemination automatically excludes several groups: lower-caste groups living below the poverty line, tribal and rural groups, as well as those who are uneducated. Furthermore, the website is in English, rather than Malayalam making its access rather restricted.

33. Interview with Chairperson Justice Koshy on October 7, 2011.
34. http://www.kshrc.kerala.gov.in/activities.htm

CHAPTER-II

Testimonies

Displacement & Inadequate Rehabilitaion

Perandoor, Kananynnor Taluk, Ernakulam District

FAMILIES EVICTED BY COCHIN CORPORATION

In 2007, over thirty-five families were evicted by the Cochin Corporation (CC), for the construction of a canal. The families had been living on these lands for over twenty-five years. They were working on these lands. They had their shops on these lands. They raised their children on these lands. In short, they had their lives on these lands. The families were given the option of moving to Mundamveli where the CC would provide them with sheets and bamboo to make their own huts. It is to be noted that there are no facilities there. Twelve of the families chose that option. Nineteen other families were moved to a hotel that belongs to CC.

The living conditions at the hotel are intolerable. Most apartments do not have doors. The hotel itself is dilapidated. The entire building is infested with spiders and insects. There are two septic tanks to serve the whole building. Both are broken and have flooded the basement of the hotel. After the septic tanks flooded, the families were told by CC that they were responsible for the clean-up. The smell is horrible and the broken tanks have led to a completely unhygienic living situation. The windows of the building are either broken or nonexistent. In many of the apartments, the water supply consists of a simple tub of water. Finally, there is no possible way to close the building with a locked door, hence there is no security as anybody can come and go inside the building.

At the time of the eviction, three women were pregnant. When they took their new-born daughters to the doctor, they were scolded regarding their condition, as the health situation was so dire. Three people have died of heart complications since living there. Many others have been hospitalised with various diseases, such as malaria, chikungunya, chicken pox and yellow fever. The government had to set up a medical clinic for them.

In 2009, there was a hearing before the KSHRC, but the families never received a copy of the order. At the hearing, they were asked to move the case to the high court. The commission's chairperson told them he would recommend that the CC give them 2.5 lakh rupees and 1.5 cent of land with houses, and that if CC didn't agree, then they should go to the high court. However, because of time and cost, the families did not go to the court and CC did not follow the commission's recommendations.

Woman Ill-treatment & Livelihood Denial

Kangazha Village, Changanassery Taluk, Kottayam District

MINNIE PALOUSE

In September 2009, Minnie Palouse became the only woman auto rickshaw driver from the Pathanadu Junction Auto Stand. After two months, one of the other auto rickshaw drivers started harassing her. She and her customers were subjected to verbal abuse. Her customers were dragged out of the auto at times. She suffered severe mental torture as a result of this. The reason behind this, according to her, might be that women prefer to ride in her auto owing to the fact that she is also a woman. Furthermore, on September 30, 2010, another driver crashed into her auto. She asked him why. He forcefully dragged her from the auto and slapped her across the face. She fell down. Seeing this, another driver came to the spot and both of them attacked her. Mr. Joy, a social worker who was walking that way, stopped them.

She was taken to the Karugachal Mercy Hospital where she had to undergo treatment for five days. Karugachal Police came and took her statement the same day. She is presently unable to carry out her work in from the aforementioned auto stand.

A complaint was filed with the KSHRC in October 2010. The complaint is still pending and no relief has been provided to the victim.

Religious Conversion

Perumbayikadu Village, Kottayam District

PREETHI

On June 17, 2007, Preethi was married according to the Hindu marriage norms in a temple premise, in the presence of both the families. Her husband was employed as a cook. A dowry of Rs. 1,00,000 and 50 sovereigns of gold was given during the marriage. Her husband's family had represented themselves to Preethi's as belonging to the Hindu community. The marriage was solemnised according to the Hindu Marriage Act.

After the marriage, as soon as Preethi moved into her husband's house, her mother-in-law gave her instructions to not wear a bindi or wear any jewellery, to read the bible, and to pray. Preethi could not accept this. Enquiring into this, she realised that her husband's family actually belongs to the Christian community. When Preethi spoke to her husband about her mother-in-law's demands, her husband told her to pray whichever way she likes. A week later, he changed his mind. She felt that they were trying to convert her to Christianity.

One day, her mother-in-law asked her to go to her parents' home and threatened her to not tell anyone about what had happened. She left for her home following this. The next Sunday, the husband's family came to Preethi's house. They expressed their disinterest in continuing the relationship.

A complaint was filed with the KSHRC in October of 2009. No action was taken.

Case of Torture of Elderly and Police Inaction

Kottayam District

KARTHYAYANI

I have four children, and my husband passed away ten years ago. All my children have been married and, until the current incident happened, I was staying with my second son, Santhosh. Suresh, my first son, was staying near my house. For the last four years, my sons quarrelled with me; they harassed and physically abused me. Suresh would ask me for money. But because I don't work, I didn't have any money to give him. In response, he would push me around and verbally abuse me.

Before his marriage, I gave Suresh two cents of land and two sovereigns of gold chains. Suresh sold his land and now he abuses me, saying he deserves his share of the land where I currently live. I filed a complaint with the Gandhinagar Police Station. The police called my sons to try and come to an agreement, and at first, they agreed to stop. This was all the police did.

It was on May 22, 2010, at 10pm, that my son Suresh, after drinking, came to my house and talked to Santhosh for a long time. Suresh refused to talk to me, so I asked him why. He slapped me on the cheek. I fell down and was unconscious for some time. None of my children took me to the hospital. After a long time, I got up on my own. My children ransacked my bed and everything that I owned. They threatened to kill me.

After this incident, I filed a complaint with the KSHRC on May 26, 2010. The commission has taken no action and the complaint is still pending

Child Abuse in School

Thodupuzha, Idukki District

JOSE MANUEL

Following a newspaper advertisement placed by Viswa Vidyamatt, which stated that the school had a National Institute of Open School Registration, was ICSE accredited, and other detailed promises given by the school, parents decided to send their children there. They paid the fees requested by the school, as well as other expenses relating to textbooks, uniforms and so forth. Sometime later, a child was brutally assaulted and unlawfully detained by a teacher, resulting in the student's hospitalisation for almost a week. A report was submitted by the district medical officer to the local police station. During the course of their investigation, it was revealed that the school did not have the certification that it had claimed to have. Further, it was discovered that the school employed severe physical punishments, as a means of discipline, on a regular basis. Students were forced to engage in manual labor including cleaning of hostel, tarring the road, milking cattle and assisting in the construction of the school. Authorities of the education department took no notice of all these lies and violations.

Upon discovering this, many parents decided to remove their children from the school. They (the parents) were informed that they had to forfeit the deposit that had been paid to the school in that event. A police complaint was filed, and some parents were able to recover a portion of their deposit. Complaints were also lodged with the collector, district education officer, and KSHRC. A petition was also submitted to the high court. No action was taken against the school, and the parents never managed to obtain their full deposit. The school's staff was never charged for their reckless endangerment and abuse of the children.

Medical Negligency Resulting in Death

Kottayam Medical College, Kottayam District

MALINI

After I had been married for four months, I had still not conceived. In order to try to become pregnant, I began my treatment at the Kottayam District Hospital and Kottayam Medical College. Both, my husband and I, had minor problems and after two years of treatment, I became pregnant. From the early stages, we visited our gynaecologist, from the Kottayam Medical College, every month. I had no problems until the final month of my pregnancy. The due date of my delivery was the July 18, 2009. I was admitted into the Special Ward of Kottayam Medical College on the July 16, 2009, for delivery.

When I was admitted, I felt pressure inside my womb, but at that time I was told by the doctors that this would not affect my delivery. The doctors told me that, to help my delivery, I would be given an enema the same day, but this had to be postponed due to a power failure. By that night, I could no longer feel any movement of my baby inside my womb. I told the doctor this, but he just told me that I was fine. I was taken to the labour room the next day at around 10:30am. The two in-charge male doctors examined me and assured me that there were no complications.

I was then taken to another room, for the succeeding treatments. The doctors examined me carefully and suddenly became involved in serious conversations. I could make out that there was something wrong, but they would not tell me what. I was given an enema and was administered tablets for delivery that night. I woke up at 7:00pm on July 18, 2009, after the administration of the tablets. I began to experience severe pain. I was told to lie down in a room inside. There was discharge of water from my uterus. Even though I was having heavy, intolerable pain, the doctors asked me to push from within. Though I tried immensely, the baby did not come out and it was later discovered that the fluid necessary for the baby to come out, was lost before the delivery. The fact that doctors did not take this seriously should be considered as a failure of duty on the part of the doctors. All this made me realise that I couldn't deliver normally. Eventually I was transferred to the operation theatre. Within ten minutes I was operated upon and the baby was taken out. The baby had tightly twisted the umbilical cord around itself, twice. The baby's condition was very critical.

The baby's condition could have been identified earlier by the advanced technologies available in the Kottayam Medical College. This should be considered as a serious lapse in the doctors' duty. A baby in this condition should not have been delivered via normal delivery, the result of which can force the congestion of the baby by the umbilical cord. The baby was suffocated hence causing damage to the child's heart and brain.

Owing to the above reasons, the baby, who weighed 2.95 kg, died within two days. This incident weakened me mentally and physically. A complaint was given to the Kottayam Medical College Principal and Superintendent by my husband. I along with my husband filed a complaint with the KSHRC on the February 6, 2010. In response, a report was prepared by the hospital authorities (without consulting the couple) in which it was stated that there was no inefficiency or ignorance on the part of the doctors, and this was sent to the commission on November 9, 2011. This report was one-sided. The KSHRC accepted the report, and no further action has been taken.

Police Harassment

Mahi, Kannur District

SULEKHA SURYAKANTH

My husband bought some jewellery from a man named Salim, in Mahi. After my husband made the purchase, the Mahi Police arrested Salim for robbery. Salim told the police that he gave all the stolen ornaments to my husband, and so the police began to investigate my husband and my family.

Shortly after, the police came to my house and asked me to give them all our jewellery. As these items were ours, many of which had been in our family before my husband's purchase from Salim, I refused. When I did not hand over all our jewellery, the officers began to harass me. They physically assaulted me, my husband and my children. We now constantly worry for our safety and security. I worry that if anything ever happens to my husband, my children and I will be unable to support ourselves or even survive.

A complaint was filed with the KSHRC, but no action was taken. We still live in fear of the police.

Police Harassment

Kottayam West PS, Kottayam District

ANIL KUMAR

In 1997, after dropping off my last passenger of the day, I was stopped by Police Constable Raghuvarman, of the Kottayam West Police Station. I was asked to show my license and vehicle registration papers. After I produced the documents, it became clear that the constable was drunk. Not being satisfied with the papers I had shown him, the constable arrested me and brought me to the police station. That night, the constable beat me up and tortured me. I was held overnight and released the next day. No case was registered against me and no cause was given for my arrest. Angered by the entire incident, I filed a complaint with the KSHRC.

Although no action was taken by the commission, the police officials of the Kottayam West Police Station soon learned of my complaint to the commission. They began to book me for minor traffic offenses, none of which I had committed. At first, I simply paid the fines and went about my business. However, as the fines continued to stack up, I began to feel that I was being harassed. I approached the high court in 1997 and filed a petition for protection against police harassment. By January 1998, I had obtained my order.

Despite the judgment, the police continued to harass me, booking me under several cases of traffic violations. In each incident, I contested the charges in court. The charges began to seem nonsensical. In total fifteen cases over seven years were filed against me, but I obtained acquittal in each one. Enraged, I filed another petition with the high court at Ernakulam in 2005. While the petition was pending, the harassment seemingly ceased. For the next three years, I was not bothered by the policemen. However, in 2008, it all started again. I was continuously harassed until, in October 2008, I stopped driving my auto rickshaw. In July 2010, after not driving my rickshaw for nearly two years, I drove my auto to collect guests. During the return from my first trip in two years, I was stopped by police, and told that I was not allowed to drive my vehicle in the area. Despite having all of my papers and necessary permits, I was once again intimidated into ceasing my driving. It wasn't until later that year that I discovered that my petition in the high court, lodged two years earlier, had been denied – at the same time the harassment had begun again. I submitted yet another complaint to the Superintendent of Police in Kottayam, but again to no avail.

Finally, in 2010, I brought a third petition in the high court, claiming a constitutional violation of my rights. My complaint is still pending in KSHRC. No action has been taken by the KSHRC.

Police Inaction

Vaikom Taluk, Kottayam District

BINEESH GOVINDAN

My son was a friendly and sociable young man who worked as an advocate's clerk at the High Court in Ernakulam. In the week before his death, he was withdrawn and appeared disturbed. During this week, he told me that should anything happen to him, a man named Maneesh would be responsible. Despite repeated questions from me, he would not elaborate on this. On July 4, 2009, my son left his house at about 9 o'clock, with Maneesh on a motorbike. Sometime later, we learned from neighbours that a motor accident had occurred. My son had been taken to hospital with a severe head injury. He subsequently died on July 7, 2009. My son had a series of substantial head injuries that were consistent with coming into contact with a sharp object. The area of the accident did not contain any such sharp object. I subsequently learned that Maneesh had borrowed a significant amount of money from my son and was evading requests to pay it back. Further, it was submitted that there had been altercations regarding the debt. The police failed to adequately examine the scene of the incident and instead quickly arrived at the conclusion that the injuries were the result of the accident. This conclusion ignored the fact that the driver of the bike escaped relatively unharmed. The police also ignored accounts of witnesses about what may have happened. They allowed Maneesh to abscond before the investigation of the accident was finished.

I approached the KSHRC. The commission registered the complaint, but no action was ever taken. I was then left with no option other than to file a petition seeking a court order, requesting a more thorough investigation. The high court denied the action, citing as grounds a report that had been submitted to a magistrate alleging that dangerous driving had occurred. Although the commission could have recommended that the high court order for the investigation to be conducted properly, no such action was taken.

Police Torture

Koratty, Thrissur District

SATHYAN

At 2am, Sathyan was picked up from his home by the police, placed in a jeep and taken to different police stations. In each station, the policemen beat and tortured him, in an effort to obtain a confession. Eventually, Sathyan confessed to the accused crime - theft of an idol from the Iyranikulam temple in Mala. He was held in custody for the entire day, and finally released in the evening of October 9.

Immediately after being released, Sathyan's injuries became abundantly clear. A week after the incident, Sathyan was taken to the Thrissur Medical College Hospital for treatment. Upon examination, the doctors found that his lumbar spine showed signs of painful spasms and there was tenderness throughout his spine, right scapula, lower abdomen and finger. Police records showed that no case was registered against him.

Sathyan filed a complaint with the KSHRC later in 2001. The KSHRC summoned the respondents, listed in the complaint, to submit statements on their behalf. Each respondent categorically denied that the incident had ever taken place.

The KSHRC referred the complaint to the Chief Investigation Officer (CIO). Together with the Inspector General of Police, the CIO filed a report reflecting that one of the accused, T.V. Thomas, was a visa racketeer who had accepted money from Sathyan and several others. It was shortly thereafter that Sathyan was taken from his home in the middle of the night. The report further stated that a case was registered in connection with the idol theft in question. Police records showed that Sathyan was taken into custody early that morning, and was not released until after 4:30pm that day.

It was not until February 28, 2006, five years after the initial incident and complaint that an order was finally obtained from the KSHRC. The commission stated that the policemen's actions were unjustified, that they 'tortured [Sathyan] brutally', and that their preceding statements to the commission were clearly false. As such, the commission ordered that disciplinary action be taken against the respondents, and that an amount of twenty-five thousand rupees be paid in interim relief to Sathyan, to be recovered in equal amounts from the respondents.

The interim relief was initially paid to Sathyan. However, no disciplinary action was ever taken against the policemen in question. A petition is currently pending before the high court regarding the criminal acts of the policemen.

Custodial Torture

Ettumanoor PS, Kottayam District

P. K. JOY

On the date of the incident, P. K. Joy received a telephone message asking him to come to the police station, in order to verify whether a former worker of his had sustained injuries during his employment. Joy, along with his father and an advocate, went to the police station. Once there, the Superintendent of Police (SP) questioned him, asking him to wait in a different room.

After some time, the head constable came into the room and immediately began to verbally abuse Joy. He made him remove his shirt, while he seized Joy's wallet and mobile phone. Then, the head constable attacked Joy, punching him at first, and later stabbing him. He made Joy remove all of his clothing, except for his underwear, and put him into a lockup. Joy remained naked, in the lockup, until his father came to beg the SI to release him, after 8pm that evening. Before releasing him, the head constable took money (Rs. 200) out of Joy's wallet. The head constable told Joy he would have to return to the police station the next day, with more money, or else further problems would arise.

Upon leaving the police station, Joy was immediately brought to the Medical College Hospital in Kottayam, where he was treated for his wounds. Joy later learned that he had been accused in a separate case, even though he had been exonerated by the complainant.

A complaint was initially filed with the KSHRC. Receipt of the complaint was received, but the commission took no further action. After waiting months for any response, Joy filed a complaint with *Lokayukta*, who ordered a final report to be submitted by the crime branch of Kerala. That report was not submitted until December 2009. A high court petition was filed in 2010, and a favourable order was obtained.

Land Acquisition & Police Inaction

Erumeli, Kottayam District

RAMANCHANDRAN

Ramanchandran had 22.5 cents of land. His friend, John, offered to help him take a loan from a corporate bank. After offering help, John took the deed of the property, forged Ramachandran's signature, and had the property transferred to his name. Ramanchandran and his wife were thrown out of the house. Ramanchandran was a farmer and when his property was lost, there was no other source of income. Due to the stress of this situation, his wife became mentally ill. She was admitted at the Thiruvananthapuram Mental Hospital. For the treatment, Ramanchandran was forced to borrow a great deal of money from numerous friends. After his wife was discharged, the couple lived in a tent on government land. More than once, the police evicted them. Ramanchandran filed a case before the court regarding the stolen property, but the case was dismissed.

John asked for an injunction not to be evicted from the property he had stolen. The case was brought for mediation. Ramanchandran asked John to come to court on eight separate occasions, but he never came. Following that, Ramanchandran and his wife moved into a forest area, until the forest department evicted them. After being evicted from the forest area, Ramanchandran and his wife built a hut on the same land where John was staying and started living there. In retaliation, John and his son attacked them and set their tent ablaze. Ramanchandran filed a complaint with the Mundakayam Police Station, but no enquiry was ever undertaken. He also filed a case with the Kangirapally Court based on the land acquisition, but, to no avail. After Ramanchandran attempted to continue legal action, John tried to kill him.

A complaint was filed with the KSHRC on the December 10, 2007. It is still pending.

Land Grabbing

Meenachil Village, Kottayam District

RAJI V. K.

In Meenachil Village, a strip of land owned by the government, and in use as a passage towards school and work by nearly sixty families, was illegally occupied by the owner of an adjacent property. A complaint was lodged with the authorities in this regard. In the report provided by the village officer, it was held that a road was necessary in the area and that the existing passage could be converted into such a road, hence a survey of the property was necessary. But this was not undertaken. Upon this inaction, the local people approached the high court in order to obtain a remedy. In August 2009, the High Court at Ernakulam ordered that the land be converted into a road. Following this, the officials made a road. Meanwhile the owner of the adjacent property increased the level of the land so that when the road was made, it was a good foot and a half lower than the surface level. Since the road and the surrounding land were uneven, the land could not be used for the intended purpose, unless both the surfaces were levelled. Thereupon, the local people approached the court again. Meanwhile one of the key officials was spoken to rudely by a local resident, and this official made an adverse report to the court in spite of an apology. He even failed to accept the petition submitting the above grievances.

In February 2010, the Kudumbasree Ayalkoottam (neighbourhood groups) members had cleaned the road and made it useful. Coming to know this, the same official instructed people not to remove anything from the said land, as it was governmental property, and doing so would be cause for penal action.

A complaint was filed in March 2010, with the KSHRC. A response was received from the commission, stating that it would investigate. No further action has been taken.

Land Acquisition & Grievous Hurt

Idukki District

MURUGAN VEDAMANIKYAN

I had been living in Idukki for many years, where I had 60 cents of land and had been cultivating different types of crops. Balanchandran was one of my neighbours. In the year 2000, the local panchayat planned to construct a road to Pandipara. They formed an action counsel and the local people collected some money to buy the gravel and everything that was needed to build the road. The panchayat was to reimburse the money after building the road.

Balanchandran was the leader of the action counsel and he borrowed Rs. 3,600 from me. After three months, the construction still hadn't started. I filed a complaint before the district collector and the collector ordered that the construction of the road be completed before March 31, 2000.

It then became clear that Balanchandran had kept the money given for the construction of the road for himself and that he would not reimburse me. I complained to the Idukki police about the situation. The inspector questioned Balanchandran, and afterwards told me there was no evidence that he ever took money from me. The police, shortly after that, dismissed the complaint.

After this, around 11pm one night, Balanchandran and his friends came to my house and harassed me and my family. I loudly told my wife to 'take the gun' in an attempt to stop the harassment. As soon as they heard that, they ran away.

After two weeks, Balanchandran and another man complained to the police that I had been working for that man for fifteen years and that I had stolen Rs. 8,500 from him. They also complained that I had stolen documents from his vehicle. I went to the police station twice but they both refused to come in for any talk or attempt at compromise. The police eventually dismissed the petition because the complaint was baseless.

After that, Balanchandran mixed poison in the drinking water used by about fifteen families in the village. He accused me of committing this heinous act. I was initially arrested by the Idukki Police until I showed that I had, in fact, been in Cheruthoni, which is 15 km from the village, when all of this happened.

The police sub-inspector called Balanchandran to ask about this complaint but he again refused to come to the police station. The police told me that the case against me was baseless but that I should be careful as they believed Balanchandran had plans to kill me.

On the May 28, 2000, Balanchandran and others came with weapons and hid be-

hind my house. Around 8:15pm, when my wife went to take a bath they attacked her. When she screamed, I came and I was attacked by two others, who stabbed me with a knife. To escape, I took the knife from them and stabbed Balanchandran. The others ran away. All the wounded ones were later admitted to the hospital. In the hospital they tried to attack me and my wife again. The Idukki police arrested me for stabbing Balanchandran. The case was registered and I was in jail for 14 days.

I tried to file a case against Balanchandran but didn't succeed. When the police brought me in to give evidence, those who had helped him were patrolling around my house. After I was released on parole, they again attacked me, and later filed another complaint before the SI. For the protection of our lives and land, I filed a complaint with the KSHRC.

Despite the fact that the complaint was filed in 2008, my complaint is still pending in the KSHRC. The complaint was received but no action has been taken.

Case of Negligence by Medical College

Thiruvananthapuram Medical College Hospital

PATIENTS OF THIRUVANANTHAPURAM MEDICAL COLLEGE HOSPITAL (TMCH)

On 20 & 21 October 2007, the Thiruvananthapuram Medical College closed its operation theatre for two days in order to use the room to observe *aayudha puja*. Throughout those days, the entire operation theatre was closed and the room, including some of the equipment in it, was used to conduct the traditional religious ceremony. *Puja* was conducted and *bhasma* was given to the groups of people that attended the ceremony.

Upon learning this, on the October 24, the HRLN filed a complaint with the KSHRC noting the offense, and pointing out that the practice had reportedly been continued for years. HRLN requested that an enquiry into the practice be held, compensation to any individuals affected be provided, and direction to cease the practice be issued. HRLN highlighted in the complaint that all instruments were kept in the theatre during this time, some even being utilised for the ceremony, effectively halting many surgeries. It cited that an estimated sixty surgeries per day take place in the major operation theatres. It also pointed out that the medical college is a government institution, and as such, should have no association with any religious practices.

The TMCH authorities responded to the claims by stating that the theatres were closed for only one day, not two, and that the theatres had been used for Navaratri celebrations, without religious connotation, for years, and that only elective surgeries were postponed. The KSHRC called for the Secretary of the Health Department in Thiruvananthapuram to submit a report. The report was submitted, and stated that, 'no rituals were conducted by any priest or saint'. A HRLN representative was called to appear before the commission, and did so.

On May 15, 2008, the KSHRC issued an order regarding the matter. It found that a puja had, in fact, been performed in the operation theatre during that time. It further found that the use of an operation theatre in this manner would compromise the sterile environment and render the room useless to any patients in need of it. The commission concluded that this was a violation of the right to life since emergency medical attention would be denied to anyone during the period that the operation theatre was closed.

The KSHRC ordered that, in light of the facts, the government (1) initiate departmental proceedings against those responsible for the practice and (2) ensure that

all such practices are ceased, as they endanger the lives of human beings. No response from the government was received.

On December 2, 2008, HRLN filed an application under the RTI Act, requesting information on the manner in which the KSHRC's order was implemented. The State Public Information Officer sent a letter stating that, 'the government did not find it proper to take further action as recommended by the commission, on the ground that no cases of operation have been postponed, and nothing happened in the hospital which could endanger the life of human beings'. A copy of the letter was forwarded to the KSHRC. No further action was taken.

Police Torture

Piraroor, Kalady, Ernakulam

PIRAROOR SCHEDULE CASTE COLONY RESIDENTS

Around twenty Schedule Caste families were living in this colony. A local police officer encroached upon the walkway and the stream, which is used for agriculture purpose by the colony people. He put a pipe from the septic tank on the walkway to block it. When the colony people raised questions about his actions, he filed false cases against the colony people who used the walkway, even against a three year old boy. The police officer has been mentally and physically harassing the residents of the colony by giving money to *gundas* and political leaders. This has been going on for fifteen years now. Many complaints have been filed by different individuals before the KSHRC but nothing has been done.

Numerous complaints have been filed, the most recent on the January 5, 2011. While some complaints have been registered, no action has been taken by the commission. No investigation has been ordered, and the Piraroor Colony people are still waiting for a hearing. The case has not been heard by any other court or commission.

Denial of Safe & Healthy Living Environment

Thrissur District

STONE QUARRYING IN THRISSUR

We, the members of *State Human Rights Protection Centre,* approached the commission in the light of the increasing number of deaths on account of poor safety standards at existing and abandoned quarry mines close to Thrissur. Between 2000 and 2007, 257 people have died due to these unprotected and abandoned mines. From 2008 to 2009, 55 deaths were reported from here. Thus, we held that the state is liable for the negligent maintenance of the mines and non-compliance of the safety protocols essential for the safe maintenance of mines. We have sought a direction to ensure strict compliance with mandatory guidelines for the regulation of abandoned stone quarry mines, and compliance of the safety regulations for existing mines.

Once the quarrying activities are completed, the mining area is abandoned leaving it without any follow-up. This results in several safety hazards. During the rainy season, the trenches fill up with water and become man-made lakes and a breeding ground for insects carrying diseases. None of the mines have any cautionary signs resulting in several accidental deaths. Blasting, cutting, and truck traffic contribute to noise, vibration and dust causing severe air and sound pollution, and resulting in breathing problems for local residents living in the mines' surroundings. Safety hazards posed by stone piles and quarry holes are also a matter of grave concern. Some of the victims of the accidents here are left permanently debilitated. No scheme for compensation exists for these victims as they are not employees of the mines.

In 2007, we filed a petition before the KSHRC, detailing the dangers involved in abandoned mines. We presented to the commission a report of the 257 deaths which had occurred in Kerala between 2001 and 2007. The KSHRC issued an immediate order on October 10, 2007, calling for records. While the matter was awaiting records, through the mechanism of the RTI Act, we sought information relating to the deaths that had occurred in consequence of the negligent maintenance of the abandoned mines. Despite being aware that an enquiry was taking place, no precautions were taken by the respondents to ensure the safety vis-à-vis the mines.

The respondents have not yet fulfilled their duty to maintain a record of the mining sites and conduct periodic investigations. No further action or follow-up has been taken by the KSHRC.

Unconsensual HIV Testing of Pregnant Women

Medical Centres in Kerala

PREGNANT WOMEN

Ashok Nair, President of the National Netwok of Positive People

In various clinics throughout Kerala, the prevalent practice is to test the HIV status of pregnant women without providing pre-test and post-test counselling. Within these clinics, each pregnant woman who comes in for services is screened for HIV/AIDS without her knowledge or informed consent. Not only is this practice in violation of policy regarding informed consent, it violates the woman's right to privacy as well as her right to seek proper medical treatment.

Counselling prior to testing is intended to help a woman understand the risk and implications of HIV infection in a private and comfortable environment that facilitates discussion and learning. In the event of a positive test result, counselling with the patient is vital in order to strengthen strategies for coping with immediate stress, possible stigma, the need for treatment, as well as other psychological and social impacts. The approach adopted at the clinics did not allow for this. A lack of counselling services could be not only mentally and emotionally stressful for a patient but extremely dangerous as well. If patients are not prepared to handle their HIV+ status, they are extremely likely to put themselves, their partners and children, and others, at risk.

The Government of Kerala has established more than forty Voluntary Counselling and Testing Centres (VCTC). If private clinics are unable to provide the requisite counselling, then it was argued that they should refer these women to the nearest VCTC.

A complaint on behalf of numerous patients was filed with the KSHRC on the August 23, 2006. It addressed this appalling practice of medical centres throughout Kerala as well as the failure of the state government to ensure compliance with medical regulations. No action was taken by the commission.

HIV+ Person Harassment

Thiruvananthapuram Medical College Hospital

ANONYMOUS (HIV+ INDIVIDUAL)

Human Rights Law Network

The victim, who wished to remain anonymous, is an HIV+ individual who receives part of his medical treatment at the Antiretroviral Therapy (ART) Centre of Thiruvananthapuram Medical College. He filed a complaint stating that during his treatments at the ART Centre, he was forced to undergo a time-consuming, embarrassing and mentally traumatic interview without his voluntary or informed consent. The interview in question was in addition to any mandatory counselling in accordance with the HIV treatment guidelines, and for the academic purposes of one nursing student.

In the interview, the patient was asked extremely sensitive questions about their experiences with HIV which according to the victim was humiliating. The victim stated that he was forced to relive the manner in which he contracted the virus. He further stated that the entire interview was conducted without his consent since the 'consent form' that was signed was not properly explained. He contends that the form was presented in such a way as to make the victim believe that his future treatment at the centre depended on his consent to be interviewed. The KSHRC requested that a report be submitted by the Health and Family Welfare Department, Thiruvananthapuram. The report submitted stated that the interview conducted was done as part of a research study. The study had obtained the sanction of the Hospital and Ethical Committee (HEC) but no interviews were to be conducted in the ART Centre. It further stated that only counselling was conducted within the centre, and that any interviews conducted were scrutinised by the HEC in order to ensure that everything was performed with the utmost sensitivity. The report denied that consent to the interview was presented in a manner that intimated that further treatment was dependent on it, and stated that all interviews were conducted in a private area.

The KSHRC, in 2009, issued an order, stating that since the HEC is not personally present at the interviews, there is no way for it to know the nature of the questions or manner in which said questions are actually posed by those conducting the study. Hence, any research would, in future, be conducted in the Prathyasa Centre or through various recognised networks of HIV/AIDS-affected persons, and that any student research within the ART Centre was to be avoided particularly where low-income patients are involved. Despite the KSHRC's clear response, the order has not been implemented in the ART Centre. A follow-up report was requested from the KSHRC by HRLN. No follow-up of the order was carried out by the commission.

Education Donation

Shilpa School Palluruthy, Ernakulam

STUDENTS OF SHILPA SCHOOL FOR THE INTELLECTUALLY DISABLED

Philip Simon, member of Parivaar Kerala, An Apex Council of Parents' Organisations for Persons with Intellectual Disabilities

As a condition for admission, the parents of children at Shilpa School, are required to pay an annual donation to the school. A fine would be imposed on them if they do not pay the donation, and failure to pay the fine would result in their children being excluded from the school. This system of unofficial donations is unlawful and is not approved by any government. This year, some parents were unable to afford the donation, and subsequently their children were denied admission.

While the incident was a direct consequence of the donation requirement, it is relevant to note that the governing body of the school had set a number of other unreasonable conditions for admission. Amongst these were conditions prohibiting the parents from discussing school matters with teachers and members of the community, not allowing the parents into the school buildings and restricting them to form any representative organisation, beyond the organisation which has already been set up by the governing body.

The KSHRC registered the complaint and then forwarded it to the Director of Education. It was subsequently forwarded to the collector. Despite the complainant approaching the commission in August to inquire about the status of the complaint, there was no further communication beyond acknowledging receipt. The complainant acknowledges that while the complaint was ultimately dealt with by another body, as there were internal changes occurring at the commission, even a delayed response from the commission would have been helpful.

Tribal Discrimination

Lakkidi, Palakkad District

TRIBAL EMPLOYEES OF POOKODE VETERINARY COLLEGE

A complaint was filed with the KSHRC on the January 27, 2007 by the Tribal Workers Union against the Pookode Veterinary College, regarding an unlawful, unhealthy and inhumane working environment. On the February 12, 2007, six of the workers involved in the original complaint were permanently appointed to a different department - a pig farm. One of the workers had allergies and was unable to work on that farm. He therefore requested to work in a different department. That request was made on the March 1, 2007. That worker was mentally harassed, and was denied the right to work for many days because of that complaint.

On the February 22, 2007, the President of the Kozhikode Anwashi's Organisation approached the Dean of the Pookode Veterinary College, seeking justice on behalf of the tribal workers. The complainants were threatened and insulted. The Kerala Women's Association and various tribal associations held a press conference regarding these actions. As a result of this, the Tribal Workers Union's President was denied the right to work. On April 2, 2007, a notice was published in the name of the college in which the victim and others were condemned and insulted. A case was filed at the Vaithiri Police Station regarding this but no action was taken.

Furthermore, filing a complaint with the KSHRC resulted in substantial backlash against the victims and complainants involved. Not only did the commission fail to take any action, it could not even prevent the ongoing retaliation against the victims and complainants.

Loss of Life & Livelihood

Pannimada, Kizhakkethara, Venoli and Malampuzha in Palakkad District

TRIBAL FAMILIES IN PALAKKAD DISTRICT

In the Palakkad District, wild elephants are destroying the environment, trampling agricultural fields, bore wells, pump sets and pipelines. The elephants have killed tribal people. Around 1,800 families have been affected. The people living on those lands are now forced to stay awake at night to ensure their own safety. This has made it nearly impossible for the tribal people of the area to live normally, to work, and to cultivate their land without fear of an elephant attack. Their economic losses have been to the tune of Rs. 95 lakh.

The local people have sent complaints to the chief minister, the forest department, the agriculture department, and the district collector. Having received no response from these officials, they finally filed a complaint with the KSHRC. Initially, a squad was deputed to help the tribes. However, the squad did not work properly and its work was not monitored. The squad's work produced no results and the tribal people were left in the same terrible position.

Following the complaint filed before the KSHRC, investigators were delegated by the commission to go visit the area. Although the widespread destruction caused by the elephants throughout the area was documented by the investigators, the commission is yet to take any action. No hearing has been granted and the complaint is still pending.

CHAPTER-III

Jury Report

BACKGROUND

The *Human Rights Law Network* organised this event at Ashir Bhavan on October 8, 2011, in collaboration with several other human rights and civil society organisations. During the event, from 10am to 6pm, several activists, as well as many victims, provided their testimonies to the panel comprising the following:

- Justice P. K. Shamsudheen, Former Judge, Kerala High Court;
- Ms. Leela Menon, Senior Journalist;
- Mr. D.B. Binu, Advocate;
- Fr. George Pulikuthiyil, Advocate;
- Mr. C. R. Neelakandan, Social Activist.

The image of the KSHRC differs from one experience to another. The recent negative experiences faced by citizens who have approached the KSHRC mark a disillusionment and cynicism towards the commission. People approach the commission with high expectations. For them, communicating with the commission is not always easy and their chances of success are rather low. One cannot say that the commission is a total failure. However, there need to be guidelines and a certain framework in order to ensure the commission's utility and increase its efficacy.

Immediately after the inception of the KSHRC, a complaint was made regarding the serious issue of pollution within Thiruvananthapuram. The commissions took action, asking the government to file a report. Once the report was filed, the commission was able to take further action, issuing recommendations as to how to best remedy the problem at hand. The situation was subsequently rectified. This illustrates how collaboration between the government and a pro-active commission is essential to the KSHRC's effectiveness. Yet in recent years, the commission is not taking the initiative as it used to. Activists testifying to their experiences with the human rights commission often spoke about filing many petitions before the commission which were not responded to favourably. The cases were addressed without empathy or consideration.

OBSERVATIONS

In attending the IPT, several issues with the KSHRC became acutely obvious. First, citizens are not aware of the powers and limitations of the KSHRC. Second, there is a lack of effective communication on the part of the commission. Third, there is a distinctly negative attitude towards the KSHRC, on the part of the state. Finally, the commission's members often do not have the required expertise to handle the increasingly complex complaints being filed.

In addressing the first problem, it must be noted that the commission does not have the power to render binding decisions. After obtaining an order from the commission, citizens often do not see those orders being implemented effectively, if at all. As many victims and complainants are unaware that the KSHRC's orders are, more ac-

curately, recommendations, they feel they have been denied justice when those orders are not followed.

Some causes could have and should have been taken before the courts. An inappropriate choice of forum often leads to the victim perceiving a denial of justice where, legally, no denial exists. This is particularly true in cases where the government is not required to obey the recommendations at hand.

It is often a hope in the people's minds that the commission should take up issues on its own; specifically public issues. Under the Act, the SHRC has the authority to investigate *suo moto* and consequently issue orders of its own accord. This built-in mechanism was provided in order to function as a way for the commission to address ongoing public problems, without the need for any direct complaint to be filed. However, very rarely does the commission take actions suo moto.

The second issue at hand is the KSHRC's lack of effective communication, both regarding complaint disposal and victim contact. Very often, the KSHRC does not dispose of complaints properly. Complaints are filed without any acknowledgment of receipt on the part of the commission, and at times are rejected or disposed of without any communication with the victim or complainant. Far too often, there is no communication whatsoever with the victims i.e. if a report is filed in response to the victim's complaint or if a response is required from the victim or complainant.

The third issue at hand is the negative attitude by the state towards the role that the KSHRC plays. Since the KSHRC's constitution, an unconstructive attitude has been present in the approach towards the reason and the role of a human rights commission from the government, the staff and in the way the commission itself functions. A notable absence of a proactive attitude in the commission and its members is a system failure. As this attitude has seeped into the minds of the public, this can lead to a hesitance to approach the commission with human rights violations. This can undermine the effectiveness of the KSHRC's work, as people are less likely to turn to the commission when it is needed.

Finally, the increasing complexity of the cases brought before the KSHRC, often beyond the commission's members' expertise, must be pointed out. Although there are guidelines in the Act regarding the appointment of commission members, members often do not have sufficient expertise within the human rights arena to address the complaints being filed. This leaves many complaints filed with inappropriate or unsatisfactory responses from the commission. We therefore believe that members are in need of specialised support to appropriately address the complaints.

RECOMMENDATIONS

i. Communication between KSHRC and the Public

Communication seems to be lacking between the commission and the complainants or victims, as well as between the commission and the public. First, a lack of awareness and public discourse on the functioning, powers and limitations of the KSHRC is a major issue. One needs to see how the KSHRC can and should function within the limited parameters the government has set. This should be accomplished through publicly available, easy-to-read materials explaining the standards and guidelines under which the commission operates. Annual data, regarding the KSHRC's activities for the year, must also be made available to the public in order to ensure that the guidelines are being followed.

Second, there should be, as part of the established procedure, proactive communication between the commission and the parties. Three steps are necessary:

1. There must be acknowledgement of the complaints received by the commission.
2. It should be the responsibility of the commission to inform the victims of the actions that have been taken on the complaints.

3. It is essential that the commission advertise its sittings in the various cities it visits. Such information should be made available to the public, in advance, so that the local population concerned can be made ready to approach the KSHRC.

In summary, it is the role of the commission to ensure that the public is made aware of its functioning, powers and limitations. A budget for this purpose already exists, and public awareness and systematic communication between the KSHRC and the parties should be considered an integral part of the commission's duties.

ii. Development of the Commission's Understanding of Human Rights

The various issues addressed by the commission are becoming more complex as more and more people begin to utilise the commission as a complaints-handling mechanism. The commission's members are therefore in need of support at various levels. In order to address this issue, a technical panel should be formed, which could assist the current members in dealing with complex issues that go beyond their own expertise. Examples of such issues could be various crimes, environmental matters, etc.

We also suggest that a consultative committee be established in each district. This committee would comprise of various activists working on different human rights issues within the area. When the commission visits that particular district, it should have a meeting with that committee and discuss the prevailing issues within the district. This has the benefit of allowing the commission to easily gain insight into the local community's problems. More generally, there must be a more effective and systematic mechanism of investigative support from the pre-existing investigation teams.

iii. The Necessity of a Human Rights Court

There is an indispensable need for HR Courts to be set up, in order to effectively protect human rights. Implementation of the Act cannot be completed unless HR Courts are set up. Where a commission may fail in its limited power, a HR Court, as outlined by the Act, would be able to issue more powerful orders. Although the KSHRC is only able to issue recommendations as orders, a HR Court would be empowered to issue binding decisions, making their orders mandatory, rather than suggestive.

iv. The Attitude of the KSHRC

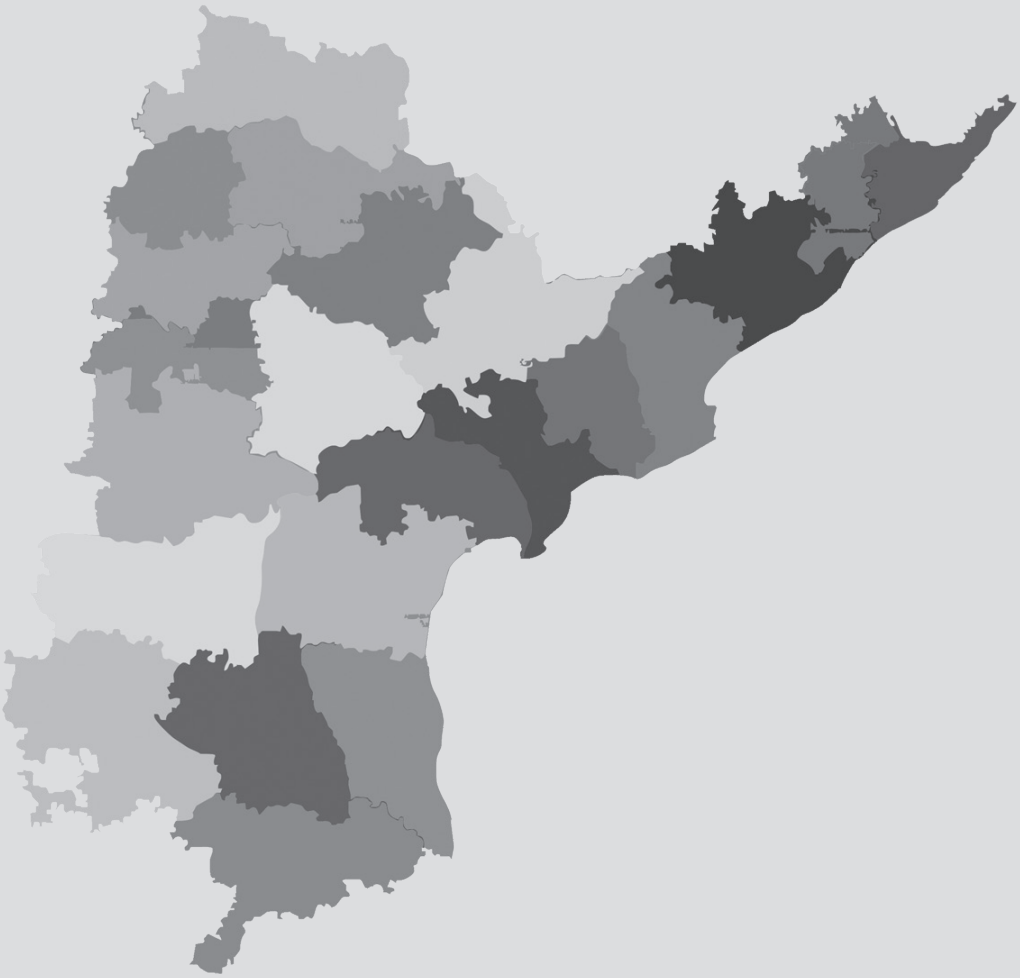
The KSHRC should be promoting justice and it should have a humanistic approach. Indeed, the commission members must also have a certain level of social sensitivity. In a similar vein, there needs to be an illustrated commitment to human rights work on the part of the officials. This should be reflected in the proactivity of the officials and the commission in general. In order for that to happen, guidelines should be written down for the functioning and disposal of cases.

The commission has been a place for retired high court judges to continue to earn a salary and state benefits. While retired judges may have a lot to bring to a human rights commission because of their work experience, there should be a primary screening process that takes into account criteria such as extracurricular activities related to human rights, empathy towards the people's issues and a general commitment to human rights.

Finally, it is very important that recommendations made by the KSHRC be taken seriously by the government. If the government does not intend to enforce the recommendations given by the commission, the pertinence and utility of its existence is otherwise too easily questionable.

v. Financial Accountability

In order to allow and ensure the better functioning of the commission, there needs to be financial accountability and publicly available information on the amounts spent for its establishment and work. Transparency is essential to ensure the credibility of the KSHRC.



ANDHRA PRADESH

Heather K Sager | M A Shakeel | M Chalapathi

SL. No.	05	City	Hyderabad
Total Cases before Jury	32	Date	April 24, 2011

Jury: Justice Ramaswamy, Retired Supreme Court Judge; M. A. Majid, Associate Editor of the Etemmad Urdu Daily; Dr. Hasanuddin Ahmed, Retired IAS officer and Former Chairperson of the Andhra Pradesh State Minorities Commission

Networking Groups
Aman Vedika; Association for Promoting Social Action; Church's Auxiliary for Social Action; Center for Caring Citizens; Caring Citizens Collective; Campaign for Housing and Tenural Rights; Civil Liberties Monitoring Committee of India; Confederation of Voluntary Associations; Centre for Social Justice; Child Rights Protection Forum; Human Rights Forum; International Human Rights Association; Mountfort Social Institutions; M Venkatarangaiah Foundation; National Alliance of Dalit Organisations; National Dalit Forum; Parivarthan Hyderabad; People's Union for Civil Liberties Andhra Pradesh; Swadhikar

THE INDEPENDENT PEOPLE'S TRIBUNAL ON THE FUNCTIONING OF
ANDHRA PRADESH STATE HUMAN RIGHTS COMMISSION

EXECUTIVE SUMMARY

ESTABLISHMENT OF HUMAN RIGHTS COMMISSION

The South Indian State of Andhra Pradesh (AP) is a site of major, ongoing, systemic human rights violations. It is known for routine encounter killings, widespread human trafficking and atrocious acts of violence against dalits and tribal peoples. The state is also known for dedicated and outstanding human rights defenders like K. Balagopal and K.G. Kannabiran. However, it must be said that the human rights situation here has not received the kind of attention that it deserves from outside agencies, national or international.

Taking the cause of human rights forward, the Protection of Human Rights Act (the Act) was enacted in 1993. It ordained the establishment of a State Human Rights Commission (SHRC) in every state of India. It also provided a detailed blueprint for the composition of such commissions, specified the qualifications for appointment to commissions, guidelines on how the appointment is to be handled, and methods of case-by-case functioning, in order to ensure the transparency of each commissions' work.[1]

The SHRC is intended to be a low-cost, accessible legal option allowing every citizen to pursue remedies for violations of their human rights, irrespective of financial or social status. The SHRCs were established as a state-wide authority on human rights, with the capacity to receive individuals' complaints and petitions, initiate independent investigations, administer guidelines on the protection of peoples' rights, order compensation and suggest ways of redressing individual grievances. So, to streamline and strengthen the mechanism of justice delivery in matters of human rights violations, the SHRC was established in AP.

INDPENDENT PEOPLE'S TRIBUNAL (IPT)

This report is an attempt at the evaluation of the commission's work through a social audit. The report is a result of a research process involving several steps. Firstly, general research was conducted on the state of human rights in AP and the APSHRC's work within the state. Then, information was sought from the commission regarding its functioning, through the Right to Information Act, 2005 (RTI Act). Following this, surveys and interviews were conducted with organisations and persons working within AP, concerning their experiences with the commission.

1. Protection of Human Rights Act, 1993

A visit to the APSHRC's office in Hyderabad was made, during which the chairperson of the commission was interviewed and reports and details of *suo moto* investigations were gathered. Approximately a hundred orders issued, and recommendations made by the commission, were studied. Consequently, an IPT was conducted. It was held in order to provide an opportunity for victims, complainants and experts to publicly speak about their first-hand experiences of approaching the APSHRC. For this, a jury was empanelled and their observations and recommendations provided. This report has been compiled, drawing upon the data generated through all these steps.

In the IPT, thirty-two cases were deposed in front of a panel of five jury members. The cases deposed reflected the ineptness of the commission in addressing the complaints brought before it. In many cases there was no response whatsoever from the commission. In other cases, the commission closed the matter on the basis of the authority's (government departments) reports only. In cases of police atrocities no action was taken by the commission. And, ironically, the accused were found to be investigating the complaint i.e. the very people against whom the complaint of human rights violations was made were investigating the complaint; for example, such was the case in police torture/harassment cases. Furthermore, an independent investigation has seldom been performed by the commission. This mechanism of investigation of cases clearly brings the commission's functioning into question.

ANDHRA PRADESH STATE HUMAN RIGHTS COMMISSION: AN INTRODUCTION

Andhra Pradesh established an SHRC on August 12, 2005, about twelve years after the enabling Act came into effect. The APSHRC is widely regarded as an inept institution by activists and academics, who have observed the way the APSHRC functions. Commission members are often chosen for their political associations, and many members have little or no experience in human rights work. The commission relies on the state government for its funding and approval, leaving it completely dependent upon the state. The complaint-handling mechanism of the commission is also highly inefficient.

As a consequence, activists and citizens often tend to be sceptical and indifferent to the commission as a resource for the protection of human rights. Political establishment and bureaucracy tend to ignore the commission and its recommendations and orders. The police often file false and fraudulent reports to the APSHRC with utter impunity. Victims are routinely ignored and at times further harassed socially, financially and physically, for filing a complaint. As an institution, the APSHRC seems to be more concerned with its own survival, than with addressing complaints or fulfilling its mandate.

FUNCTIONING OF ANDHRA PRADESH STATE HUMAN RIGHTS COMMISSION

Several facts illustrate the problematic aspects of the APSHRC's functioning. The commission is totally dependent on the state government for funding its establishment and operations. Its budget is approved by the state government every financial year. This provides the government a lot of undue indirect leverage over the commission, to influence its actions and decisions. While never explicitly accepted by the commission, numerous activists in the area have argued that the APSHRC's particularly weak approach to prisoner's rights and curtailing police violence have been, in part, a product of the state's desire to gloss over such issues. Addressing them would require an almost revolutionary change in the state's previous policies and would incur immense cost, and would demand unprecedented accountability on part of the government.

INDEPENDENCE

A lack of independence of the APSHRC is one of the most worrying issues for the victims of human rights violations, activists and scholars of human rights in AP. The Paris Principles clearly lay down that independence from government is vital to the success of any human rights institution.[2] The Act also talks about various ways in which the independence of commissions must be protected. Despite this, the APSHRC has been denied its independence from the AP government.

The commission has not made its appointment processes, other than the guidelines of the Act, publicly available, and many have criticised the commission for relying heavily on retired judges, other members of the state government, or past members of other commissions. This compromises the autonomy of the commission, as persons who have been previously employed by the state government in a high-end capacity are more likely to hold influential political ties. Many have argued that these political ties can be seen in many of the commission's more contentious actions and decisions.

OPERATIONAL EFFICIENCY

A chart of the annual numbers of cases dealt with by the commission was gathered from the APSHRC office. Since the commission became operational in 2006, the number of complaints it receives has increased by approximately 3,000 per year. While in earlier years the commission consistently disposed of the majority of complaints, in more recent years the number of complaints that the APSHRC has left pending far outweigh the number of complaints that it has disposed of. The current numbers show that over half of all complaints received are still pending. From 2006 to 2011, the commission disposed of a total of 14,646 complaints, leaving 16,537 pending. While the numbers of complaints registered and complaints pending follow a similar rising trend, the number of complaints disposed of remains relatively stable, perhaps owing to the fact that the manpower of the commission has remained stagnant. Clearly, the commission is not able to keep up with the increasing number of complaints.

INVESTIGATION AND COMPLAINT HANDLING MECHANISM

Although authorised under the Act to independently investigate claims and complaints submitted to it, as well as any ongoing issues it takes notice of, the commission has consistently failed to initiate any investigations on its own. It usually requests reports from various government authorities. This has been disclosed by the commission itself, in its response to the RTI applications, and confirmed subsequently by the commission's chairperson in an interview. Usually, an investigation by the commission consists of requesting reports from the concerned authorities, along with issuing a directive to the concerned officers to appear before it especially when the commission has deemed the report unsatisfactory. The commission does not have any independent resources to conduct investigations on its own, and depends on either hearsay or the use of the police for its investigation purposes.

RTI, ACCESSIBILITY OF INFORMATION AND ITS DISSEMINATION

Information about the APSHRC is difficult to come by. Hence, an application for information regard-

2. Paris Principles, as adopted by United Nations in 1993

ing the APSHRC was submitted under the RTI on January 11, 2011. HRLN requested information related to the way the commission maintains their records, ways in which it makes information regarding its activities publicly available, whether it publishes details regarding the policy changes, the influential decisions it has taken, and other details.

A second RTI application was submitted on March 23, 2011. It was an extensive questionnaire addressing a variety of issues related to the functioning of the APSHRC. It asked for details of *suo moto* investigations, visits to state-run facilities to ensure compliance with regulations and protection of rights, research conducted by the commission into human rights concerns, action taken to ensure the implementation of legal safeguards for human rights, implementation of international treaties under Indian law, public awareness and promotion and support of local organisations working towards human rights, the commission's policies and guidelines for its day-to-day functioning, the commission's policies in conducting investigation and issuing recommendations, and its resources used in investigating complaints, among others.

In response to the first application, a letter from the public information officer-cum-public relations officer was received. It stated, "The commission has not sent any annual report to the government, as per the records maintained by the commission".[3] No other response was included, either in the letter or any other follow-up correspondence. In response to the second application the APSHRC sent a letter, with individualised responses to each question. The responses, for the most part, were one-worded, unsatisfactory, and often tangential. For example, when asked what criteria the commission used in appointing the chairperson and other members, the APSHRC responded that they followed the guidelines under the Act without providing any additional details. Out of 12 questions specifically requesting quantifiable data i.e. numbers of cases of initiated investigations, the commission provided only two appropriate answers. The first, the above mentioned prison system visits. The second, the number of cases into which the commission has enquired since its inception; 30,087 out of 52,418 cases. When copies of annual reports were requested, the commission responded that it had not published annual reports. This clearly shows violation of Section 20 of the Act.

PATTERN OF HUMAN RIGHTS VIOLATIONS IN ANDHRA PRADESH

Torture, Police Atrocities and Abuses by Security Forces

Police abuses in AP have long been a problem. In their 2011 annual report, *Amnesty International* took note of a case where two fishermen were killed when police fired at an ongoing protest.[4] In this incident, approximately three hundred and fifty people were injured as police officers attempted to disperse the protesters. In 2007, police officers opened fire at a political rally, killing seven people.[5] The National Crime Records Bureau (NCRB) reported that a total of seventy-five civilians had been killed in police firings in 2006.[6] Yet, no charges were filed in any of these cases. According to the National Human Rights Commission (NHRC), in the year 2000, approximately three hundred army officers went on a rampage in Hyderabad, attacking local farmers and beating anyone who resisted.[7] These cases illustrate the extent of the high-handedness of the police and security forces in AP.

3. Andhra Pradesh State Human Rights Commission response (in the year 2011) to the RTI filed by HRLN
4. India - Amnesty International Report 2011
5. India Human Rights Report 2008, Asian Centre for Human Rights
6. Ibid
7. Annual Report 2000-2001, National Human Rights Commission

In one of these police atrocity cases deposed in the IPT, the victims in question complained of having been harassed on and off by the local police since the year 2007, yet the commission has not taken any action against the accused. In 2007, Ghulam Ilyas Hyder, owner and operator of a local jewellery shop, was arrested by the Golconda Police of Hyderabad District, on charges of purchasing stolen gold. He was held in custody for three days. Thereafter, the victims' harassment continued. On September 19, 2009, the Kamatipura police came to Ghulam Ilyas Hyder's shop. They began to search his shop, demanding payment of two lakh rupees, and several gold items. Ghulam called his wife, who arrived immediately. He began to complain that he was not feeling well, and was having chest pains. Out of fear of the police and stress from the harassment, Ghulam fainted. While his wife took him to the hospital via auto-rickshaw, the police stole approximately twelve-thousand rupees from the counter and left.

Since then, the Kamatipura Police have continuously threatened Ghulam Ilyas and his wife, Quadeerunnisa. The couple reported that the police have threatened them by saying, "You are approaching the high court and the commissions against the police; if you do not withdraw the petitions, you and your wife will be booked in dozens of cases". Mr. Hyder has been unable to open his shop and has found it difficult to earn a living. Such is the extent of police threat and harassment. On September 22, 2009, both the victims submitted a petition to the APSHRC but no action has been taken by the commission against the accused.

Custodial Deaths

The state is also known for custodial deaths being swept under the rug. The NCRB reported a total of twenty-eight custodial deaths in 2006. While statistics for 2007 were not available, various human rights organisations working in AP reported that they had handled at least ten custodial death cases. In most of these cases, reports filed by the police or prison authorities typically state that the death was due to unpreventable illness, unexpected suicide, or attempted escape on the prisoner's part. Despite the legal requirement that an autopsy should be performed in every such case, and all custodial deaths be investigated, it is rare that either of these requirements is fulfilled. Often the only information available about the cause of a death is the solitary report written by the perpetrators themselves. In other cases, witness reports vary from the reports filed by involved officials.

Extrajudicial and Encounter Killings

Extrajudicial and encounter killings, the so called 'self-defence' killings perpetrated by the police or security forces, have been abused by the AP Police and security forces over the years, despite the legislation establishing this as a defence was intended to protect police in cases where an exchange of fire was necessary. Citizens have long questioned the practical applications of it. Several blatant cases of staged encounters illustrate how encounter killings are often abused by the police of AP. The *Human Rights Forum* has publicly denounced numerous cases of encounter killings, claiming that far too often these deaths were not in self-defence, but were premeditated. They point to the fact that in many of these cases, evaluation of the incident never complied with legal requirements for investigation. The *Asian Centre for Human Rights* reported in 2008 that approximately thirty-six cases of encounter killings had taken place throughout AP, from January to September 2007, alone.[8]

8. India Human Rights Report 2008, Asian Centre for Human Rights

Maoist Conflict

Bordered by Maharashtra, Chhattisgarh and Orissa, Andhra Pradesh is currently at the heart of Maoist activity and consequent state repression. The Andhra Pradesh-Orissa and Andhra Pradesh-Chhattisgarh borders are the principle theatres of ongoing conflict. In February 2011, international agencies such as *Amnesty International* have called for the AP Government to do more to ensure that the current violence between the police and the Maoists is stopped.[9]

In 2009, the NHRC in India investigated and reviewed the ongoing violence spurred by Maoist activity. It found that both the opposition group and the Andhra Pradesh, Orissa and Chhattisgarh state police forces were responsible for grave human rights violations.[10] In 2011, it was reported that approximately 20,000 *adivasis* were displaced and dispersed from Chhattisgarh into AP and Orissa, due to Maoist violence.[11] Between three hundred and five hundred deaths, relating to Maoist conflict, were reported in AP for the year 2005 alone. In 2007, the AP Government offered cash rewards, ranging from twenty thousand rupees to twelve lakh rupees, for killing Maoists.[12] Over the years, this violent cycle has led to both the government and the Maoists brutalising those in their path. Villages have been caught in the crossfire, and continue to be so. While international and domestic actors have called for an end to the violence, no end is in sight.

Religious Conflict and Discrimination

The majority of AP's population, approximately 88 percent, practices Hinduism, with the second largest religious group, approximately 10 percent, practicing Islam[13]. A significant amount of the state's Muslim population is concentrated in the state capital, Hyderabad, and the remaining population practices Christianity, Jainism, or tribal religions. Religious discrimination in AP has manifested itself in numerous forms. There have been numerous reports of police beating people identified as Muslim, in ill-conceived attempts at prevention of future terrorist attacks.[14]

In 2008, numerous Muslims were detained for periods ranging from five to ten days, without charge.[15] Many of those detained reported that they had been tortured while in custody. Although compensation was ordered to those who were in illegal detention, no criminal proceedings were ever initiated against the officers responsible. The claim, in many of these cases, is that it is the police's duty to protect citizens against possible further attacks. These methods of protection leave much to be desired, in terms of their adherence to human rights.

Women's Rights

Women's rights address a multitude of issues, such as sex ratio, literacy and education levels, violence against women, sexual violence, and a variety of others. In 2011, the NCRB ranked the states of India in terms of highest to lowest in various crime rates. When ranking states in terms of violent crimes against women, AP came up first, its total crimes against women accounting for 12.8 percent of the

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9. India: Maoist kidnappings come against backdrop of rising Violence, Amnesty International Public Statement, February 22, 2011
10. India - Amnesty International Report 2009
11. India - Amnesty International Report 2011
12. India Human Rights Report 2008, Asian Centre for Human Rights
13. http://www.cs.colostate.edu/~malaiya/india.html#States: percent20Religions
14. Interview with Shakeel Mohammad, HRLN Hyderabad, April 2011.
15. India - Amnesty International Report 2009

entire country.[16] This was the second year in a row that AP led the country in female-targeted violence.

Within the state, crimes against women made up 32.4 percent of all offenses, violent and non-violent. Among total crimes against women, domestic violence amounted for the majority of cases at 44.34 percent.[17] Activists in AP have long fought to bring attention to the ongoing problem of police refusal to address domestic violence cases, citing that too often the police officers fail to respond or are reluctant to register a case, viewing the incident as a family matter. Women are often unable or unwilling to approach authorities about incidents, due to fear of their perpetrator or pressure from their family. In a state with strong prejudices against reporting such incidents, these high numbers reflect how rampant domestic violence is within AP. After domestic violence, sexual harassment and molestation account for approximately 36 percent of all crimes against women, with kidnapping, rape, dowry deaths and trafficking just trailing behind. Such high numbers illustrate a state with deep roots in violence against women.

In one of the rape cases from 2008 which was deposed in the IPT, a daily wage labourer (anonymous) was abducted by two men from the Golconda area in Hyderabad District. The victim was forced into an auto rickshaw and brought to a construction site in nearby Sayeed Nagar area. Two more men followed in another auto-rickshaw. She was then dragged into the construction site. The two men who had taken her there pulled her into an abandoned room. They threatened her and told her that if she made any sound, they would kill her. After threatening and beating her, the two men raped her. Later, the two who had followed in another auto rickshaw arrived, thrust a cloth into her mouth, and repeatedly raped her. After the rape, all the men fled the site together.

Immediately after the rape, the survivor reported the incident to the police. Three of the accused were arrested by the Banjara Hills Police. After the arrest, no further action was taken. Later, a complaint was filed with the APSHRC. No action has been taken by the commission either. Such incidents of rape are rampant in AP, but sadly, in many such cases the commission has time and again failed to take any action against the accused or to provide any relief to the victim.

In another case of violence against women deposed in the IPT, there was an incidence of rape committed by police personnel - the authorities that are supposed to be the protector of its citizens. In 2008, Shakum Bee, an OBC woman and a resident of Bethapalli Village, Kurnool District, was picked up by the police of Kodumuru, on alleged charges of theft. She was kept in the police station for four days in order to 'further' the investigation. During this time, the police interviewed and examined her, in order to investigate the charges. When Shakum refused to confess to the crime, Sub-Inspector M. A. Roohana Rao beat her in an attempt to obtain a confession. Constable Nagaraju attempted to coerce her confession with various promises and threats.

During these 'interviews', Shakum denied being involved in any incident. In response, the above named men continued to violently attack her. During the day, the Sub-Inspector repeatedly beat her during interrogation. During the night, the constable brought her back to her jail cell, where he beat and raped her. During several nights of custody, she was repeatedly raped. With the help of her family, Shakum Bee filed a complaint with the APSHRC. No action has been taken by the commission yet.

16. Crimes against women: State at top place for second year in a row, 2011, The Hindu, Hyderabad, October 29, 2011
17. Crimes against women: State at top place for second year in a row, 2011, The Hindu, Hyderabad, October 29, 2011

Child Rights

Child rights encompass a variety of issues: child health, infant mortality, public education, child labour, child trafficking, and crimes against the child. Andhra Pradesh has the second highest concentration of child labour in India, according to studies.[18] The state accounts for 1.36 million child labourers and that labour accounts for 62 percent of all cotton seed farming in the country. While various child labour cases have been registered with the APSHRC, very few have been addressed by the Commission. Unfortunately, the APSHRC does not maintain data regarding the types of cases it handles on a regular basis, so little information is available. However, a survey of approximately 100 APSHRC orders, conducted by HRLN, spanning 2005 to 2011 contained not one child labour complaint.[19]

According to the NCRB, AP currently ranks among the top four states with the highest incidents of child rape.[20] With 446 reported cases in 2010, AP has the fourth most reported sexual assaults cases in India, involving a child. Statistically, the number of occurrences where the rape of a child is actually reported is shockingly low. And, where police resistance towards a response is entwined with the process of reporting such occurrences, the likelihood that these incidents are acted upon, continues to fall.

One example of such child atrocity came to the fore in one of the cases deposed in the IPT. The case is of Sameera Begum, daughter of Mohammad Azhar Ali, who went to the market on the afternoon of March 10, 2008 but did not return home. Concerned, her father searched for her, but to no avail. Her father registered a missing child complaint in the Kulsumpura Police Station, Hyderabad District, hoping that the police would find his daughter. After a few days, Sameera's body was found. She had been abducted on the way to the market, sexually assaulted, murdered, and thrown in a burial ground. Because of the high social status of the suspected perpetrators, the police did not launch an investigation against the accused.

On March 19, 2003, Mr. Chalapathi filed a complaint on behalf of the victim's family with the APSHRC. The complainant requested that the APSHRC ensure 1) legal action against the accused, 2) protection from the accused for the victim's family, and 3) compensation for the victim's family. The Inspector of Police in Kulsumpura submitted a report in response to the complaint. He confirmed the allegations made in the complaint to the APSHRC but claimed that the police had never refused to investigate. He went further to claim that the accused had indeed been arrested, taken into custody and produced in court.

Having reviewed the police inspector's report, and without conducting any further enquiry into the matter, the APSHRC dismissed the complaint. The family of Sameera received no compensation for the government's failure to initiate the justice process. Such is the state of affairs in AP.

Rights of Dalit and Tribal Communities

Still considered the 'Untouchables', the dalit community continues to face daily discrimination. Often denied access to health, educational, or legal services, as well as being subjected to degrading, sometimes violent attacks, the dalit community in AP has long experienced extreme prejudice. In 2010, the NCRB ranked the state third highest in crimes against Schedule Tribe and Scheduled Caste, with shock-

18. International Day Against Child labour 2009 — Child Rights, UNICEF India, http://www.unicef.org/india/child_protection_5202.htm
19. Survey of APSHRC Orders and Recommendations by Human Rights Law Network, (April, 2011)
20. Crimes Against Children on the Rise. The Times of India, November 3, 2011, http://articles.timesofindia.indiatimes.com/2011-11-03/jaipur/30354250_1_total-cases-rural-areas-police-officer

ingly little legal response.[21] The NCRB data also revealed that in the year 2010, of 5,128 cases, only 297 convictions were obtained.[22] Local NGOs and activist groups reported that during the election period in 2010, the dalit community faced intimidation and violence, in an effort to influence their vote.[23]

For women belonging to the dalit and tribal communities, their status often manifests itself in making them targets for sexual abuse. In 2008, it was reported that police had raped and sexually assaulted eleven *adivasi* women in Vishakhapatnam District alone.[24] No criminal charges were filed. The NCRB 2010 Report (*Crime in India*) revealed that among the cases booked under the SC/ST (Prevention of Atrocities) Act, rape of dalit women outnumbered murder of dalits, male or female, by a staggering 232.56 percent.[25]

In a dalit atrocity incident deposed in the IPT, Nokathoti Musalaiah, a dalit, was abused by Chikena Ramayogi, of the Home Guard. Chikena Ramayogi abused the victim and all his neighbours by taking advantage of being a member of the police. Prior to this incident, Chikena also abused, intimidated and beat Ubboti Prasad, Sangam Kantha Rao and Sangam Krishna, who are residents of the same village. Furthermore, Chikena Ramayogi took them to the police station and beat and tortured them, with the consent of the police inspectors.

The incident took place on July 8, 2007, when the victim was casually rebuking his son as to why he was not going to tuition; Mr. Chikena deliberately interfered and verbally abused the victim. Mr. Chikena also falsely accused the victim of abusing him. The same night, at around 9:30pm, two constables came to the victim's house and forcibly took him to the police station, where SI Mohiddin Mohin mercilessly beat the victim with a stick. Mr. Chikena also brutally kicked the victim Nokathoti Musalaiah. The victim was detained the whole night and the following day, and at around 5pm, he was thrown out of the police station. The victim subsequently went to a government hospital for treatment.

In response to this complaint filed with the APSHRC, the commission called for a report from the Superintendent of Police (SP), Prakasam. The SP Mr. Naveen Chand filed a report stating that the complaint filed by the complainant is false and that he has ulterior motives, and therefore no further action is necessary. The complainant filed comments in response to this report. The case is still pending and the commission is yet to provide any relief to the victim. Such is the extent of police torture against dalits in AP. Furthermore, the commission continue to remain insensitive towards such atrocities.

CONCLUSION

In the end one can say that the APSHRC has several potential roles. It is meant to provide justice for the citizenry in AP, in the face of human rights violations. It is supposed to compile data on the human rights situation in the state for academics, be of assistance and guidance to the activists, and act as an adviser to politicians in those matters of policy with human rights implications. Instead, today it has become a source of overly-publicised and scandalous cases. Often, victims who need its intervention are ignored. Political interests take the front seat in the functioning of the commission. The commission has become a parking lot for retired judges and career politicians.

21. State Ranks Third in Crime Against STs, SCs., The Hindu, Hyderabad, October 31, 2011, http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/article2583658.ece
22. Ibid
23. India - Amnesty International Report 2010
24. India - Amnesty International Report 2008
25. Percentage calculated based on NCRB data for 2010

THE INDEPENDENT PEOPLE'S TRIBUNAL JURY PANEL

SOCIAL AUDIT REPORT

CHAPTER-I

Patterns of Violations and Functioning of APSHRC

INTRODUCTION

The South Indian State of Andhra Pradesh (AP) is a site of major, ongoing, systemic human rights violations. It is known for routine encounter killings, widespread human trafficking and atrocious acts of violence against dalits and tribals. The state is also known for dedicated and outstanding human rights defenders like K. Balagopal and K.G. Kannabiran. However, it must be said that the state of human rights here has not received the kind of attention that it deserves from outside agencies, national or international.

Andhra Pradesh established a SHRC in August 2004, a good ten years after the enabling act came into effect. The present report is an attempt at the evaluation of the commission's work through a social audit after seven years of its existence. The Andhra Pradesh State Human Rights Commission (APSHRC) is widely regarded as an inept institution by activists and academics, who have observed the way the APSHRC functions. Commission members are often chosen for their political associations, and many members have little or no experience in human rights work. The commission relies on the state government for its funding and approval, leaving it completely dependent on the state. In addition, the complaint-handling mechanism of the commission is highly inefficient.

As a consequence, activists and citizens often tend to be sceptical and indifferent to the commission as a resource for the protection of human rights. Political establishments and bureaucracy tend to ignore the commission and its recommendations and orders. The police often file false and fraudulent reports to the APSHRC with utter impunity. Victims are routinely ignored and at times further needled socially, financially and physically, for filing a complaint. As an institution the APSHRC has come to be more concerned with its own survival, than with addressing complaints or fulfilling its mandate. For instance, as one of the depositions tells us; one district col-

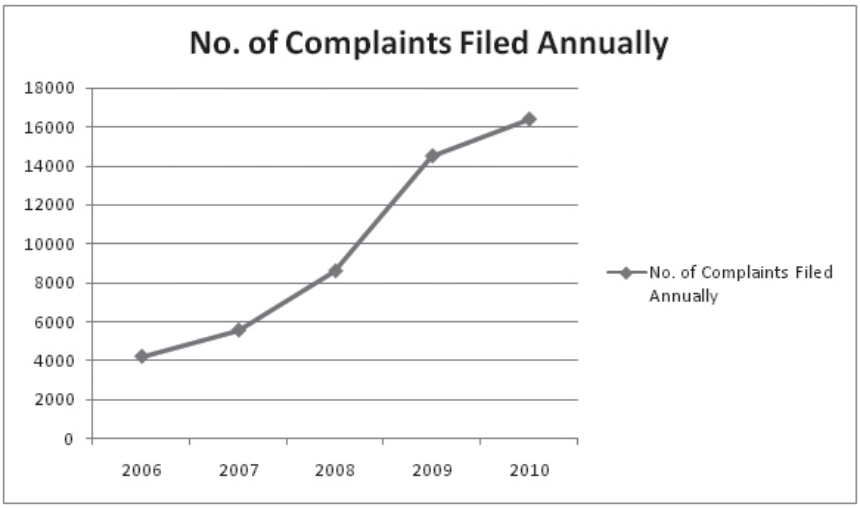
lector reported for several years that there was no child labour in its jurisdiction. When confronted with evidence that several cotton seed farms had been employing hundreds of children within the district, the collector responded by shutting down one farm, getting state-wide attention, and further claimed that the farm in question was an exception to the rule. The APSHRC took his word for it and never probed any further. There are several such instances.

The present report has been thoroughly researched, involving several steps. Firstly, general research was conducted on the state of human rights in AP and the APSHRC's work within the state. As a second step, information was sought about the commission through the RTI Act. The third step of the research was to survey and interview organisations and persons, working within AP about their experiences with the commission. In the fourth step, a visit to the APSHRC's office in Hyderabad was made, during which the chairperson of the commission was interviewed, and reports and details of *suo moto* investigations were gathered. Furthermore, approximately one hundred sample orders issued along with the recommendations made by the commission were examined. The fifth and final step, was an Independent People's Tribunal (IPT). It was held in order to provide an opportunity for victims, complainants and experts to speak publicly about their first-hand experiences of approaching the APSHRC. For this, a jury was empanelled and their observations and recommendations provided. This report was then compiled, drawing upon the data generated through all these steps.

ANDHRA PRADESH STATE HUMAN RIGHTS COMMISSION

The State of AP registers low in several key development indicators and high in violent crime and human rights violations. It has a high Maternal Mortality Rate (MMR) at 195 deaths per 100,000 live births (MMR is around 10 in developed countries). The Infant Mortality Rate (IMR) in 2008 was shockingly high at 52 per 1,000 live births (in developed countries IMR is around 8).

Andhra Pradesh ranks fourth in the country for violent crimes. The complaints of human rights violations in AP have been on the rise. As Figure-1 shows, between 2006 and 2010, the number of complaints filed with the APSHRC has nearly quadrupled. While this is indicative of growing awareness of the commission and willingness to come forward regarding human rights abuses, it is also indicative of an overall growth in the occurrence of violations. According to data obtained from the APSHRC, the number of complaints of human rights violations filed annually increases on average by approximately 3,000 cases per year. While the steady increase can be attributed to a multitude of factors, but if we take the total number of cases filed as an indicator, AP figures among the states with the highest numbers of violations.



(Figure-1: Graph representing the complaints filed with APSHRC for 2006-2010)

POLICE ATROCITIES AND ABUSES BY SECURITY FORCES

Police abuses in AP have long been a problem. In their 2011 annual report, *Amnesty International* took note of a case where two fishermen were killed when police fired at an ongoing protest.[1] In this incident, approximately three hundred and fifty people were injured as police officers attempted to disperse the protesters. In 2007, police officers opened fire at a political rally, killing seven people.[2]

The National Crime Records Bureau (NCRB) reported that a total of seventy-five civilians had been killed in police firings in 2006.[3] Yet, no charges were filed in any of these cases. According to the National Human Rights Commission (NHRC), in the year 2000, approximately three hundred army officers went on a rampage in Hyderabad, attacking local farmers and beating anyone who resisted.[4] These cases illustrate the extent of the high handedness of the police and security forces in AP.

The state is also known for custodial deaths being swept under the rug. The NCRB reported a total of twenty-eight custodial deaths in 2006.[5] While statistics for 2007 were not available, various human rights organisations working in AP reported that they had handled at least ten custodial death cases. In most of these cases, reports filed by the police or prison authorities typically state that the death was due to unpreventable illness, unexpected suicide, or attempted escape on the prisoner's part. Despite the legal requirement that an autopsy be performed in every such case and that all custodial deaths be investigated, it is rare that either of these is performed. Often the only information available about the cause of a death is that solitary report by the perpetrators. In other cases, witness reports vary from the reports filed by involved officials.

Extrajudicial and encounter killings, the so called 'self-defence' killings perpetrated by the police or

1. India - Amnesty International Report 2011
2. India Human Rights Report 2008, Asian Centre for Human Rights
3. Ibid
4. Annual Report 2000-2001, National Human Rights Commission
5. Ibid

security forces, have been abused by the Andhra police and security forces over the years despite the legislation establishing this as a defence having been intended to protect police in cases where an exchange of fire was necessary. Citizens have long questioned the practical applications of this legislation. Several blatant cases of staged encounters illustrate how encounter killings are often abused by the police of AP. The *Human Rights Forum* has publicly denounced numerous cases of encounter killings, claiming that far too often these deaths were not a result of self-defence, but were premeditated. They point to the fact that in many of these cases, evaluation of the incident never complied with legal requirements for investigation. The *Asian Centre for Human Rights* reported in 2008 that approximately thirty-six cases of encounter killings had taken place throughout AP, from January to September, 2007, alone.[6]

MAOIST CONFLICT

Bordered by Maharashtra, Chhattisgarh and Orissa, Andhra Pradesh is currently at the heart of Maoist activity and consequent state repression. The Andhra Pradesh-Orissa and Andhra Pradesh-Chhattisgarh borders are principle theatres of ongoing conflict. In February 2011, international agencies such as *Amnesty International* have called for the AP Government to do more to ensure that the current violence between the police and the Maoists is stopped.[7]

Maoists have been active in AP from the early 1970s, and the repression of Maoist activities by the state is an ongoing reality in AP. Both national and international reports have reflected the current status of what has been a never-ending problem. In 2004, there was a peace initiative, but to no avail. In 2008, it was reported that approximately 10,000 *adivasi* victims fled into AP in response to Maoist violence.[8] Within the same year, attacks against Maoists by security forces resulted in multiple deaths.[9]

In 2009, the NHRC in India investigated and reviewed the ongoing violence spurred by Maoist activity. It found that both the opposition group and the Andhra Pradesh, Orissa and Chhattisgarh state police forces were responsible for grave human rights violations. [10] In 2011, it was reported that approximately 20,000 *adivasis* were displaced and dispersed from Chhattisgarh into AP and Orissa, due to Maoist violence.[11] Between three hundred and five hundred deaths, relating to Maoist conflict, were reported in AP for the year 2005 alone. In 2007, the AP Government offered cash rewards, ranging from twenty thousand rupees to twelve lakh rupees, for killing Maoists.[12] Over the years, this violent cycle has led to both the government and the Maoists brutalising those in their path. Villages have been caught in the crossfire, and continue to be so. While international and domestic actors have called for an end to the violence, no end is in sight.

RELIGIOUS CONFLICT AND DISCRIMINATION

The majority of AP's population, approximately 88 percent, practices Hinduism, with the second larg-

6. India Human Rights Report 2008, Asian Centre for Human Rights
7. India: Maoist kidnappings come against backdrop of rising Violence, Amnesty International Public Statement, February 22, 2011
8. India - Amnesty International Report 2008
9. Ibid
10. India - Amnesty International Report 2009
11. India - Amnesty International Report 2011
12. India Human Rights Report 2008, Asian Centre for Human Rights

est religious group, approximately 10 percent,[13] practicing Islam. A significant amount of the state's Muslim population is concentrated in the state capital, Hyderabad, and the remaining population practices Christianity, Jainism, or tribal religions. Religious discrimination in AP has manifested itself in numerous forms. Following the faith-charged terrorist attacks in Hyderabad, there have been numerous cases of the police targeting Muslim youths in menacing, often violent, unjustified and unmeritorious ways. There have been numerous reports of the police beating people identified as Muslim, in ill-conceived attempts at prevention of future terrorist attacks.[14]

In 2008, numerous Muslims were detained for periods ranging from five to ten days, without charge.[15] Many of those detained reported that they had been tortured while in custody. Although compensation was ordered to those who were in illegal detention, no criminal proceedings were ever initiated against the officers responsible. The claim, in many of these cases, is that it is the police's duty to protect citizens against possible further attacks. These methods of protection leave much to be desired, in terms of their adherence to human rights.

A third, perhaps more complex way in which religious discrimination has reared its head in AP has come from within a single religious group. Although the prejudice itself may be focussed more on the caste status of individuals rather than their religious identity, it has been reported that in many cases prejudice against the Hindu-Dalits has resulted in, among other acts, the prevention and violent denial of dalit individuals being admitted to places of worship.[16]

WOMEN'S RIGHTS

Women's rights address a multitude of issues, such as sex ratio, literacy and education levels, violence against women, sexual violence, and a variety of other concerns. In AP, current statistics reveal an alarming disparity between the genders, with women trailing far behind men. Although trends show that the gender disparity is diminishing, current numbers draw a picture of preference of male children, the shockingly low level of female literacy rates, and high incidents of violence.

Sex ratios (the ratio of female to male population) illustrate changes in the population's gender discrepancy. This can be reflective of a variety of issues, but in particular, can point to the overall status of females within a particular community. According to the Directorate of Census Operations in AP, the overall sex ratio has been steadily improving, with the 2011 adult sex ratio climbing to 992 females per 1000 males.[17] The child sex ratio, while improving, still falls below a healthy average. The average sex ratio, 952 girls per 1000 boys, provides for a natural unbalance; slightly more boys than girls.[18] In AP, the child sex ratio has consistently fallen below average. The 2001 Census revealed a startlingly low child sex ratio, with just 896 girls per 1000 boys. The 2011 Census shows vast improvement, with 943 girls per 1000 boys. This is still below the average sex ratio of 952 per 1000.

When viewing the sex ratio by district, many of the less populous, less developed districts reveal high numbers. Nizamabad, the second to least populous district in the state, which has also been named

13. http://www.cs.colostate.edu/~malaiya/india.html#States:%20Religions
14. Interview with Shakeel Mohammad, HRLN Hyderabad, April, 2011.
15. India - Amnesty International Report 2009
16. http://www.achrweb.org/reports/india/AR05/andhra.htm
17. Andhra Pradesh Population Census data 2011, http://www.census2011.co.in/census/state/andhra+pradesh.html
18. India's Skewed Sex Ratio: Seven Brothers, The Economist, April 7, 2011

one of India's most backward districts, has the highest sex ratio in AP, with 1038 females per 1000 males.[19] AP's least populous district, Vizianagaram, has a similarly high sex ratio of 1016.[20] Conversely, AP's capital, Hyderabad, has a shockingly low sex ratio of 943; the lowest in the state.[21] These trends are consistent with the patterns of seasonal migration for work from rural areas to the urban areas, primarily by the male folk, due to the absence of opportunities in the hinterland.

A low child sex ratio indicates an overall preference for male children over female children. It can reflect trends of sex-selection through termination of pregnancy, and in more extreme cases, infanticide. Studies show that an overall low sex ratio can encourage inequality between the sexes, including the abuse of girls and women, increased violence against women, and increased trafficking.[22]

Another indicator of the overall status of women within a particular community is the percentage of literate women. Used as an indicator of female education, overall gender equality, and socio-economic development, the female literacy rate correlates with gender-based inequality, social discrimination, economic exploitation, child labour, a low level of enrollment of girls in school, a low retention rate, and a high dropout rate.[23] A low female literacy rate also means a low number of women who are educated, financially secure, or self-sufficient. Without education and self-sufficiency, women become socially and financially dependent on their fathers, brothers or husbands.

In AP, literacy rates for the last thirty years show a steady increase. While such progress is encouraging, the huge disparity in literacy between genders[24] and the consistent failure of AP to approach the national average illustrates an inability to promote and deliver on female education and address low literacy. While the literacy rate of men in the state falls below the average for India, the male literacy rate is still 15.82 percent higher than the female rate in the state. In comparison to other states, such as Kerala, which boasts the highest female literacy rate at 91.98 percent, AP's current rate, 59.74 percent, is shockingly low.[25]

In 2011, the NCRB ranked the states of India in terms of highest to lowest in various crime rates. When ranking states in terms of violent crimes against women, AP came up first, its total crimes against women accounting for 12.8 percent of the entire country.[26] This was the second year in a row that AP led the country in female-targeted violence. Within the state, crimes against women comprised 32.4 percent of all offences, violent and non-violent.

Among the total crimes against women, domestic violence accounts for the greatest portion at 44.34 percent.[27] Activists in AP have long fought to bring attention to the ongoing problem of police refusal to address domestic violence cases, citing that too often officers fail to respond or are reluctant to register a case, viewing the incident as a family matter. Women are often unable or unwilling to ap-

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19. Andhra Pradesh Population Census data 2011, http://www.census2011.co.in/census/state/andhra+pradesh.html
20. Ibid
21. Ibid
22. Ibid
23. NLM and Women's Empowerment (2001), National Literacy Mission (NLM) - India, http://www.nlm.nic.in/women.htm
24. See figure of 'Literacy Rates: Andhra Pradesh and India'
25. Andhra Pradesh Population Census data 2011, http://www.census2011.co.in/census/state/andhra+pradesh.html
26. Crimes against women: State at top place for second year in a row, The Hindu, Hyderabad, October 29, 2011, http://timesofap.com/politics/crimes-against-women-state-at-top-place-for-second-year-in-row/
27. Ibid

proach authorities about incidents, due to fear of their perpetrator or pressure from their family. In a state with strong prejudices against reporting such incidents, these high numbers show how rampant domestic violence actually is within AP.

After domestic violence, sexual harassment and molestation account for approximately 36 percent of all crimes against women, with kidnapping, rape, dowry deaths and trafficking just trailing behind. Such high numbers illustrate a state with deep roots in violence against women.

A final indicator of women's status within the state is the Maternity Mortality Rate (MMR). MMR can be indicative of a variety of factors such as effective and accessible health care, economic status, education level, and overall development. The high MMR in AP, 195 deaths per 100,000 live births, has been attributed to four main causes: (1) a disproportionately high focus on population stabilisation and reduced emphasis on maternal health in peripheral hospitals, (2) lack of emphasis on the growth of Primary Health Centres (PHCs) and thereby overall weakening of the peripheral health system, (3) low emphasis on training midwives with prime focus on maternal health, and (4) the low status of women within the state, which hampers timely referral and access to services.[28] Each of these facts illustrates the lack of focus on maternal health, and is indicative of a failure of the state to provide basic healthcare and education to its female population.

CHILD RIGHTS

Child rights encompass a variety of issues: child health, infant mortality, public education, child labour, child trafficking, and crimes against the child. Andhra Pradesh has a high Infant Mortality Rate (IMR), at 52 per 1,000 live births.[29] IMR can be used as a socio-economic indicator, as well as a public health indicator. More developed areas can have an IMR of around 8/1,000. Approximately 70 percent of infant deaths in AP are neonatal.[30] While women in urban AP have high access to health care services during pregnancy, it was found that in rural areas, women are not provided neonatal services, often giving birth without a trained professional at hand, and so have a significantly higher MMR and IMR.[31]

Postnatal health care, for both mother and child, is virtually non-existent. In recent years, there has been a decline in the number of children receiving immunisations; current numbers show these are available to only 46 percent of the child population.[32] There has been a resurgence in polio cases, and the available healthcare facilities are of such poor quality that they go unused.[33]

The state suffers from a variety of factors that contribute to an overall lack of public education. While facilities are available in urban areas, many rural areas lack sufficient schools, supplies, or available teachers. In a study conducted by a local NGO, it was found that in the Kowdipally *Mandal* of Medak District, approximately 600 out of 12,600 children did not attend school.[34]

28. Maternal Mortality-reduction Programme in Andhra Pradesh (2009), M Prakasamma, Journal of Health, Population and Nutrition
29. Brief note on Child Health - Ministry of Health and Family Welfare, mohfw.nic.in/NRHM/Documents/Brief_Note_on_CH_Nov_2011.pdf
30. Andhra Pradesh - Reproductive & Child Health, http://www.unicef.org/india/state_profiles_5734.htm
31. Urban-rural differentials in maternal and child health in Andhra Pradesh, India (2003), D. Nagdeve and D. Bharati, Journal of Rural and Remote Health
32. Andhra Pradesh - Reproductive & Child Health, http://www.unicef.org/india/state_profiles_5734.htm
33. Ibid
34. Child rights and child education in Andhra Pradesh (2010), Caesar Andres, Report for CARPED (Centre for Action Research and People's Development)

While local groups have initiated programs to encourage school attendance and retention, this issue is invariably linked with the high rates of child labour in the state.

Andhra Pradesh has the second highest concentration of child labour in India, according to studies.[35] The state contains 1.36 million child labourers and that labour accounts for 62 percent of all cotton seed farming in the country. While various child labour cases have been registered with the APSHRC, very few have been addressed by the commission. Unfortunately, the APSHRC does not maintain data regarding the types of cases it handles on a regular basis, so little information is available. However, a survey of approximately 100 APSHRC orders conducted by HRLN, spanning 2005 to 2011, contained not one child labour complaint.[36]

According to the NCRB, AP currently ranks among the top four states with the highest incidents of child rape.[37] With 446 reported cases in 2010, AP has the fourth most reported sexual assaults cases in India, involving a child. Statistically, the number of occurrences where the rape of a child is actually reported is shockingly low. And, where police resistance towards a response is entwined with the process of reporting such occurrences, the likelihood that these incidents are acted upon, continues to fall.

RIGHTS OF DALIT AND TRIBAL COMMUNITIES

Still considered the 'Untouchables', the dalit community continues to face daily discrimination. Often denied access to health, educational, or legal services, as well as being subjected to degrading, sometimes violent attacks, the dalit community in AP has long experienced extreme prejudice. In its 2010 report, the NCRB ranked the state third highest in crimes against Schedule Tribe and Scheduled Caste, with shockingly little legal response.[38] The NCRB data also revealed that in the year 2010, of 5,128 cases, only 297 convictions were obtained.[39] Local NGOs and activist groups reported that during the election period in 2010, the dalit community faced intimidation and violence, in an effort to influence their vote.[40]

For women belonging to the dalit, tribal, Scheduled Caste and Scheduled Tribe communities, their status often manifests itself in making them targets for sexual abuse. In 2008, it was reported that police had raped and sexually assaulted eleven *adivasi* women in Vishakhapatnam District alone.[41] No criminal charges were filed. The NCRB 2010 Report (*Crime in India*) revealed that among the cases booked under the SC/ST (Prevention of Atrocities) Act, rape of dalit women outnumbered murder of dalits, male or female, by a staggering 232.56 percent.[42]

35. International Day Against Child Labour 2009 – Child Rights, UNICEF India, http://www.unicef.org/india/child_protection_5202.htm
36. Survey of APHRC Orders and Recommendations by HRLN (2011)
37.Crimes Against Children on the Rise, The Times of India, November 3, 2011, http://articles.timesofindia.indiatimes.com/2011-11-03/jaipur/30354250_1_total-cases-rural-areas-police-officer
State Ranks Third in Crime Against STs, SCs., The Hindu, Hyderabad, October 31, 2011, http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/article2583658.ece
38. State Ranks Third in Crime Against STs, SCs., The Hindu, Hyderabad, October 31, 2011, http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/article2583658.ece
39. Ibid
40. India - Amnesty International Report 2010
41. India - Amnesty International Report 2008
42. Percentage calculated based on NCRB data for 2010

THE ANDHRA PRADESH STATE HUMAN RIGHTS COMMISSION: A PORTRAIT

THE CONSTITUTION OF APSHRC

The Protection of Human Rights Act (PHRA), 1993, ordained the establishment of a State Human Rights Commission (SHRC) in every state of India. It also provided a detailed blueprint for the composition of such a commission, specified the qualifications for appointment to the commission, guidelines on how the appointment is to be handled, and methods of case-by-case functioning, in order to ensure the transparency of the commissions' work.[43] The SHRC is intended to be a low-cost, accessible legal option for every citizen, irrespective of financial or social status, to pursue remedies for human rights violations. The SHRCs were established as a state-wide authority on human rights, with the capacity to receive individuals' complaints and petitions, initiate independent investigations, administer guidelines on the protection of peoples' rights, and order compensation and suggest ways of redressing individual grievances.

The APSHRC was established on August 12, 2005 (APSHRC, 2006), twelve years after the Act came into existence. The office of the commission is located in Hyderabad, the capital of the state. Prior to the formation of the APSHRC, human rights issues in Andhra Pradesh used to be handled under the authority of the Human Rights Committee (HR Committee). Notwithstanding the initial optimism, the institution decayed even before it found its feet due to insufficiency of funds, the *ad hoc* manner in which it was set up, and the overwhelming task at hand.

THE RIGHT TO INFORMATION– RESPONSE FROM THE APSHRC

Information about the APSHRC is difficult to come by. Hence an application for information regarding the APSHRC was submitted under the RTI on January 11, 2011. The information requested was related to the way the commission maintains their records, ways in which it makes information regarding its activities publicly available, whether it publishes details regarding policy changes, the influential decisions it has taken, and details regarding the *suo moto* investigations it may have initiated.

A second RTI application was submitted on March 23, 2011. It was an extensive questionnaire addressing a variety of issues related to the functioning of the APSHRC. It asked for details of *suo moto* investigations, visits to state-run facilities to ensure compliance and protection of rights, research conducted by the commission into human rights concerns, action taken to ensure the implementation of legal safeguards for human rights, implementation of international treaties under Indian law, promotion of public awareness and support of local organisations working towards human rights, the commission's policies and guidelines for its day-to-day functioning, the commission's policies in conducting investigations, and its resources in investigating complaints and issuing recommendations, among other concerns.

43. Protection of Human Rights Act, 1993

In response to the first application, a letter from the Public Information Officer-cum-Public Relations Officer was received. It stated, "The commission has not sent any annual report to the government, as per the records maintained by the Commission".[44] No other response was included, either in the letter or any other follow-up correspondence. In response to the second application the APSHRC sent a letter, with individualised responses to each question. The responses, for the most part, were one-worded, unsatisfactory, and often tangential. For example, when asked what criteria the commission used in appointing the chairperson and other members, the APSHRC responded that they followed the guidelines under the Act, without providing any additional details. When asked how many persons had been detained for the purpose of treatment, reformation or protection in the process of studying the living conditions of inmates, the commission reported that:

> "Some of the minor children, who were neglected by the [sic] parents and who approached the commission for help were sent to the [The Orphan] 'Rescue Home' (previously know as The Village Children Home), some of the children were admitted in the [sic] residential schools. The commission has not made any recommendations to the government in this regard."[45]

Other answers provided by the commission failed to effectively address the question at hand. In 10 out of 30 questions, 'Yes' or 'No' answers were given. For example, Question No. 5 asked, "In how many cases [did] the Commission intervene in any proceeding involving any allegation of violation of human rights, pending before the court with the approval of the court"?[46] The answer received was, 'Nil'. Question No. 9 asked, "Has the commission under its function and power, reviewed the factors . . . that inh[i]bit the enjoyment of human rights and recommended remedial measures"?[47] The APSHRC replied, 'No'. Question No. 13 asked, "Has the commission encouraged the efforts of non-governmental organisations and institutions working in the field of human rights"?[48] The response was, 'Yes'.

In each of the above questions, the commission failed to respond clearly, and did not provide any additional details. This reticence on the part of an institution that is supposed to serve the public good, in close communication and coordination with civil society, is bad enough; however, the data obtained from the RTI response is even more disturbing. The commission also stated that it has never submitted any writ petition or intervening petition in order to obtain emergency interim relief for a victim or complainant, and has never sent a representative to or hosted a joint session with any other state commission. The commission also did not make publicly available its own policies regarding its day-to-day functioning and budgetary expenses. It further stated in its reply to the RTI query that in complaints deemed to require investigation, the action taken by the commission is limited to calling for a report from the concerned authority. Where no report is submitted, the commission sends a second request, followed by a direction for the concerned officer to appear before them. At no time has the commission initiated an investigation of its own accord, or through its own employees or resources. It has relied solely on other government entities or officers.

The commission rarely addresses a pressing human rights concern on its own. For instance, one of the long standing human rights concerns in the State of AP has been its failure to address the issue of its overcrowded and inadequately equipped prison system. When asked about the APSHRC's actions con-

44. APSHRC response (in the year 2011) to the RTI filed by HRLN
45. Ibid
46. As under Section 12 (b) of PHRA, 1993
47. As under Section 12 (e) of PHRA, 1993
48. As under Section 12 (i) of PHRA, 1993

cerning this, the commission responded that it had visited two prisons, Cherlapally and Rajahmundry Central Jails. It stated that no reports of the visits were submitted. When asked what action the commission has taken to improve the overall conditions of AP's prisons, the commission's response was, 'Nil'.[49]

Out of 12 questions specifically requesting quantifiable data – e.g. numbers of cases or initiated investigations – the commission provided only two appropriate answers. The first, the above mentioned prison system visits. The second, the number of cases into which the commission has enquired since its inception; 30,087 out of 52,418 cases. When copies of annual reports were requested, the commission responded that it had not published annual reports, and instead provided a copy of its 'First Foundation Day Report' and 'Welcoming Address', as an alternative response.

COMPLAINTS-HANDLING MECHANISM OF THE APSHRC

During a visit to the APSHRC, a chart of the annual numbers of cases dealt with by the commission was provided. Since the commission's foundation in 2006, the number of complaints it receives has increased by approximately 3,000 per year. While in earlier years the Commission consistently disposed of the majority of complaints, in more recent years the number of complaints that the APSHRC has left pending outweigh the number of complaints the commission has disposed of. The numbers show that over half of all complaints received are still pending. From 2006 to 2011, the commission disposed of a total of 14,646 complaints, leaving 16,537 pending. While the numbers of complaints registered and complaints pending follow a similar rising trend, the number of complaints disposed of remains relatively stable, perhaps owing to the fact that the manpower of the commission has remained stagnant. Clearly, the commission is not able to keep up with the increasing number of complaints.

INDEPENDENCE FROM THE STATE

The lack of independence of the APSHRC is one of the most worrying issues for the victims of human rights violations, activists and scholars of human rights in AP. The Paris Principles clearly lay down that independence from government is vital to the success of any human rights institution.[50] The Act noted, in theory, the various ways in which independence must be protected within the commission.[51] There are numerous Supreme Court opinions and decisions citing the level of importance that independence plays in every commission's work. Despite this, the APSHRC has been denied its independence from AP Government.

Several facts illustrate the problematic aspects of the APSHRC's functioning. The APSHRC is totally dependent on the state government for the funding of its establishment and operations. Its budget is approved by the government every financial year. This provides the government a significant amount of undue indirect leverage over the commission, to influence its actions and decisions. While never explicitly accepted by the commission, numerous activists in the area have argued that the APSHRC's particularly weak approach to prisoner's rights and curtailing police violence have been, in part, a product of the state's desire to gloss over such issues. Addressing them would require an almost revolutionary change in the state's previous policies, and would incur immense cost, and demand unprecedented accountability on part of the government.

49. APSHRC response (in the year 2011) to the RTI filed by HRLN
50. Paris Principles, as adopted by United Nations in 1993
51. PHRA, 1993

Secondly, although authorised under the Act, to independently investigate claims and complaints submitted to it, as well as any ongoing issues it takes notice of, the commission has consistently failed to initiate any investigations on its own. It usually requests reports from various government authorities. This has been disclosed by the commission itself in its response to the previously discussed RTI applications, and confirmed subsequently by the commission's chairperson, in an interview with HRLN.[52]Usually, an investigation by the commission consists of requesting reports from the concerned authorities, along with issuing a directive to the concerned officers to appear before them in cases where the commission has deemed the report unsatisfactory. The commission does not have any independent resources to conduct investigations on its own, and depends on either hearsay or the use of the police for its investigation purposes.

Third, while the commission has not made its appointment processes, other than the guidelines of the Act, publicly available, many have criticised the commission for relying heavily on retired judges, other members of the state government, or past members of other commissions. This compromises the autonomy of the commission, as persons who have been previously employed by the state government in a high-end capacity are more likely to hold influential political ties. Many have argued that these political ties can be seen in many of the commission's more contentious actions and decisions.

In conclusion, one may say that the APSHRC has several potential roles. It is meant to provide justice for the citizenry in AP, in the face of human rights violations. It is supposed to compile the data on the human rights situation in the state for academics, and be of assistance and guidance to the activists, as well as acting as an adviser to the politicians in the matters of policy with human rights implications. Instead, today it has become a source of overly-publicised and scandalous cases. Often, victims who need its intervention are ignored. Political interests take the front seat in the functioning of the commission. The commission has become a parking lot for retired judges and career politicians.

52. Interview with APSHRC Chairperson (HRLN, 2011)

CHAPTER-II

Testimonies

Police Inaction

Hyderabad District

PAPALAL AND JAYSHREE RAVI

After the Gokul Chat Bandar bombing, my wife, Jayshree, and I, found a Muslim girl, Sonia, who had been orphaned by the attack. When I initially attempted to hand her over to the police, they asked me to take care of the girl for the time being. This was four years ago. Shortly after taking this girl, some of the local community members, led by the Yadav Bhavan and Choudhary families, began to harass me and my family. They claimed this because the girl was Muslim she did not belong in the Hindu community. On several occasions, specifically 15 & 16 August, 2008, these protestors attacked me and harassed my family; threatening to kill them, to drag Jayshree into the street, strip her and leave her naked in public, and to kidnap our daughter.

In addition to the harassment by our own community members, I began to be troubled by people from the local Muslim community, who questioned me and my wife's intentions with Sonia. They claimed that because we were of the Hindu faith, we would not be able to properly raise a Muslim girl. These statements quickly grew to vicious and dangerous allegations. On more than one instance, several members of the community approached the police and registered uncorroborated statements that my wife and I were both molesting and raping Sonia. The community demanded that the girl be returned over to them.

The harassment rose to such a point that I was unable to carry on my daily life. I was verbally, sometimes physically, attacked every time I left my house. Multiple false claims were made against me and my wife, while neither community was supportive of my decision to take in Sonia.

In an attempt to address these overwhelming problems, I approached the police and the APSHRC. Initially, some of the offenders were arrested and jailed. On April 24, 2009, the APSHRC convened on the matter, and shortly after the hearing, my wife and I were again attacked, this time by Shiv Lal and Raja Johari, local members of the Hindu community.

On October 9, 2009 the APSHRC, upon hearing my case, ordered that the Sub-Inspector of Police be directed to protect me, my family and our adopted girl Sonia. On December 9, 2009, the case was revisited by the APSHRC, in which I stated that the police had regularly kept a protective watch over my home, and that because of this we had not been attacked. However, several people who live locally had been creating further nuisance for me and my family when the police were not around. The

APSHRC ordered that the Deputy Commissioner of Police, West Zone, Hyderabad, should instruct the Station House Officer, Shahinayat Gunj, to intensify protection measures. The same was ordered on February 2, 2010. On February 3, 2010, I reported to the APSHRC that my family continued to be harassed, despite police efforts. The APSHRC ordered that the Assistant Commissioner of Police, Goshamahal Division, should further look into the matter. On April 26, 2010 and August 2, 2010, the APSHRC ordered that the protection of me and my family be continued.

In October 2010, I filed another complaint with the police, alleging that Neeraj Kuril, Attu Sachin and Vinod, had asked me to use my positive rapport with the Muslim community to assist them in the construction of a house that would encroach approximately 17 feet of a Muslim graveyard. I was offered Rs. 50,000 for this. When I refused, stating that I was both unable and unwilling to do so, these men threatened me again.

Currently, I am under the protection of the police. However, the police are continuously failing to respond properly, and intensified efforts have continued to be unsuccessful in resolving the ongoing harassment. The APSHRC appointed an advocate commission, consisting of three advocates, who on April 18, 2011, filed a report. The advocate commission decision stated that I must now legally adopt the Muslim girl, Sonia, or hand her over to the state children's home. The advocate commission failed to address the ongoing failure of the APSHRC's orders, to protect my family. Jayshree and I are currently in the process of legally adopting Sonia, but I worry for my family's safety and my own.

Police Inaction

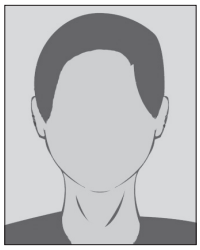
Hyderabad District

SABERA BEGUM

I was married to a police constable, Mohammad Rafi. He was given a dowry in the form of gifts and cash at the time of my marriage. After the wedding, we moved to Hyderabad. Since then, Mohammad Rafi and his brother's family started harassing me for more dowry. To stop their harassment, I obtained additional money from my parent's family. But they were not satisfied. They were often violent with me. My in-laws beat me and threatened to kill me if I was not able to bring in additional dowry. Meanwhile, I became pregnant with Mohammad's child.

Fearing for my security, my parents came to Hyderabad and took me back to my village. I have been living with them ever since. My husband, Mohammad Rafi, never came for me and has continuously failed to provide for me and my daughter. The local police and other officials have refused to help me when I have approached them. I feel that there is a threat to me, my daughter, my brother and my parents.

It was requested that the APSHRC intervene in this matter and that they ensure that shelter and maintenance be provided to me as per the law. No action has been taken as of yet by the commission.



Dowry Death and Police Inaction

Secunderabad District

MADHAVI RAJENDER

Madhavi Rajender married Mr. G. Sridhar on May 9, 2007. As dowry, Madhavi's family gave seventy-five thousand rupees, one Hero Honda vehicle and two *thulas* of gold. G. Sridhar was an alcoholic and a gambler, who would spend his salary on his vices. As a result, he was constantly demanding additional dowry from Madhavi and her family. After continuous verbal and physical abuse by her husband, Madhavi eventually left her marital home, and went to stay with her parents.

On April 15, 2008, around 8:00am, neighbours noticed smoke coming from Madhavi and G. Sridhar's bedroom. The in-laws and neighbours attempted to enter the room, eventually breaking down the door. By the time they could get in, Madhavi had been burned to death.

The incident was reported to the police, who refused to take action on the matter. On April 19, 2008, a complaint was filed with the APSHRC.

After the complaint was filed, Madhavi's husband was arrested. Since then, no further action has been taken. Neither the police nor the APSHRC have investigated the incident, and the APSHRC has yet to set a hearing date. After his arrest, G. Sridhar was never tried in court.

Rape and Police Inaction

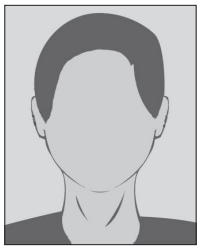
Sangaypalli Village, Medak District

SUGUNA

In the evening of December 31, 2007, Suguna Goud, then seven months pregnant, was travelling with her husband, Pocha Goud, to Ramayampet, to treat an ankle injury. After several travel mishaps, they ended up waiting for a bus outside of their village, at the Shankapur Bus Station. As the couple waited for the bus, a group of approximately fifteen men came in auto-rickshaws around 3:30am. The group attacked the couple, physically striking Pocha and robbing them. The men tied Pocha with rope and dragged Suguna into the bushes behind the stop. Suguna was repeatedly beaten and violently raped until she lost consciousness.

Regaining consciousness on the next morning, Suguna went to Ramayampet Hospital but the doctors refused to admit her. Suguna and her husband approached the police, and after the Ramayampet Circle Inspector intervened, the hospital staff finally examined Suguna.

On January 3, 2008, Suguna and Pocha Goud filed a complaint with the AP-SHRC. The commission held a hearing at which they awarded the couple one lakh rupees compensation from the Medak District Collector. However, the order did not address any criminal investigation to be initiated or charges to be filed. No criminal action has been taken against the accused.



Rape and Police Inaction

Jagadamba Nagar, Hyderabad

MUKKALA RADHA KUMARI

The victim, Mukkala Radha Kumari, a mentally challenged young girl, was left at home alone on February 14, 2008. In her mother's absence, she was lured to the home of a neighbour, Ponnala Babu. After giving her an alcoholic drink and Rs. 50, Ponnala Babu raped her. When her mother returned home, Mukkala told her what had happened. Angry, her mother approached the accused. In order to keep her quiet, Ponnala Babu beat Mukkala's mother and told her that he would take responsibility of her daughter's health. Babu later beat Mukkala for reporting the incident to her mother. Since this incident, Mukkala's health has deteriorated significantly. Thus far, her mother has been forced to spend approximately Rs. 10,000 on her medical expenses.

The incident was reported to the police, but no formal investigation was ever conducted. A fact-finding team, sent from a local civil society organisation, confirmed the case details with the in-charge of the local police station. A complaint was filed with the APSHRC, but to date no action has been taken.

Police Inaction

Vinjamur Mandal, Nellore District

N. ARUNNAMMA

My husband died due to a debt owed to Kondal Rao, a member of the same village. Most of the debt was cleared, and only a small amount was left. For the outstanding amount, Kondal Rao and some others came and took away our paddy by force. Immediately, I complained to the police, but the police did not take any action. Kondal Rao also publicly humiliated my husband, an action from which my husband later died. I made a complaint to the police, but the police did not take any action. I complained to the SP as well. I have three female children and elderly parents. Further, I do not have any source of livelihood. I did not get any compensation from the government. I would like justice to be done.

The report by the police states that the officers enquired into the matter and found that my husband, Mr. Malleswara Rao, borrowed some money from Mr. Kondal Rao, R/o Kalluru village. When he didn't repay the loan, Mr. Kondal Rao and others forcibly entered my house and took away forty bags of paddy. Due to this insult and the harassment by Mr. Kondal Rao, my husband committed suicide. The report goes on to say that the matter was supposedly settled by the *sarpanch* and local villagers. The report also says that since I didn't file any complaint with the police. No case was registered. A complaint was made to the APSHRC, but no action has been taken by the commission.

Rape and Police Inaction

Banjara Hills, Hyderabad

Advocate Chalapathi deposing on behalf of the victim

RAPE AT BANJARA HILLS

A daily labourer (anonymous) was abducted by two men from the Golconda area. Forcing her into an auto rickshaw, they brought her to a construction site in nearby Sayeed Nagar area. Two more men followed in another auto rickshaw.

Dragging her into the construction site, the two men who had taken her there pulled her into an abandoned room. They threatened her and told her if she made any sound, they would kill her. After threatening and beating her, the two men raped her. Later, the two who had followed in another auto rickshaw arrived, thrust a cloth into her mouth and repeatedly raped her again. After the rape, all the men fled the site together.

Immediately after the rape, the survivor reported the incident to the police. Three of the accused were arrested by the Banjara Hills Police. After the arrest, no further action was taken. Later, a complaint was filed with the APSHRC. No action has been taken by the commission.

Custodial Rape and Torture

Kodumuru, Kurnool District

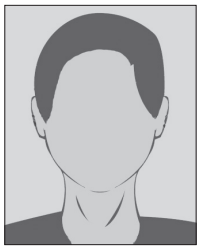
SHAKUM BEE

Shakum Bee, an OBC women and a resident of Bettapalli Village, was picked up by the police of Kodumuru, on alleged charges of theft. She was kept in the police station for four days in order to 'further' the investigation. During this time, the police interviewed and examined her, in order to investigate the charges. When Shakum refused to confess to the crime, SI M.A Roohana Rao beat her in an attempt to obtain a confession. Constable Nagaraju, attempted to coerce her into confessing with various promises and threats.

During these 'interviews', Shakum denied being involved in any incident. In response, the above named men continued to violently attack her. During the day, the SI repeatedly beat her during interrogation. During the night, the constable brought her back to her jail cell, where he beat and raped her. During the last several nights of custody, the constable repeatedly raped her.

When her relatives met her in the police station, she told them that she had been kept in custody for four continuous days. She also told them that Constable Nagaraju had been raping her at night, throughout her time in the jail cell, and that during interrogation she had been beaten by the sub-inspector.

With the help of her family, Shakum Bee filed a complaint with the APSHRC. No action has been taken.



Human Trafficking

Kadapa District

K. RAMACHANDRA REDDY

On December 22, 2005, K. Ramachandra Reddy filed a complaint with the APSHRC, regarding the large scale trafficking of women and girl children in the Kadapa District. The complaint was made alongside several supporting documents, including media and newspaper reports, as well as a fact-finding report. The APSHRC requested that the collector of the Kadapa District submit a report in response to these allegations.

Nearly two years later, Mr. M. T. Krishna Babu, Collector, Kadapa, filed his report with the APSHRC on February 22, 2008. The report claimed that there has been absolutely no human trafficking, child labour or cases of child marriages in the district. The report specifically stated that no agencies or persons were utilising child labour or illegal transportation of persons, within the district.

On October 12, 2009, the complainant submitted evidence to the contrary, in response to this report, through a council. Copies of various reports of large numbers of women and children being trafficked through AP, and specifically in the Kadapa, Chittoor and Anantapur districts, as gathered by local and national newspapers and researchers, was also sent to the APSHRC. Among the evidence submitted was an article published on January 28, 2009, in *The Hindu*, where the same district collector was quoted expressing concern that trafficking was becoming rampant within the three above named districts. Several other articles were included, specifically one informing the public of a ring of individuals trafficking Indian women to the Middle East.

A response was submitted on October 12, 2009. Since then, no further action has been taken by the APSHRC. In the last two years, the commission has failed to review the extensive information provided to it by the complainants, and no hearing date has been set.

Child Labour and Police Inaction

Pamapalli Village, Kurnool District

MV Foundation's representative, Prakash deposing on behalf of Shyamala and Yashoda

SHYMALA AND YASHODA

On August 10, 2006, two young girls, Shyamala and Yashoda were found dead outside of a farm in Pamapalli Village, Uyyalavada. The two girls, along with their older brother and sister, and numerous other children, had been trafficked from their village to work on the farm of Subbarayudu, a local cotton seed farmer.

In a petition via letter dated October 10, 2006, M. Venkatarangaiya Foundation filed a complaint with the APSHRC alleging that child trafficking and child labour had become rampant in the area. The group claimed that approximately 500 children have been brought in Uyyalavada alone to work on cotton seed farms. It has been estimated that a total of 2,500 children per village, work on cotton seed farms in the area, despite reports from the mandal education officer that every child is currently enrolled in school.

According to the data of the M.V. Foundation, gathered through fact-finding teams, media reports and various other methods, the children in question are housed in the verandas of farmers and in other nearby areas, and are fed just enough to allow them to continue to work. They are exposed to pesticides and scorching heat throughout their work, and are subject to symptoms such as headaches, vomiting, giddiness and depression. Often, no child receives medical attention until the child's life is at risk. No protection is provided for these children, which often results in attacks such as in the case of the two above named girls.

The petition demanded the following action: (1) Appropriate criminal action regarding the rape and murder of Yashoda and Shyamala, (2) Release of all children engaged in bonded labour and prosecution of employers responsible, (3) Acre-by-acre survey of child labour occurring on farms in the Kurnool and Mahbubnagar districts by the government, (4) Setting up of vigilance committees at the village, district and state level, in order to monitor the status of child labour, and in order that the government be able to receive complaints, (5) Gram Panchayats be authorised to maintain a register of children who have migrated from the village, and children who have come into the village, in order to collect information at the *mandal* level, to ensure that children are in school.

On May 8, 2007, the SP, Kurnool District, submitted a report to the APSHRC, as requested, on the incidents in question. The report admitted to the occurrence of the rape and murder of the two girls, and established that five individuals had been identi-

fied and arrested for the same. The report further claimed that the Revenue Divisional Officer, Nandyal, was asked to take necessary action against Subbarayudu, the farm owner, for the use of child labour.

In response to this particular incident, the DC and SP provided an ex-gratia amount to the family and provided the older brother a job in a nearby cement factory. The children, who were found working, were returned to their respective villages. However, no further action was taken to either address the crimes that occurred against the two above named girls, or to address the systematic use of child labour in the production of cotton and cotton seeds throughout the area.

Child Trafficking in Andhra Pradesh

Y. RAJENDRA PRASAD

On February 13, 2007, Surender Singh Koli and Mahender Singh Pandher were found guilty of the rape and murder of multiple children. It is suspected that some of the children who had fallen victim to these men were trafficked from AP. I submitted a complaint to the APSHRC, regarding the prevention of child disappearances and child trafficking, citing this particular instance.

In response to my complaint, the DGP submitted a report to the commission stating the following: "AP is one of the few States that investigates cases of missing persons; there is a monthly review mechanism in place to address missing persons; and police staff are educated as to the prevention, protection and prosecution in the cases of disappeared and missing children". Two years from the date of original petition, on July 16, 2009, I was invited to submit a response.

In his response, I wrote that a number of measures must be taken to prevent the continuing disappearance and trafficking of children. I suggested that, while photographs of missing children are kept on the AP Police website, other standard information, such as the names, addresses, etc, should be made available on the same site, so as to assist in possible identification.

Sensitisation and basic legal training should be given to the station house officers, in order to illustrate the importance of preventing and addressing the matter of missing children and child trafficking. A toll free helpline for victims, as sanctioned in twenty-two districts, should be operationalised immediately, and a record should be kept of where the helplines have been launched and where they are functioning properly.

Failure to strictly implement the Child Labour (Prohibition and Regulation) Act, 1986, has resulted in many child disappearances, as children are forced to migrate for work. Implementation of this Act would lessen the number of child disappearances. The latest data of missing children should be made available by the DGP.

Despite the various petitions that I have submitted to the APSHRC, notifying the commission of this ongoing issue, and requesting that the commission take action, the APSHRC has failed to even launch an investigation. Since the submission of the my response, there has been no further development.

Child Rape and Police Inaction

Pannipura, Hyderabad District

Advocate Chalapathi deposing on behalf of Sameera Begum

SAMEERA BEGUM

Sameera Begum, daughter of Mohammad Azhar Ali, was sent to purchase some vegetables in the *sabzi* market, on the afternoon of March 10. She did not return home. Concerned, her father searched for her, but to no avail. He registered a missing child complaint at the Kulsumpura Police Station, hoping the police would find his daughter.

After a few days, Sameera was found. She had been abducted on the way to the market, sexually assaulted, murdered, and thrown in a burial ground. Because of the high social status of the suspected perpetrators, the police did not launch an investigation.

On March 19, 2003, Mr. Chalapathi filed a complaint on behalf of the victim's family in the APSHRC. The complainant requested that the APSHRC ensure - 1) legal action against the accused, 2) protection from the accused for the victim's family, and 3) compensation for the victim's family.

The Police Inspector of Kulsumpura submitted a report in response to the complaint. He confirmed the allegations made in the complaint to the APSHRC but claimed that the police had never refused to investigate. He went on to claim that the accused had indeed been arrested, taken into custody and produced in court.

Having reviewed the police inspector's report, and without conducting any further enquiry into the matter, the APSHRC dismissed the complaint. The family of Sameera received no compensation for the government's failure to properly handle their case.

Child Abuse and Police Torture

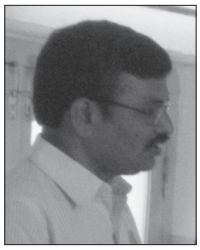
Hyderabad District

Mr. Prakash deposing on behalf of Venkat Sai

VENKAT SAI

The Sub-Inspector of Police of Kalapathar, Mr. Arvind Kumar, was filmed having a young child, Venkata Sai, clean his pants and shoes, while on the construction site of the Old Paro Biscuits premises. Shortly after the recording was aired on Channel TV 9, D. Prakash of the *Child Rights Protection Forum* wrote a letter describing the incident to the APSHRC. The letter was received and filed by the APSHRC, dated November 10, 2009.

Almost a year later, on August 28, 2010, the Assistant Commissioner of Police (ACP), Charminar District, submitted a report of the incident. It was claimed in it, that the incident was blown out of proportion by the media. It is stated that the young boy voluntarily began to clean the sub-inspector's pants, and he (the sub-inspector) had an injury that prevented him from cleaning his own pants. It is also claimed that the sub-inspector had actually attempted to stop the boy from helping him, but the boy had ignored his request. The report had testimonies, (translated from Telugu) of the father of the boy, the boy himself, another employee at the construction site, an auto rickshaw driver and car driver, who were said to be present at the incident. All of the witness statements were typed in English and signed by the police inspector. None of the witness statements were signed by the witnesses themselves. The APSHRC forwarded an 'Official Memorandum', enclosing the ACP's report and disposed of the case.



Police Torture

Golconda PS, Hyderabad

Dr. K. Murali deposing on behalf of Quadeerunnisa and Ghulam Ilyas Hyder

QUADEERUNNISA AND GHULAM ILYAS HYDER

The victims in question complain of having been harassed on and off by the local police for the last four years, since 2007. In 2007, Ghulam Ilyas Hyder, owner and operator of a local jewellery shop, Mustafa Hyder & Sons Jewellers, was arrested by the Golconda Police on charges of purchasing stolen gold. He was held in custody for three days. During this time, Quadeerunnisa, his wife, visited the Golconda Police Station, Hyderabad, to inquire about her husband. During her visit, two police inspectors by the names of Khaja and John Wesley, threatened her. They demanded that she hand over the gold jewellery she was wearing at the time, approximately 120 grams, in order to ensure her husband's safety. Shortly thereafter, the police inspectors visited her home and collected 80 grams of gold from her daughter. After taking their possessions, the police assured Quadeerunnisa that her husband would be released. Instead, Ghulam Ilyas Hyder was booked and sent to jail. He was subsequently charged with five additional crimes. After being held for forty days, he obtained bail and returned home. Shortly thereafter, he filed a quash petition in the high court, in order to halt the harassment of him and his family by police at various police stations. While the quash petition was pending, the police ceased their harassment.

Again on September 19, 2009, the Kamatipura Police came to Ghulam Ilyas Hyder's shop. They began to search his shop, demanding payment of two lakh rupees, and several gold items. Ghulam called his wife, who arrived immediately. He began to complain that he was not feeling well, and was having chest pains. Out of fear of the police and stress from the harassment, Ghulam fainted. While his wife took him to the hospital via auto-rickshaw, the police stole approximately twelve-thousand rupees from the counter and left.

Since then, the Kamatipura Police have continuously threatened Ghulam Ilyas and his wife, Quadeerunnisa. The couple reports that the police have threatened them by saying, "You are approaching the high court and the commissions against the police; if you do not withdraw the petitions, you and your wife will be booked in dozens of cases." Mr. Hyder has been unable to open his shop and has found it difficult to earn a livelihood.

On September 22, 2009, both victims submitted a petition to the APSHRC, via several letters, statements and a letter on their behalf, by the *Human Rights Forum*. The couple has prayed for relief in the form of protection from harassment and threats,

criminal charges being pursued against the offenders, and compensation for the costs of being forced to shut down the shop and the resulting medical care.

The commission requested that the police submit a report. On October 21, 2009, the ACP, Charminar Division, submitted a report categorically denying every claim of wrongdoing mentioned in the victims' complaint. His report further claimed that it was Quadeerunnisa who had been threatening the police with court action, in order to excuse her husband from his legal problems. No further action has been taken by the APSHRC.

Rape and Police Inaction

Asif Nagar, Hyderabad

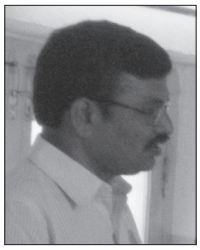
Andhra Pradesh Differently-Abled Peoples' Collective representative deposed on behalf of Gayatri

GAYATRI

Gayatri, a mentally challenged 24 year old woman, was working as a domestic worker in February 2008, in Asif Nagar. On the incident date, Gayatri was taken by the accused, G. Srinivas, to a local primary school. Threatening to hurt her and her brothers if she refused to follow, Srinivas brought her up to the 2nd floor of the building and raped her. After the rape, Gayatri was threatened, with her and her brothers' lives, if she informed anyone about the incident.

Despite these threats, Gayatri found the strength to come forward. With the help of the *Andhra Pradesh Differently-Abled Peoples' Collective*, a local civil society organisation, Gayatri reported the attack to the police and filed a complaint with the APSHRC.

Three years have passed since the incident, but the police have failed to take any action or initiate any investigation. Although a complaint was filed with the APSHRC and a receipt of complaint was received, the commission has taken no action.



Custodial Torture

Ranga Reddy District

Dr. K. Murali deposing on behalf of Sandhil, Muthyalu and Vijay Kumar

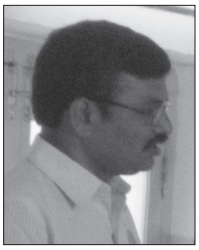
SANDHIL, MUTHYALU AND VIJAY KUMAR

The afternoon of April 13, 2008, the excise police of Malkajgiri caught hold of a young boy, Sandhil Kumar, aged about 11 years old. A resident of Koukur Village, Sandhil was walking to nearby Balaji Nagar. The police kept the boy in custody for three days. During this time, they tortured him, in order to obtain a false statement against Muthyalu, his mother and wife of Vijaya Kumar. The police claimed that Muthyalu was selling *gudumba*, an illegal intoxicant. The young boy could not bear the torture for long and gave a statement.

On Monday, April 14, 2008, in the early hours, four excise constables of Malkajgiri went to Muthyalu and Vijaya's home and woke them. They started beating them indiscriminately, verbally abusing them and accusing them of selling *gudumba*. Though Muthyalu refused to admit any wrongdoing, the police continued to beat them, eventually throwing chilli powder in their wounds. They continued to kick Muthyalu in her stomach, while she protested the attack, claiming she was pregnant. The police took her to the excise police station, and continued to beat her until she fell unconscious. Upon seeing the condition she was in, they called her husband and relatives, and asked them to take her home.

Her husband took her to a private hospital, where they refused to treat her. Forced to leave the private facilities, Vijaya took her to Gandhi hospital, where she was finally admitted.

On April 18, 2008, the couple filed a complaint with the APSHRC. The commission called for a report from the commissioner of police, but, to date, the police have not filed any reply. No further action has been taken.



Custodial Torture

Warangal Central Prison

Dr. K. Murali deposing on behalf of B. Ravi and Md. Yakub

B. RAVI AND MD. YAKUB

B Ravi and Md. Yakub were held in the Warangal Central Prison in 2004. During their time there, they were subjected to abuse by the prison staff. Out of desperation arising from this abuse, the two of them, along with an unnamed third individual, attempted to commit suicide by simultaneously ingesting several types of drugs at once on November 20, 2004. Following the suicide attempt, a case of attempted suicide was registered against them in the MM court, Warangal. The victims further claim that as punishment for their behaviour, they were transferred from the Warangal Central Prison to the Kadapa and Rajahmundry Central Prisons, respectively. The transfer was an attempt to alienate them from their friends and family members, who remained in the Khammam district, and would no longer be able to visit them due to the distance.

For the next two years they were denied parole and furlough. Further, they were also denied any right to communicate with their relatives, through either letters or in-person visits or interviews, for three months. In 2007, the victims were brought from the Kadapa and Rajahmundry Central Prisons to the Warangal Central Prison, in order to face their trial for attempted suicide. During this time, both of them sent two letters, one dated October 18, 2007 to the APSHRC, and another dated October 22, 2007 to me, alleging that they were lodged in single cells in the 'High Security Block' to prevent them from interacting with any other prisoners. On October 2, which is 'Prisoners Welfare Day', they were not released from their cells or allowed to participate in the events of the day in anyway. They were continuously threatened by the prison authorities and staff, which included threats that they would be transferred again, further alienating them from their families.

In addition to the above allegations, they also requested intervening assistance from the APSHRC, requesting that the commission perform the following:

A surprise visit and independent investigation of the prison, in order to witness the conditions of their confinement, first-hand.

Order that the prisoners be allowed to remain in the Warangal Central Prison and that the use of threats of transfers as punishments is stopped.

I additionally sent letters to the APSHRC, in support of the APSHRC taking up the case.

Upon receipt of the above named letters, the APSHRC ordered that the SP of Warangal submit a report and file a reply to the allegations contained in the letters. On

August 20, 2009, the SP submitted the report to the APSHRC, along with the report of the Sub-Divisional Police Officer (SDPO) of Warangal. In these two reports, the police allege the following:

The victims did not attempt suicide in a serious or genuine manner, but rather only to attract attention to themselves, in order to create difficulties for the prison staff. The victims were transferred from the Warangal Central Prison due to their difficult and dangerous behaviour, and in order to isolate them from each other, so as not to encourage further unacceptable behaviour. During transfer, the victims broke the glass of the windows in the vehicle, tore their shirts, verbally abused the transfer personnel and attempted to create another scene, in order to attract attention.

The report claimed that the victims were, in fact, not harassed, threatened or kept in isolation. They were allowed to visit other prisoners, and were also allowed to celebrate Prisoners Welfare Day, albeit in a limited capacity. It claimed that the victims have been alleging false abuses in order to further attract attention to themselves. The police report further claimed that any punitive measures taken against the prisoners were done so due to their dangerous behaviour, and were performed fully within the prisoners' rights, in accordance with the AP law. The report did not address any allegation of previous harassment.

No further information on the case is available. The APSHRC has taken no action.

SUO MOTO INQUIRY INITIATED BY APSHRC

The Telugu daily newspaper *Andhra Jyothi* published an article on March 11, 2006, alleging the deaths of several prisoners in various jails in AP, because of grossly inadequate medical facilities and a general lack of access to medical care. Going by this news article, the APSHRC initiated a *suo moto* investigation into medical care provided in the prisons of the state. The sample cases taken up by the news article were that of Vadde Mallayya, Bandela Sattiah and Bandi Ramulu. The commission asked the Director General and Inspector General of Prisons and Correctional Services to submit a report. Additionally, the APSHRC requested that Dr. K. Murali, Consultant to CHRI, conduct an independent investigation and submit a separate report.

Mr. R.P. Singh, IPS, Director General and Inspector General of Prisons and Correctional Services, in his report contended that,

"The allegation that the above named prisoners died due to inadequate medical facilities and care is false. Each prisoner received prompt and proper medical attention, both at the jail hospital facilities and at external hospital facilities. The prisoners' deaths were in fact due to incurable conditions, and the prison staff and facilities are not at fault. Hence, the allegations are false.

The allegation that the number of prisoners' deaths is rising every year is false. While it is true that the number of deaths due to natural causes while in prison was above 100 per year since 2003, and the figure is on rise continuously, it must be seen in the context of the fact that more than 1,70,000 prisoners are admitted and released from AP jails every year. Every death is due to natural causes and incurable diseases, despite the fact that necessary and timely treatment is provided. Thus, the allegation that prisoners are dying due to unnatural and preventable causes is false. Every prisoner receives timely treatment. In every case of death, an inquest, post-mortem and magisterial enquiry is conducted. The allegation that the number of medical officers and medical staffs are inadequate, in comparison with the number of prisoners, is false. In all central prisons and district jails, with the exception of district jails of Mahabubnagar and Naigonda, full time medical officers are provided, in addition to medical subordinates.

The allegation that there are no female medical officers in two central prisons and in state jails for women, and that there is a lack of female gynaecologists too, is false. Because, there are less female prisoners in many of the central prisons, no female

medical officers were appointed. In the state jails for women, there are full-time female medical officers available. Though no gynaecologist is available, needy prisoners are referred to an outside facility. The allegation that, except at two central prisons, no doctor is available for night calls is also incorrect, as doctors are required to reside near the jails, and new quarters are under construction wherever quarters are not available.

The allegation that the prisoners referred to outside hospitals face escort problems, are only transported on Saturdays, and are not treated well at those hospitals, is also deemed to be false. Generally, it is only routine cases that are transported on Saturdays, but prisoners in need are sent out promptly. The allegation that mentally-ill prisoners are not receiving proper treatment, due to a lack of psychiatric facilities within the prisons, is false. On the whole, utmost medical care is being provided to all prisoners, there is no lack of facilities or medicine, and where needed, prisoners are taken to outside hospitals and they receive the best care."

Dr. K. Murali's report, as ordered by the APSHRC, was submitted, dated March 6, 2007. The report was based on prison records, inquest reports, reports of post-mortem examinations and the report of the Forensic Science Laboratory, Hyderabad. He was unable to obtain direct observation of the living conditions of the prisons. Furthermore, Dr. K. Murali has noted that the prison department has ignored his findings and recommendations. His report is not currently available. On December 6, 2007, the APSHRC reserved the case for direction. The case is still pending.

Police Torture of Dalit

Velamuripadu Village, Ongole, Prakasam District

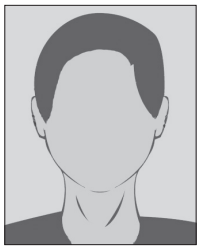
NOKATHOTI MUSALAIAH

Nokathoti Musalaiah, a dalit, was abused by Mr. Chikena Ramayogi, of Home Guard, who was in a drunken state. Mr. Chikena Ramayogi abused the victim and all his neighbours by taking advantage of being a member of the police. Prior to this incident, the Mr. Chikena had also abused, intimidated and beat Ubboti Prasad, Sangam Kantha Rao and Sangam Krishna, who are residents of the same village. Mr Chikena Ramayogi also took them to the police station and beat and tortured them, with the consent of the police inspectors.

During the early morning of July 8, 2007, when the victim was casually rebuking his son as to why he was not going to tuition, Mr. Chikena deliberately interfered and verbally abused the victim. Mr. Chikena also falsely accused the victim of abusing him. The same night, at around 9:30pm, two constables came to the victim's house and forcibly took him to the police station, where SI Mohiddin Mohin mercilessly beat the victim with a stick. Mr. Ramayogi also brutally kicked the victim. The victim was detained the whole night and the following day, and at around 5pm, the victim was thrown out of the police station. The victim, unable to bear the pain, went to a government hospital in Ongole, and was treated there.

In response to this complaint, the commission called for a report from the SP, Prakasam. The SP Mr Naveen Chand, filed a report stating that the complaint filed by the complainant is false, that the complainant has ulterior motives, and therefore no further action is necessary.

The complainant filed comments in response to this report. The case is still pending.



Police Inaction

Cheepurupalli Village, Vizianagaram District

G. SIMHACHALAM

The petitioner Mrs. Gedala Simhanchalam, from the Schedule Tribe community, Yerukala caste, married Gurana Seetharaju of Purrayavalasa village. They lived together, as a married couple, in Cheepurupalli village. During their marriage, her husband's relatives would frequently call their home, to try to convince her husband to abandon her, and to marry another woman of their own caste. On multiple occasions, her husband and other members of his family verbally and physically abused her. They demanded more dowry from her. Finally, after some time, her husband abandoned her in Cheepurupalli, and went to live with his family in Purryavalasa.

After her husband abandoned her, Gedala Simhanchalam approached the Cheepurupalli Police, and registered a complaint. The police took up the complaint, but arrested only her husband, and none of the other family members who had abused her. As no other person came forward to provide her husband's bail, Gedala Simhanchalam filed a bail petition on his behalf and had him released. He returned with her to their home in Cheepurupalli.

Several days after Gurana Seetharaju's return, his relatives again began to call him, to demand that he abandon his wife so that he may marry a woman of their own caste. He once again abandoned Gedala Simhanchalam. In response, Gedala followed her husband to Purrayavalasa. Once she arrived, her in-laws, and particularly her sister-in-law verbally abused her by degrading her caste name, beating her indiscriminately and stealing several gold ornaments from her.

Following this incident, on February 24, 2010, Gedala prepared a written report in order to take action against her husband and sister-in-law, and submitted it to the police and the APSHRC. In response, the APSHRC requested that the matter be investigated and that the SP of Vizianagaram District submit a report on the status of the case.

On June 25, 2010, the SP submitted a written report outlining the details of the case. The SP reported that the petitioner's claims were all false. He further alleged that the petitioner had been aggressive with the police, had refused to cooperate with them and had refused to give a statement regarding the matter. The details of the investigation were not included in the report.

On October 8, 2010, the APSHRC enclosed the above named report. There has been no further development in this case.

Discrimination by Caste Panchayat

Cherla Mandal, Khammam District

NAGESWARA RAO

A minor altercation occurred between Nageswara Rao and another person, both of whom belong to the same Schedule Caste. The caste elders organised a *Jathi Panchayat* in the village, and they decided that Nageswara Rao made a mistake in the matter so they passed a judgment against Nageswara Rao, ordering that he should pay Rs. 5000 to the other person. If he was unable to pay the fine he would be ostracised.

Following the caste elders' judgment, Mr. Nageswara Rao and his family suffered, as his family was poor, and nobody in the village were talking to them as they could not pay the fine. Nageswara Rao has three children and elderly parents. He has nowhere else to go.

In another earlier trivial incident, the same person had to pay Rs.1000 as a fine to the caste elders of the village, for which he had to sell his buffalo. Even in that incident the elders told him that he would have to leave the village if he could not pay the amount. During this uncertain period, his wife attempted to commit suicide.

A complaint was made to the commission. The APSHRC called for a report from the SP and collector, but till now no report has been filed by them. No follow-up action has been taken.

CHAPTER-III

Jury Report

BACKGROUND

The *Human Rights Law Network* organised the Independent People's Tribunal on April 24, 2011, in collaboration with several other human rights and civil society organisations. During the IPT, several activists as well as many victims provided their testimonies to the Jury panel comprising the following:

- Justice Ramaswamy, Retired Supreme Court Judge;
- M. A. Majid, Associate Editor of the Etemmad Urdu Daily;
- Dr. Syed Hasanuddin Ahmed, Retired IAS officer and former Chairperson of the Andhra Pradesh State Minorities Commission.

JURY'S COMMENTS

The present public hearing is a welcome initiative by the HRLN. As Jury panel members, our attitude should be not only to criticise the functioning of the APSHRC, but to suggest measures to strengthen it.

This really is a much awaited day for all of us who have been watching with sincerity, the formation of the APSHRC and its functioning. We, who are concerned with human rights matters, have been very hopeful and optimistic about a body which has constitutional support and was created by an Act of the Parliament which instills very wide ranging powers.

Before commenting on the state of affairs of the APSHRC and its functioning, let us discuss in brief the idea and the ideology behind the inception of such bodies.

The Protection of Human Rights Act, 1993, was promulgated by an Act of the Parliament and received the assent of the President on January 8, 1994. In its very objective it has been mentioned, 'An Act to provide for the constitution of a NHRC, SHRC in states and human rights courts for better protection of human rights and for matters connected therewith or incidental thereto'.

However it is clear that this Act, and its objective, is not being followed in the State of AP. Indeed, the IPT has highlighted several key issues concerning the APSHRC. First and foremost, people are not aware of the functions and limitations of the APSHRC. Also, there is a serious lack of effective communication between the APSHRC and victims/complainants. Furthermore, the plight of those cases pending before the APSHRC, some of which were put up before the Jury during the IPT, proves beyond doubt that the APSHRC is an almost crippled body, incapacitated by

government neglect to perform its functions properly. The APSHRC appears to lack the knowledge and the expertise required to deal with the issues put before it.

The following section will look at the panel's observations and recommendations in more detail.

JURY'S RECOMMENDATIONS AND OBSERVATIONS

Communication and Remedies

The testimonies we have heard clearly demonstrate the lack of effective communication in the APSHRC's functioning. The following steps ought to be implemented to ensure better communication and more effective remedies:

- A framework of established procedure to ensure better communication and functioning; currently, victims often must inquire about their case in order to discover its outcome. Instead of this unsatisfactory state of affairs, a more systematic procedure needs to be established, in order to keep complainants well-informed of their cases.
- A fixed time schedule for the redressal of complaints, which would put a stop to the long periods of time that cases are often left pending for, as was visible in the cases presented in the IPT
- Public awareness regarding the APSHRC's mandate and functioning, which would help make people aware of the APSHRC's powers and limitations. This could be carried out through accessible reading materials which explain the guidelines and standards under which the APSHRC operates.
- Acknowledgement from the APSHRC when a complaint has been received, as this would improve communication and build trust between the complainants/victims and the APSHRC.
- The APSHRC's reports regarding the complaints should be made immediately available to the complainants.
- Remedies and compensation amounts should follow uniform guidelines; currently, recommendations vary greatly from case to case, instead, they should be made in accordance to specific guidelines, and should cater to the needs of the victims.
- A mechanism to ensure that the APSHRC's orders are effectively implemented by the concerned government authority, so that it's sanctity can be maintained.
- The APSHRC should put pressure on the government or concerned authority to take appropriate action on the recommendations made by it. Although the APSHRC is a recommendatory body, their decisions carry the weight of a constitutional body, and therefore should be complied with accordingly by the concerned government authority. The APSHRC should forcefully pursue its recommendations and follow-up the matter in the court of law, where recommendations have not complied with, as it is empowered to do so under Section 18 (b) of PHRA. It should also bring any inaction by the government, of its orders, to light through print and electronic media.
- The APSHRC must prioritise all cases of violations of human rights by state agencies, such as police or administrative departments, in which the victims, especially the people fighting for the conservation and protection of human rights, have been harassed, and false cases have been registered against them.
- In cases where the complaint is against the police, especially in police torture cases, the APSHRC should not rely on the police report only for its final order, as has so often have been

the case; but rather it should utilise its own resources to verify the original case and see to it that relief is provided to the victim, and that the perpetrator is punished.

APSHRC's Constitution

- The APSHRC's manpower has not grown in size since its inception, despite the steady increase in the number of complaints being lodged. A three-member APSHRC simply cannot cover the entire state; this number need to be increased.
- Appointment of members of APSHRC who have empathy and experience concerning human rights issues, as currently the APSHRC lacks technical expertise in human rights matters. The addition of specialists and experts would also help the APSHRC to better understand the issues placed before it. One option might be to establish a consultative committee, made up of various specialists and human rights activists, who could discuss and advise on the relevant issues with the APSHRC.
- The APSHRC should have its own independent agency with a sufficient number of personnel to conduct its investigations independently. By relying on the state authorities to enquire into state violations, the APSHRC loses all credibility.

APSHRC's Functioning and Attitude

- The APSHRC should conduct itself in a more sympathetic and empathetic manner when processing cases. Its current indifference to the suffering of the people who approach it, often leads to the disinterest and cynicism of observers, concerning its work.
- The APSHRC members should be more compassionate towards people's issues, and ought to have a certain level of social sensitivity. This matter should be reflected in the appointment mechanism for members, which should include an initial screening process to determine the candidates' commitment to human rights.
- The APSHRC should be very serious about the protection and conservation of human rights in all custodial institutions, including jails, juvenile homes, and protective homes for women and other such institutions meant for persons with disabilities. One of the most effective ways of doing so would be to conduct sudden and surprise visits of these institutions, and see to it that these institutions are functioning properly; if they are not, then the APSHRC should give appropriate recommendations to improve the institutions. Also, the APSHRC should never hesitate in approaching the court, to see to it that its recommendations are properly implemented.
- One of the most common excuses provided by the APSHRC for its inaction in matters concerning violations of human rights, and subsequently closing (disposing of) the case, is that the matter has been referred to a court, and therefore it is *sub judice*. However, Section 12 (b) of PHRA gives the APSHRC sufficient power to intervene in any proceeding, involving any allegation of violation of human rights, pending before a court, with the approval of such courts. It really needs to be questioned, as to how many cases the APSHRC exercised this power in, and the answer will invariably be none. It is therefore very important that the APSHRC, in serious human rights violations cases, intervene and see to it that justice is delivered.

Human Rights Courts and Independence

- The Act provides each state the authority to constitute Human Rights Courts. The notified

Human Rights Courts should be made operational in AP, allowing for the possibility of binding decisions to be made concerning human rights violations.

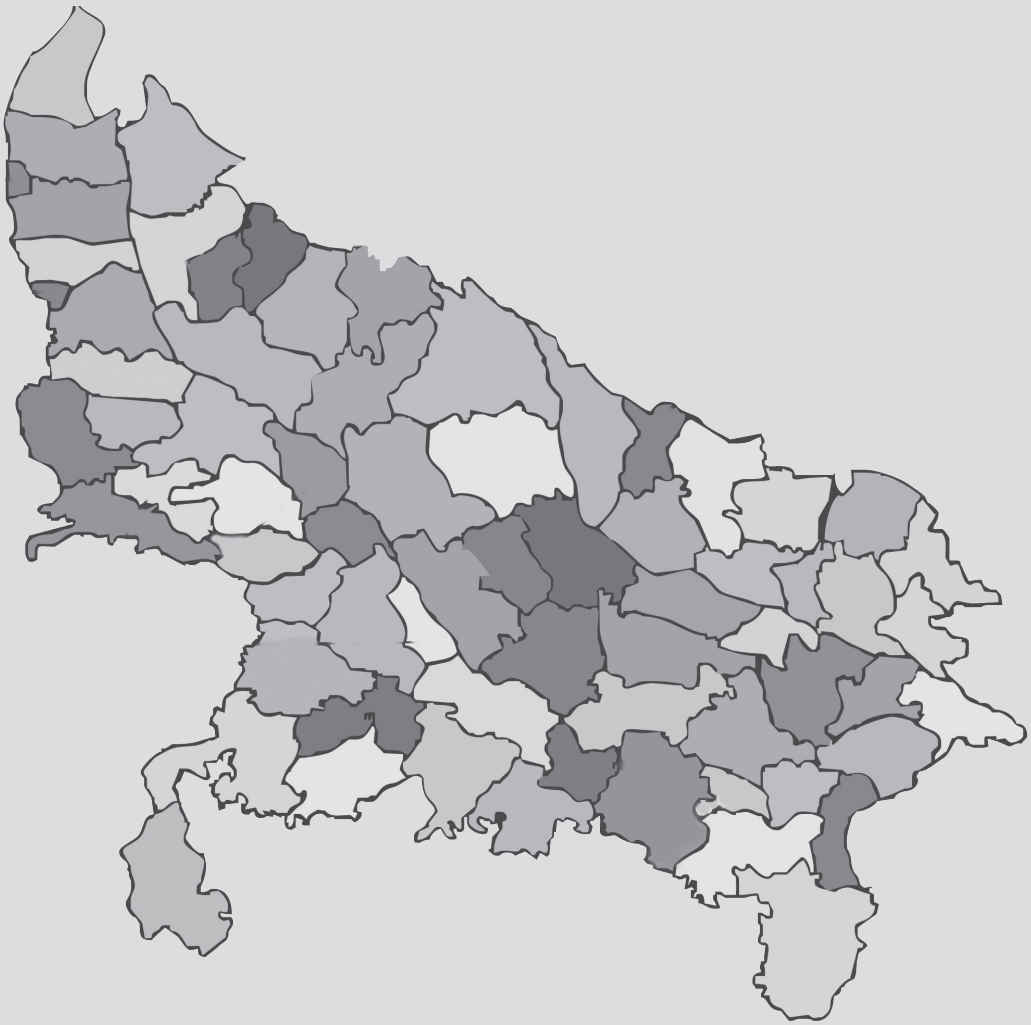
- For the purpose of providing a speedy trial of offences arising out of violation of human rights, the AP Government, with the consultation of the Chief Justice of the AP High Court, should specify every district session court/fast track court to be a human rights court, to deal with cases of human rights violations, and also specify a public prosecutor or appoint an advocate as a special public prosecutor, for the purposes of conducting cases in that court, as provided for in Chapter 6 of PHRA.
- People should be made aware of the Human Rights Courts, and be encouraged to approach them when seeking redressal for the violations they have suffered.
- The human rights commissions were created in order that people might bypass the lengthy, expensive procedures involved in approaching the courts, in order to be able to seek justice for human rights violations. A limited, non-independent APSHRC cannot deliver justice effectively, and so the logical step would be to increase the power and independence of the APSHRC, thereby increasing people's access to justice.

Financial Accountability

- There needs to be financial accountability, and the easy, public availability of financial information, concerning expenditure etc. Such transparency would strengthen the credibility of the APSHRC.

Dissemination of Information and Complaints Mechanism

- The APSHRC needs to become more proactive and initiate *suo moto* investigations in cases of grave human rights violations such as fake encounters, custodial killings and police torture etc.
- The APSHRC needs to support the work of civil society organisations working on human rights matters, and also work towards promoting the cause of human rights through research, publications etc., and consequently suggest measures to improve the situation of human rights, either through enactment of new laws, abolishment of certain laws or amendments in the current Act (PHRA, 1993).
- The APSHRC needs to conduct workshops, trainings, and public campaigns, with the help of human rights activists and organisations, as it has limited resources, to disseminate information and create awareness regarding human rights issues, so as to strengthen the cause of human rights.
- The APSHRC should sensitise government authorities, especially the police personnel, in order to combat the indifference of the administration towards matters concerning human rights violations.



UTTAR PRADESH

Heather K Sager | K K Roy

SL.No.	06	**City**	Lucknow
Total Cases before Jury	20	**Date**	March 26, 2011
Jury: Mr. S.R. Darapuri, Ex-IPS Officer; Mr. Ram Kumar, Dalit Right Activist; Prof. Pradeep Kumar, Ruhelkhand University; Ms. Shruti Nagvanshi, Women Rights Activist; Ms. Roop Rekha Verma, Former Vice- Chancellor of Lucknow University			
Networking Groups Uttar Pradesh Alpsankhayak Utpeedan Manch; People's Vigilance Committee on Human Rights; People's Union for Civil Liberties; People's Union for Human Rights; Patha Dalit Adhikar Manch; Asangatith Mazdoor Manch; Dynamic Action Group; Savitri Phule Mahilla Adhikar Manch			

THE INDEPENDENT PEOPLE'S TRIBUNAL ON THE FUNCTIONING OF UTTAR PRADESH STATE HUMAN RIGHTS COMMISSION

EXECUTIVE SUMMARY

The North Indian State of Uttar Pradesh (UP) is the most populous state in India. Located neighbouring the states of Bihar, Madhya Pradesh, Rajasthan, Delhi, Himachal Pradesh, Haryana, and Uttarakhand, UP has long played a major role in Indian political history. Geographically, it is the fourth largest state in the country, and has a mammoth administrative apparatus to govern its seventy districts.[1]

UP is home to approximately one-quarter of the Indian population living below the poverty line. Literacy and education levels in the state are startlingly low. The state is known for widespread human rights violations.[2] It has the dubious distinction of being the state from which the largest numbers of complaints are filed with the National Human Rights Commission (NHRC). According to 2009 statistics, over 50 percent of the complaints received by the NHRC originated from the state of UP.[3] This is way ahead of Delhi and Gujarat, the next two states in the pecking order of number of complaints lodged with the NHRC. For instance, in 2009, Delhi's annual complaints stood at 5,616 followed by Gujarat's at 3,000; this is in sharp contrast to UP's 55,216 – a difference of nearly 50,000 complaints per year![4] Mr. Anil Kumar Parashar, Joint Registrar of the National Human Rights Commission, confirmed that this trend continues, at a conference in 2011.[5]

HUMAN RIGHTS VIOLATIONS IN UTTAR PRADESH

It is argued at times that the high percentage of cases from UP at the NHRC is due to the state's large population and geographical proximity to the seat of the NHRC in Delhi. However, one may not discount the deficiencies on the part of the Uttar

1. Politics of India, 2011, India For You, available at http://www.indfy.com/uttar-pradesh/politics.html
2. Situational Analysis of Women in the State of Uttar Pradesh, 2004, Usha Nayar, available at http://ncw.nic.in/pdfReports/Gender%20Profile-Uttar%20Pradesh.pdf
3. Ibid
4. Human Rights Violation Max in UP, Delhi, 2009, *The Indian Express*, available at http://www.indianexpress.com/news/human-rights-violation-max-in-up-delhi/434739/
5. Interview in August, 2011, EU Capacity-Building Meeting

Pradesh State Human Rights Commission (UPSHRC) as a factor that galvanises large numbers of victims of human rights violations to go instead to NHRC, for redressal of their grievances. Further, the sheer volume of these complaints, whichever commission they are made to, attest to the fact that human rights violations are rampant in the state.

According to the National Crimes Record Bureau's Annual Report in 2009, Uttar Pradesh had a reported crime rate of 88 per one lakh citizens[6]. These figures are said to be skewed, and real crime rate is held to be much higher, as police apparatus in the state is reluctant to register cases in order to try and paint a rosier picture.[7] A closer inspection paints a bleak picture of crime in UP. In 2007, the Asian Centre for Human Rights (ACHR) reported a rise in crime in Uttar Pradesh. According to their report, a total of 1,18,195 cases were registered under the Indian Penal Code (IPC) in 2006, in comparison with 1,17,748 registered in 2005. These included 5,482 murders, 3,420 riots, 109 kidnappings for ransom, 1,795 dowry-related deaths and 1,161 cases of rape. In addition to the crimes registered under the IPC, 411 cases were registered under the National Security Act, 2,177 under the Gangster Act, 11,816 under the Goonda Act, and 39,184 cases under the Arms Act[8]. The reports of high numbers of registered violent incidents, as noted above, coupled with the fact that over half of all human rights complaints filed annually with the NHRC originate from Uttar Pradesh, points to a dire situation.

CONSTITUTION OF UTTAR PRADESH STATE HUMAN RIGHTS COMMISSION

The Uttar Pradesh State Human Rights Commission (UPSHRC) was formed in the year 2002, almost a decade after the passage of the Protection of Human Rights Act, 1993. It was formed due to the herculean effort on the part of human rights organisations, in the face of great reluctance from the state government to form the commission. Alarmed by the high number of custodial deaths, blatant violations of human rights and flood of complaints from the state, the NHRC urged the UP Government repeatedly to form the UPSHRC between 1993 and 2002. Successive Chief Ministers of UP, Kalyan Singh, Ram Prakash Gupta, and Rajnath Singh, promised to constitute the commission several times, on occasions even on the floor of the *Vidhan Sabha* (UP State Assembly), but they repeatedly failed to honour their commitment.

Eventually, the People's Union for Civil Liberties (PUCL) filed a Public Interest Litigation (PIL) in the Allahabad High Court, and obtained an order asking the state government to form the commission. Even after the order, the government was reluctant to go ahead. It took two more PILs, one to get the government to relinquish their excuses of a lack of resources, and another to actually constitute the commission, to finally get the institution going in 2002. This clearly demonstrates the determination of the state to undercut the institution even before its inception.

FUNCTIONING OF THE UTTAR PRADESH HUMAN RIGHTS COMMISSION

Composition

The USPHRC consists of three members; a chairperson, Justice H. K. Sema, and two members, Justice Vishnu Sahai and Asha Tewary. This is a rudimentary administrative set up; however, as the chairperson

6. http://www.nipsa.in/crime-in-india-2009-the-mystery-of-statistics/
7. Ibid
8. India Human Rights Report, 2007, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR07/UP.htm

pointed out in an interview conducted in July 2011, the commission does not have any investigative staff on its payroll. It therefore depends on the local and state police to investigate complaints and issues has taken *suo moto* cognisance of. Thus, the commission does not have an independent investigation wing of its own.

Accessibility

It is difficult to say that the UPSHRC has got its act together, even with the limited resources it does have. To begin with, the commission has not taken any initiative to make itself accessible to the public, let alone tried to spread awareness about human rights amongst the general public. While other states with SHRCs have created informative websites despite their commissions' more recent formation, the UPSHRC does not even have a website of its own, giving relevant information regarding their location, as to who could approach them, how to file a case, what resources are available, etc. Basic contact information of the UPSHRC can be obtained on the NHRC's website but that too is replete with obsolete information.

Accountability

For an institution that has been set up to hold the state accountable for its actions, the UPSHRC is extremely lethargic and reticent. It was very reluctant to part with any information regarding its working, and made it clear it would only part with little chunks of information, when forced to through a barrage of applications under the RTI Act from HRLN. In response to an RTI filed regarding the annual reports that the commission has to submit to the state government, under section 28 of the PHRA, 1993, the commission said that all reports must be tabled in the state legislative assembly before they can be made public. Since not a single annual report had been tabled, they could not provide access to such details. However, subsequently, a report for the period of 2007-08 was received. It included a broad outline of the efforts made, workshops held, and landmark cases that were decided by the UPSHRC. The report claims that the UPSHRC has developed computer software to manage complaints according to the categorisation of cases (type of violation and its details etc.). This program keeps electronic records of all the complaints registered, providing UP with a reliable organisational system; an advantage over many other SHRCs. But notwithstanding this sophisticated information retrieval system, all the information requested was informally denied, with a request to return within a week. From April 2011 onwards several visits were made to obtain copies of landmark orders, and to get details on statistics of complaints and their proceedings etc., but each time this information was withheld.

A decade after its inception the UPSHRC does not have a building of its own. It has no independent budgeting, and members appointed to it are indifferent and singularly lacking in any background in human rights work.

PATTERN OF HUMAN RIGHTS VIOLATIONS IN UTTAR PRADESH

Police Atrocities and Rights Violations by Security Forces

Local and national organisations working within Uttar Pradesh have reported shockingly high numbers of cases of police violence and abuse. The NHRC statistics have shown that Uttar Pradesh is leading the country in complaints of police abuse of authority, custodial rape, and extrajudicial killings[9].

9. Uttar Pradesh – Police Brutality Unchecked, 2003, Voice of the Asia Pacific Human Rights Network, available at http://www.hrdc.net/sahrdc/hrfeatures/HRF82.htm

National Crime Records Bureau statistics for 2009 show that UP accounts for the highest number of police firings casualties in India[10]. The records of Allahabad High Court show that in UP, an average of six to seven cases of police brutality, rape or extrajudicial killings came up in the court each day[11]. In 2001, expressing its concern over the growing number of cases of atrocities, the Allahabad High Court noted that:

"A large number of petitions are coming up before the court alleging the police, that they are behaving like bandits, thieves, rapists and petty criminals…The police are supposed to protect the people and not rape, blackmail or loot them…it is high time that the police start behaving in a civilised manner…"[12]

Human rights violations perpetrated by the police and security forces include the violation of right to life through falsified extrajudicial encounters, custodial torture, and the indiscriminate use of firearms[13]. For example, a court in Basti, Uttar Pradesh, sentenced seventeen policemen to life imprisonment for killing eleven innocent persons, in a fake encounter in Karhana village of the Basti district, on 28 & 29 July, 1986[14]. In 2006, Rajiv Kapoor, a resident of Delhi, allegedly committed suicide, by setting himself ablaze with sewing machine oil, in the custody of Noida's Sector 39 Police Station[15]. It was later alleged by the *Asian Centre for Human Rights* that his death involved custodial torture and murder. More recently, in 2010, Ghaziabad police officers were accused of torturing a young boy, who was detained at the Loni Police Station for three days. He was beaten and given electric shocks while in custody.[16] Unfortunately, due to the outright refusal of the police to register complaints when victims, complainants, and activists approach them, especially in matters of police violence, reliable statistics are hard to come by.

The issue of police atrocities and human rights violations received international attention too. In 2007, *Amnesty International* reported that activists protesting against the Uttar Pradesh Government faced police harassment and detention[17]. From the *Amnesty International* report one learns that illegal detention of activists, under the National Security Act, is a routine practice.[18]

Organisations working within Uttar Pradesh point to a number of causes that contribute to the ongoing, systemic problem of police abuse within the state. As the *South Asia Human Rights Documentation Centre* notes:

The police force in Uttar Pradesh has an inordinate amount of power and discretion delegated to them by the legal system, the political climate and society in general. The internal reward system, which provides monetary incentives or promotions for carrying out extrajudicial executions, also acts as a catalyst. In addition, victims primarily hail from the disenfranchised, poverty-stricken, lower caste and illiterate sections of society, which generally lack access to the few legal remedies that actually exist . . . systemic and endemic corruption in the police and within the political and judicial agencies exacerbates

10. http://www.nipsa.in/crime-in-india-2009-the-mystery-of-statistics/
11. Ibid
12. Ibid
13. India Human Rights Report, 2007, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR07/UP.htm
14. Ibid
15. Ibid
16. 'Uttar Pradesh Human Rights Commission asks to register FIR against policemen', 2010, Daily News & Analysis, available at http://www.dnaindia.com/india/report_uttar-pradesh-human-rights-commission-asks-to-register-fir-against-policemen_1409647
17. Annual Report, 2007, Amnesty International
18. Annual Report, 2008, Amnesty International and Annual Report, 2011, Amnesty International

the problem and ensures that such crimes go unpunished.[19] Such police atrocities were reflected in the cases deposed in the IPT. In one such incident of death due to police torture, the victim Mr. Anupam Bhargav, was brutally beaten by policemen of Raipura Police Station, Chitrakoot district.

The incident took place on July 18, 2010, when the victim was taken to the Raipura Police Station. When the victim didn't come home that day, his father complained to the Superintendent of Police (SP) the next day, and he was assured of his son's release by evening. But when that didn't happen, he went to the police station on July 20, 2010, at around 10am to meet his son, while he was still in police lock-up. Anupam told his father that he was brutally tortured and beaten while in custody, by Inspectors Dharmender Singh and Om Prakash Sharma, Constable Rajdeb Saroj, and one more constable. He said he had been stripped down, beaten with sticks, repeatedly hit over his head, and electrocuted by the above named policemen. After seeing his son for only a few minutes, Anupam's father was chased out of the police station.

On July 27, 2010, Anupam's elder brother, Avadh Bihari, went to the District Headquarters and met the SP. The SP again assured Avadh that he would ensure the release of Anupam that evening. But even before Avadh could return to his village, the news of Anupam's death arrived. The police reported Anupam's location of death at a farm two kilometers away from the police station. Upon vehement protest, the SP issued orders to register the case in the Raipura Police Station. Still Anupam's location of death was reported at the aforementioned farm.

When no further action was taken, Anupam's family filed a complaint with the Uttar Pradesh State Human Rights Commission. Ever since then, Anupam's family has been threatened and harassed to settle for an out-of-court deal with the policemen involved. The SP hasn't shown any interest in the case, despite repeated requests. The commission has also turned a blind eye to this gross violation of rights i.e., being denied the right to live and further to the continuing harassment of the victim's family. Such is the insensitiveness of the commission towards such gross violations of human rights.

Such high-handedness was also highlighted in another case of illegal detention, sexual assault, beating and inhumane treatment by the police, which came up in the IPT. The victim Vinod Kumar Gupta, and his father Ram Lal Gupta, were illegally detained and tortured in police custody. On February 12, 2010, at approximately 11:30pm, five-six policemen along with one shop owner Vicki Gupta went to Vinod's house and forcefully detained the entire family, including the women and children, and sexually assaulted and abused Vinod's wife, who was alone in the house at that time. The victim Vinod, during the time of illegal detention, was kept in three different police stations: Cholapur, Phulpur and Sindhaura police stations. In custody, the victim's family was severely tortured, compelled to drink urine and, the police even put petrol into the ear of Vinod.

Due to this incident, Vinod's sons have been dismissed from their jobs, due to fear of the powerful shop owner. The victim's family was finally released on February 18, at night. Now, the family is under constant threat. After being released, Ram Gupta approached the People's Vigilance Committee on Human Rights (PVCHR). So, on February 13, 2010, with the help of PVCHR, a letter was sent to the UPSHRC about the incident. No action has been taken by the commission, even after such awful inhumane treatment was meted out by the police. Furthermore, the victim's family continues to live in fear, and the commission continues to ignore their complaints.

19. Uttar Pradesh – Police Brutality Unchecked, 2003, Voice of the Asia Pacific Human Rights Network, available at http://www.hrdc.net/sahrdc/hrfeatures/HRF82.htm

Atrocities on Dalits

As a community, dalits are victims of discrimination and violence in Uttar Pradesh, as is the case all over India, due to the persistence of caste prejudice. Although there are stringent statutory provisions in place to protect them in the SC/ST (Prevention of Atrocities) Act, dalits have faced violent attacks, which include murder, rape and torture by upper castes in UP. The political consolidation and assertion of the dalits in the state does not appear to have mitigated their plight.

The annual report of the NCRB, of the Ministry of Home Affairs, for the year 2009, reported that Uttar Pradesh has the highest number of crimes committed against dalits in the country. According to this report, the state accounted for 22.4 percent of all crimes committed against dalits[20]. The *Asian Centre for Human Rights* has previously recorded horrendous acts committed against dalits, such as the chopping off of arms, tongues and noses, and gouging out of eyes[21]. Further, the violation of dalit human rights is not so much an event-centric occurrence, but rather a routine practice embedded in the socio-economic structure in the state of UP. For instance, *Human Rights Watch*, in a report on the living conditions of dalits in Uttar Pradesh, revealed that on average, in exchange for one day's labour, the dalits received five kilograms of wheat, worth about Rs. 40.[22] Some were forced to take loans from traders in order to survive.[23] The report additionally found that publically funded *anganwadis* (community centers) within the state are known to practice 'Untouchability', resulting in the denial of healthcare facilities to pregnant dalit women.[24]

Taking serious note of the prevailing situation, in 2011, the Chairman of the National Commission for Scheduled Castes, P.L. Punia, criticised the state for its indifference towards dalit atrocities. He stated, "In Uttar Pradesh, no action is taken against dalit atrocities under pressure from state government. Primarily, no case is registered, and if the case is registered, no action is taken against the culprits."[25]

Dalit atrocity incidences were reflected in the cases deposed in the IPT. For example in one such case deposed in the IPT, a dalit *Anganwadi* worker, Jugunthi, became the victim of an arson attack, when her house was burnt down by the local dominant caste people of the village, over a small matter. The incident took place on September 12, 2009, when Jugunthi's son, who is a driver in the village for a transport company, got into an argument with the accused which later turned into a fight. Later, the dominant caste people abused Jugunthi and her daughter. When the victim went to lodge a complaint in Rajapur Police Station, the police refused to do so. Instead they filed a false case against Jugunthi's son and sent him to jail.

After this incident, Jugunthi approached the senior police officers, the district administration and the UPSHRC, but no one helped her. She managed to obtain court orders, but the police still refused to register the complaint. The accused brought a petition to stay the previous order, but Jugunthi was able to appeal. Finally, at the direction of the high court, the police acknowledged Jugunthi and registered a First Information Report (FIR). Even though the FIR was registered, the police failed to arrest the

20. U.P. Tops in Atrocities Against Dalits, 2011, S. R. Darapuri, available at http://www.countercurrents.org/darapuri100211.htm
21. India Human Rights Report, 2007, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR07/UP.htm; and Indian Human Rights Report, 2008, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256788
22. Hidden Apartheid Caste Discrimination against India's 'Untouchables', 2007, Human Rights Watch
23. Ibid
24. Ibid
25. 'Uttar Pradesh blind to cromes against dalits: SC panel', 2011, *The Economic Times*, http://articles.economictimes.indiatimes.com/2011-05-26/news/29586108_1_dalit-atrocity-cases-conviction-rate-sc-panel

accused. The police's Final Report (FR) claimed that Jugunthi had falsified her statement to the court.

The UPSHRC never addressed Jugunthi's complaint. Such is the plight of the dalits in the state of Uttar Pradesh. Every justice mechanism is closed to them, and even the UPSHRC is not paying any attention to their grievances. dalits continue to be oppressed in the state, and have nowhere to go.

Rights of Prisoners

Uttar Pradesh has long been criticised for its deplorable prison conditions. The *Bureau of Police Research and Development* in India reported that as of 2007, the state had the highest number of prison inmates at 76,180, which accounts for 20.2 percent of the country's total prisoner population.[26] The Bureau also reported that UP has the worst prison overcrowding in the country at 201.3 percent.[27]

The *Asian Centre for Human Rights* (ACHR) has consistently reported that prison conditions in Uttar Pradesh remain deplorable, with rampant overcrowding and routine indifference to prisoners' well being. They are often denied timely treatment even for serious illnesses.[28] In 2008, the ACHR reported that, according to the findings of an inquiry conducted by the police and administration, prisons are poorly equipped. It is indeed ironic that the dearth of infrastructure in UP is such that, let alone the provisions for the welfare of inmates, they are not even equipped enough to qualify as decent penitentiary institutions. It is reported that in many of UP's prisons, there are no watch towers, no metal detectors, no public address systems, no wireless sets, no generators, and no helmets or tear gas. Many even lack a jail superintendent. Often, the prison walls are below the official norms and standards![29]

Custodial deaths have long remained a problem within the state's prison system. Overcrowding and lack of access to sufficient healthcare has led to mass deaths in the past. In 2005, over twenty inmates held in the Lucknow Jail died because of a lack of medical treatment.[30] Alternatively, it has been reported that politically influential or wealthy inmates are allowed to enjoy lavish comforts in the jail hospital. [31]

Women's Rights

The general state of women's rights in UP is a cause for concern. According to the National Commission for Women (NCW), the majority of women in Uttar Pradesh are illiterate.[32] The NCW reported in 2004 that sex ratios of children aged 0–6 reveal a clear preference for the male child, and a general neglect of the girl child.[33] This general social subordination of women is also reflected in the level and nature of crime against women. According to state police department records, a total of 14,925 crimes against women were registered in 2006 against the total of 12,897 in 2005. These included 1,795 dowry deaths, 1,161 rapes, and 2,295 kidnappings, among others. The domestic sphere accounts for a large number of human rights violations of women in UP. A study performed in 2010 revealed that

26. 'Snapshot on Prison Statistics, published by NCRB, New Delhi', 2007, Bureau of Police Research & Development, available at http://bprd.nic.in/index3.asp?sslid=437&subsublinkid=152&lang=1
27. Ibid
28. India Human Rights Report, 2008, Asian Centre on Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256790
29. Ibid
30. Ibid
31. Ibid
32. Situational Analysis of Women in the State of Uttar Pradesh, 2004, Usha Nayar, available at http://ncw.nic.in/pdfReports/Gender%20Profile-Uttar%20Pradesh.pdf
33. Ibid

23.52 percent of UP's female population has, or is currently experiencing domestic violence.[34]

Women of UP are most vulnerable in familial situations. Scores of reports illustrate that women are often beaten, forced into sexual acts, harassed for additional dowry and sometimes killed. If abandoned by their families, they are often left homeless, with no education, no prospects, and no one willing to provide help to them. Throughout the state, there have been reports of honour killings and dowry deaths. It is widely reported that police often refuse to file rape charges brought by women.[35] The UP State Women Commission is said to be singularly ineffective in addressing these crimes, and consequent rights violations of women in UP.[36]

Violence against women was reflected in the cases deposed in the IPT. In one such rape case, which took place in the Banda district, police inaction as well as the commission's apathy towards women rights violations was highlighted. The incident took place on October 22, 2010. The victim, Mira, was alone at home as her father and mother had left for work, to farm. Bijju, her neighbour, along with three of his friends, Kuttan, Sattidin, and Mewalal, came to the house. They stole the victim's family jewellery, kidnapped Mira and took her away to different villages where they continuously gang-raped and tortured her for several days.

When Mira's father found out that his daughter was missing, he approached the local police. After some days, Bijju and the others were tracked down, and Mira too was found. Only two of the accused, Kuttan and Mewalal, were arrested, but the other two, Bijju and Sattidin were spared. The two who were arrested were booked, but not tried. Since then, Mira's family has been constantly threatened, and told that they must retract the case. On November 22, 2010, Mira's father filed a complaint with the UPSHRC and asked that every necessary action be taken, to include trial and just compensation. No action has been taken against the accused.

Another violence against women case deposed in the IPT, is of 2006, in which Uttar Pradesh Legislator, Bana, raped Purusot Dwivedi, and neither the administration nor the commission has been able to initiate action against the accused. A FIR was filed in the year 2006 itself, but no action has been taken yet. The country's highest investigative body, the Central Bureau of Investigation (CBI), has also been involved in this case, but so far no arrests have been made. A complaint was filed with the UP-SHRC, but no action was taken by them either. Purusot is still waiting for her rapist to be prosecuted and still awaits compensation by the government for their blatant inaction. Such is the irony of the justice delivery system in UP.

Children's Rights

Uttar Pradesh was reported as the state with the highest number of child murders in 2010, with 318 children killed within the year.[37] Annual data from 2008 shows UP to have the highest number of child rape cases, with 900 registered cases in that year.[38] Also, children living in orphanages are often vic-

34. 'Domestic violence against women higher in UP', 2010, *Hindustan Times*, available at http://www.hindustantimes.com/Domestic-violence-against-women-higher-in-UP/Article1-552449.aspx
35. India Human Rights Report, 2008, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256789
36. 'Congress to protest over rising crime against women in UP', 2011, One India News, available at http://news.oneindia.in/2011/06/21/congressto-protest-over-rising-crime-against-women-inup-aid0126.html
37. 'Over five thousand children raped, another 1,408 murdered in 2010', 2011, *Times of India*, available at http://articles.timesofindia.indiatimes.com/2011-10-30/india/30338511_1_cases-of-sexual-assault-uttar-pradesh-madhya-pradesh
38. 'Uttar Pradesh tops list of child rape cases', 2010, *Times of India*, available at http://articles.timesofindia.

timised. On December 1, 2006, the Supreme Court sought an immediate response from the National Commission for Women, National Human Rights Commission, and the District Magistrate, after a private TV channel had telecast a report on sexual exploitation of about 65 girls, most of them aged five or six years old – some mentally challenged – in the Swami Bal Nath Ashram at Ghaziabad.[39] The district authority did not initiate any action, despite the matter being brought to its notice. This clearly shows the apathy of the administration towards the protection of children and issues of child rights.

Further, child labour continues to be a problem, with many UP children employed in hazardous industries. There were around 18,000 children working in the furnaces, and another 20,000-25,000 who were involved in casting and scrapping processes of the brassware industry.[40] These children are subjected to toxic fumes that cause respiratory diseases.

In a case deposed in the IPT, administrative apathy towards the death of a child was prominently reflected. The incidence is of Mahoba district. On the evening of September 30, 2009, a blast occurred at the government mine and a five kilo stone was projected approximately one kilometer away, onto the house of the eight year old child Uttam Prajapati. Uttam was playing in the house and was injured. He died on the way to the hospital.

After the incident, villagers protested in the police station, and under pressure the police registered a complaint. When the accused learned about the complaint, they approached Uttam Prajapati's family and threatened them, in an attempt to pressure them to withdraw the case. They tried to settle the case with money. The entire incident forced Uttam's family to flee the village and take refuge in a nearby village. At the police station, Uttam's father was forced to give a false statement, and it was (falsely) recorded that Uttam died while playing in the house, and not because of the blasting in the mines.

When the incident was taken up by local organisations, a visit to the site revealed that the case was wrongly registered. While the FIR states that the cause of Uttam's death was the blasting, his father was later forced to change his statement. Later, the matter was brought in front of the NHRC and UPSHRC, but no action has been taken against the accused, neither has any relief been provided to the victim's family. Instead, the victim's family was forced to leave the village. Such is the mechanism of justice delivery, that the victim has to suffer, not once but continuously, instead of the accused.

Religious Discrimination

UP is a communally sensitive state. The principle religious minority of the state are Muslims. *Human Rights Watch* reported multiple cases of discrimination by police against Muslims within Uttar Pradesh. Under-representation of religious minorities in the security forces of UP patently renders them a biased entity when they have to intervene in a communally tense situation. Furthermore, targeting of UP Muslims, by using stereotypes of Muslim terrorists, has led to the violation of human rights on an everyday basis. For instance, in response to bombings in 2008, police accused three Muslim boys of being 'terrorists', searched their pockets and seized whatever money they were carrying. When the officers discovered that one of the boys was carrying only one rupee, they called him 'beggar'.[41] There are also reports that Muslim individuals are being harassed and beaten, held in custody for extended periods of

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indiatimes.com/2010-03-04/india/28139612_1_highest-number-cases-tops

39. Indian Human Rights Report, 2008, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256789

40. Ibid

41. The "Anti-Nationals" Arbitrary Detention and Torture of Terrorism Suspects in India, 2011, Human Rights Watch

time without being charged, humiliated and tortured by police in order to obtain a confession, and their families are also being threatened.[42]

CONCLUSION

Diverse cases of encounters with the UPSHRC, including those concerning dalits, minorities, women, children, tribals, environments, land acquisition, corporate intervention, etc. were brought forth in the IPT. The general disillusionment with the commission among the people who approached the UPSHRC, was quite evident in these cases. So, people's faith in this institution has to be re-kindled.

In order to do this, a number of steps should be taken. Amendments should be made to the PHRA. For example, in necessary cases, complainants should be availed of protection once the complaint reaches the SHRC. The police should be held responsible for the protection of at-risk victims. The collegiums to select members should be reconsidered, and the appointment procedures should be made open and publicly accountable. Public institutions that work within human rights and in the area of public interest should choose commission members. The UPSHRC should have an established feedback mechanism. In addition, accountability mechanisms should be built into the institutional structure of the commission.

The common refrain among civil society representatives and the commissions, has been that their recommendations are not binding and therefore no obligation is cast on the government to comply. The compliance with recommendations largely depends on the responsiveness of the concerned state government. The commissions can only appeal and persuade the government to take action, but they cannot direct them to do so. If the state is obdurate and considers human rights issues to be marginal, there is no concrete recourse available to the SHRC to secure compliance with its orders. In Uttar Pradesh, with the absence of reports on whether recommendations have or have not been heeded; there is no information available on the extent to which the recommendations have been complied with.

In the light of these findings, there is a feeling that only an earnest action on the part of the commission, in the spirit of a constitutional guarantor of human rights, could bestow sufficient moral authority to force the state to comply with its recommendations.

42. Ibid

THE INDEPENDENT PEOPLE'S TRIBUNAL JURY PANEL

SOCIAL AUDIT REPORT

CHAPTER-I

Patterns of Violations and Functioning of UPSHRC

INTRODUCTION

The North Indian State of Uttar Pradesh (UP) is the most populous state in India. Surrounded by the neighbouring states of Bihar, Madhya Pradesh, Rajasthan, Delhi, Himachal Pradesh, Haryana, and Uttarakhand, UP has long played a major role in Indian political history. Geographically, it is the fourth largest state in the country, and has a mammoth administrative apparatus to govern its seventy districts.[1]

UP is home to approximately one-quarter of the Indian population living below the poverty line. Literacy and education levels in the state are startlingly low. The state is known for widespread human rights violations.[2] It has the dubious distinction of being the state from which the largest numbers of complaints are filed with the National Human Rights Commission (NHRC). According to 2009 statistics, over 50 percent of the complaints received by the NHRC originated from the state of UP.[3] This is way ahead of Delhi and Gujarat, the next two states in the pecking order for the number of complaints lodged with the NHRC. For instance, in 2009, Delhi's annual complaints stood at 5,616 followed by Gujarat's at 3,000, and this is in sharp contrast to UP's 55,216 – a difference of nearly 50,000 complaints per year![4] Mr. Anil Kumar Parashar, Joint Registrar of the National Human Rights Commission, confirmed that this trend continues, at a conference in 2011.[5]

1. Politics of India, 2011, India For You, available at http://www.indfy.com/uttar-pradesh/politics.html
2. Situational Analysis of Women in the State of Uttar Pradesh, 2004, Usha Nayar, available at http://ncw.nic.in/pdfReports/Gender%20Profile-Uttar%20Pradesh.pdf
3. Ibid
4. Human Rights Violation Max in UP, Delhi, 2009, *The Indian Express*, available at http://www.indianexpress.com/news/human-rights-violation-max-in-up-delhi/434739/
5. Interview in August, 2011, EU Capacity-Building Meeting

It is argued at times, that the high percentage of cases filed from UP with the NHRC is due to the state's large population, and its geographical proximity to the seat of the NHRC in Delhi. However, one may not discount the deficiencies on the part of the Uttar Pradesh State Human Rights commission as a factor that moves large number of victims of human rights violations to lodge their complaints with the NHRC. Further, the sheer volume of these complaints, whichever commission they are made to, attest to the fact that human rights violations are rampant in the state.

According to the National Crimes Record Bureau's Annual Report, in 2009, Uttar Pradesh had a reported crime rate of 88 per one lakh citizens[6]. These figures are said to be skewed, and the real crime rate is held to be much higher, as police apparatus in the state is reluctant to register cases, in an attempt to paint a rosier picture.[7] A closer inspection paints a bleak picture of crime in UP. In 2007, the Asian Centre for Human Rights (ACHR) reported a rise in crime in Uttar Pradesh. According to their report, a total of 1,18,195 cases were registered under the Indian Penal Code (IPC) in 2006, in comparison with 1,17,748 registered in 2005. These included 5,482 murders, 3,420 riots, 109 kidnappings for ransom, 1,795 dowry-related deaths and 1,161 cases of rape. In addition to the crimes registered under the IPC, 411 cases were registered under the National Security Act, 2,177 under the Gangster Act, 11,816 under the Goonda Act, and 39,184 cases under the Arms Act[8]. The reports of high numbers of registered violent incidents, as noted above, coupled with the fact that over half of all human rights complaints filed annually with the NHRC, originate from Uttar Pradesh, points to a dire situation. In the following pages we try to present a portrait of crime in UP concerning human rights.

HUMAN RIGHTS VIOLATIONS IN UTTAR PRADESH

Local and national organisations working within Uttar Pradesh have reported shockingly high numbers of cases of police violence and abuse. The NHRC statistics have shown that Uttar Pradesh is leading in complaints of police abuse of authority, custodial rape, and extrajudicial killings[9].

National Crime Records Bureau statistics for 2009, show that UP accounts for the highest number of police firing casualties in India[10]. The records of the Allahabad High Court show that an average of six to seven cases of police brutality, rape or extra-judicial killings appeared before it each day[11]. In

6. http://www.nipsa.in/crime-in-india-2009-the-mystery-of-statistics/
7. Ibid
8. India Human Rights Report, 2007, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR07/UP.htm
9. Uttar Pradesh – Police Brutality Unchecked, 2003, Voice of the Asia Pacific Human Rights Network, available at http://www.hrdc.net/sahrdc/hrfeatures/HRF82.htm
10. http://www.nipsa.in/crime-in-india-2009-the-mystery-of-statistics/
11. Ibid

2001, expressing its concern over the growing number of cases of atrocities, the Allahabad High Court noted that:

"A large number of petitions are coming up before the court alleging the police, that they are behaving like bandits, thieves, rapists and petty criminals…The police are supposed to protect the people and not to rape, blackmail or loot them…it is high time that the police start behaving in a civilised manner…"[12]

Human rights violations perpetrated by the police and security forces include the violation of right to life through falsified extrajudicial encounters, custodial torture, and the indiscriminate use of firearms[13]. For example, a court in Basti, Uttar Pradesh, sentenced seventeen policemen to life imprisonment for killing eleven innocent persons in a fake encounter in Karhana village of the Basti district, on 28 & 29 July, 1986.[14] In 2006, Rajiv Kapoor, a resident of Delhi, allegedly committed suicide by setting himself ablaze with sewing machine oil in the custody of Noida's Sector 39 police station.[15] It was later alleged by the *Asian Centre for Human Rights* that his death involved custodial torture and murder. More recently, in 2010, Ghaziabad police officers were accused of torturing a young boy, who was detained at the Loni Police Station for three days. He was beaten and given electric shocks while in custody.[16] Unfortunately, due to the outright refusal of the police to register complaints when victims, complainants, and activists attempt to register cases in which police violence occurs, reliable statistics are hard to come by.

The issue of police atrocities and human rights violations has received international attention too. In 2007, *Amnesty International* reported that activists protesting against the Uttar Pradesh Government faced police harassment and detention[17]. From *Amnesty International* reports, one learns that the illegal detention of activists under the National Security Act is a routine practice.[18]

Organisations working within Uttar Pradesh point to a number of causes that contribute to the ongoing, systemic problem of police abuse within the state. As the *South Asia Human Rights Documentation Centre* notes:

The police force in Uttar Pradesh has an inordinate amount of power and discretion delegated to them by the legal system, the political climate and society in general. The internal reward system, which provides monetary incentives or promotions for carrying out extrajudicial executions, also acts as a catalyst. In addition, victims primarily hail from the disenfranchised, poverty-stricken, lower caste and illiterate sections of society, which generally lack access to the few legal remedies that actually exist... systemic and endemic corruption in the police and within the political and judicial agencies exacerbates the problem and ensures that such crimes go unpunished.[19]

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12. Ibid
13. India Human Rights Report, 2007, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR07/UP.htm
14. Ibid
15. Ibid
16. 'Uttar Pradesh Human Rights Commission asks to register FIR against policemen', 2010, Daily News & Analysis, available at http://www.dnaindia.com/india/report_uttar-pradesh-human-rights-commission-asks-to-register-fir-against-policemen_1409647
17. Annual Report, 2007, Amnesty International
18. Annual Report, 2008, Amnesty International, and Annual Report, 2011, Amnesty International
19. Uttar Pradesh – Police Brutality Unchecked, 2003, Voice of the Asia Pacific Human Rights Network, available at http://www.hrdc.net/sahrdc/hrfeatures/HRF82.htm

ATROCITIES ON DALITS

As a community, dalits are victims of discrimination and violence in Uttar Pradesh, as is the case all over India, due to the persistence of caste prejudice. Although there are stringent statutory provisions to protect them in the SC/ST (Prevention of Atrocities) Act, dalits have faced violent attacks, which include murder, rape and torture, by people of upper castes in UP. The political consolidation and assertion of the dalits in the state does not appear to have mitigated their plight.

The annual report of the *National Crimes Record Bureau*, of the Ministry of Home Affairs, for the year 2009, reported that Uttar Pradesh has the highest number of crimes committed against dalits in the country. According to this report, the state accounted for 22.4 percent of all crimes committed against dalits[20]. The *Asian Centre for Human Rights* has previously recorded horrendous acts committed against dalits, such as the chopping off of arms, tongues and noses, and the gouging out of eyes[21]. Further, the violation of dalit human rights is not so much an event-centric occurrence but rather a routine practice embedded in the socio-economic structure in the state of UP. For instance, *Human Rights Watch*, in a report on the living conditions of dalits in Uttar Pradesh, revealed that on average, in exchange for one day's labour, the dalits received five kilograms of wheat, worth about Rs. 40.[22] Some were forced to take loans from traders in order to survive.[23] The report additionally found that publically funded *Anganvadis* (community centres) within the state are known to practice 'Untouchability', resulting in the denial of healthcare facilities to pregnant dalit women.[24]

Taking serious note of the prevailing situation, in 2011, the Chairman of the National Commission for Scheduled Caste, P.L. Punia, criticised the state for its indifference towards dalit atrocities. He stated, "In Uttar Pradesh, no action is taken against dalit atrocities under the pressure from the state government. Primarily, no case is registered and if the case is registered, no action is taken against the culprits."[25]

RIGHTS OF PRISONERS

Uttar Pradesh has long been criticised for its deplorable prison conditions. The *Bureau of Police Research and Development* in India reported that as of 2007, the state had the highest number of prison inmates at 76,180, which accounts for 20.2 percent of the country's total prisoner population.[26] The Bureau also reported that UP has the worst prison overcrowding in the country, at 201.3 percent.[27]

The *Asian Centre for Human Rights* (ACHR) has consistently reported that prison conditions in

20. U.P. Tops in Atrocities Against Dalits, 2011, S. R. Darapuri, available at http://www.countercurrents.org/darapuri100211.htm
21. India Human Rights Report, 2007, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR07/UP.htm; and Indian Human Rights Report, 2008, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256788
22. Hidden Apartheid Caste Discrimination against India's "Untouchables", 2007, Human Rights Watch
23. Ibid
24. Ibid
25. 'Uttar Pradesh blind to cromes against dalits: SC panel', 2011, *The Economic Times*, http://articles.economictimes.indiatimes.com/2011-05-26/news/29586108_1_dalit-atrocity-cases-conviction-rate-sc-panel
26. 'Snapshot on Prison Statistics, published by NCRB, New Delhi', 2007, Bureau of Police Research & Development, available at http://bprd.nic.in/index3.asp?sslid=437&subsublinkid=152&lang=1
27. Ibid

Uttar Pradesh remain deplorable, with rampant overcrowding and routine indifference to their well-being. They are often denied timely treatment, even for serious illnesses.[28] In 2008, the ACHR reported that, according to the findings of an inquiry conducted by the police and administration, prisons are poorly equipped. It is indeed ironic that the dearth of infrastructure in UP is such that, let alone being able to cover the provisions for the welfare of inmates, they are not even equipped enough to qualify as decent penitentiary institutions. It is reported that in many of UP's prisons, there are no watchtowers, no metal detectors, no public address system, no wireless sets, no generator, no helmets or tear gas. Many even lack a jail superintendent. Often, the prison walls are below the official norms and standards![29]

Custodial deaths have long remained a problem within the state's prison system. Overcrowding and lack of access to sufficient healthcare has led to mass deaths in the past. In 2005, over twenty inmates held in the Lucknow Jail died because of a lack of medical treatment.[30] Alternatively, it has been reported that politically influential or wealthy inmates are allowed to enjoy lavish comforts in the jail hospital. [31]

WOMEN'S RIGHTS

The general state of women in UP is a cause for concern. According to the National Commission for Women (NCW), the majority of women in Uttar Pradesh are illiterate.[32] The NCW reported in 2004 that the sex ratio of children aged 0–6 revealed a clear preference for the male child, and a general neglect of the girl child.[33] While the state experienced an overall increase in the female sex ratio, the ratio for the girl child has decreased. Figure 2: Uttar Pradesh Sex Ratios between 1991 and 2001

This general social subordination of women is reflected in the crimes committed against women too. The rate of crime against women in UP is on the assent. According to *State Police Department Records*, a total of 14,925 crimes against women were registered in 2006, against the total of 12,897 in 2005. These included 1,795 dowry deaths, 1,161 rapes, and 2,295 kidnappings among others. The domestic sphere accounts for a large number of human rights violations of women in UP. A study performed in 2010 revealed that 23.52 percent of UP's female population has, or is currently experiencing domestic violence.[34] Statistics from the report also revealed a prevalence of child marriage across the state. Nearly one-third of girls between the ages of 15 and 19 had been married, and among girls aged 20 to 24, more than half were married before the age of 18, with one-quarter married before the age of 15.[35] Women of UP are most vulnerable in familial situations. Scores of reports illustrate that women are often beaten, forced into sexual acts, harassed for additional dowry and sometimes killed.

28. India Human Rights Report, 2008, Asian Centre on Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256790
29. Ibid
30. Ibid
31. Ibid
32. Situational Analysis of Women in the State of Uttar Pradesh, 2004, Usha Nayar, available at http://ncw.nic.in/pdfReports/Gender%20Profile-Uttar%20Pradesh.pdf
33. Ibid
34. 'Domestic violence against women higher in UP', 2010, *Hindustan Times*, available at http://www.hindustantimes.com/Domestic-violence-against-women-higher-in-UP/Article1-552449.aspx
35. Situational Analysis of Women in the State of Uttar Pradesh, 2004, Usha Nayar, available at http://ncw.nic.in/pdfReports/Gender%20Profile-Uttar%20Pradesh.pdf

If abandoned by their families, they are often left homeless, with no education, no prospects, and no one willing to help them. Throughout the state, there have been reports of honour killings and dowry deaths. It is widely reported that police often refuse to file rape charges brought by women.[36] The State Women Commission is said to be singularly ineffective in addressing these crimes, and the consequent rights violations of women in UP.[37]

CHILDREN'S' RIGHTS

Uttar Pradesh was reported as the state with the highest number of child murders, in 2010, with 318 children killed within the year.[38] Annual data from 2008 shows UP to have the highest number of child rapes, with 900 registered cases that year.[39] Also, children living in orphanages are often victimised. On December 1, 2006, the Supreme Court sought an immediate response from the National Commission for Women, National Human Rights Commission, and the District Magistrate, after a private TV channel had telecast a report on the sexual exploitation of about 65 girls, most of them aged five or six years old – some mentally challenged – in the Swami Bal Nath Ashram at Ghaziabad.[40] The district authority did not initiate any action, despite the matter being brought to its notice. This clearly shows the apathy of the administration towards the protection of children and issues of child rights.

Further, child labour continues to be a problem, with many UP children employed in hazardous industries. There were around 18,000 children working in the furnaces, and another 20,000-25,000 who were involved in casting and scrapping processes of the brassware industry.[41] These children are subjected to toxic fumes that cause respiratory diseases, and are being paid between Rs. 7 and Rs. 15 per day.

RELIGIOUS DISCRIMINATION

UP is a communally sensitive state. The principle religious minority of the state are Muslims. *Human Rights Watch* reported multiple cases of discrimination by police against Muslims within Uttar Pradesh. Under-representation of religious minorities in the security forces of UP patently rendered them a biased entity when they intervene in a communally tense situation. Further, recent targeting of UP Muslims, by using stereotypes of Muslims as terrorists, has led to the violation of human rights on an everyday basis. For instance, in response to bombings in 2008, police accused three Muslim boys of being 'terrorists', searched their pockets and seized whatever money they were carrying. When the officers discovered that one of the boys was carrying only one rupee, they called him 'beggar'.[42] There are also

36. India Human Rights Report, 2008, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256789
37. 'Congress to protest over rising crime against women in UP', 2011, One India News, available at http://news.oneindia.in/2011/06/21/congressto-protest-over-rising-crime-against-women-inup-aid0126.html
38. 'Over 5k children raped, another 1,408 murdered in 2010', 2011, *Times of India*, available at http://articles.timesofindia.indiatimes.com/2011-10-30/india/30338511_1_cases-of-sexual-assault-uttar-pradesh-madhya-pradesh
39. 'Uttar Pradesh tops list of child rape cases', 2010, *Times of India*, available at http://articles.timesofindia.indiatimes.com/2010-03-04/india/28139612_1_highest-number-cases-tops
40. Indian Human Rights Report, 2008, Asian Centre for Human Rights, available at http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html#_Toc216256789
41. Ibid
42. The 'Anti-Nationals' Arbitrary Detention and Torture of Terrorism Suspects in India, 2011, HRW

reports that Muslim individuals are being harassed and beaten, held in custody for extended periods of time without being charged, humiliated and tortured by police in order to obtain a confession, and the threatening of their family members is also taking place.[43]

UTTAR PRADESH STATE HUMAN RIGHTS COMMISSION

At the outset, it is important to mention that there was very little information available on Uttar Pradesh State Human Rights Commission (UPSHRC), mostly because no annual report was published and also there was no website. The UPHRC was formed in the year 2002, almost 10 years after the passage of the Protection of Human Rights Act (1993) . It was formed due to a herculean effort on the part of human rights organisations, in the face of the great reluctance of the state government to form the commission. Alarmed by the high number of custodial deaths, blatant violations of human rights and a flood of complaints from the state, the NHRC urged the UP Government again and again to form the UPSHRC between 1993 and 2002. Successive Chief Ministers, Kalyan Singh, Ram Prakash Gupta, and Rajnath Singh, promised to constitute the commission several times, on occasion even on the floor of the *Vidhan Sabha* (UP Legislative Assembly), but repeatedly failed to honour their commitment.

Eventually, the People's Union for Civil Liberties (PUCL) filed a Public Interest Litigation (PIL) in the Allahabad High Court and obtained an order asking the state government to form the commission. Even after the order, the government was reluctant to go ahead. It took two more PILs, one to get the government to drop the excuse of a lack of resources, and another to actually constitute the commission, to finally get the institution going in 2002. This clearly demonstrates the determination of the state to undercut the institution even before its inception.

The UPSHRC consists of three members, a chairperson, Justice H. K. Sema, and two members, Justice Vishnu Sahai and Asha Tewary. This is a rudimentary administrative set up; however, as the chairperson pointed out in an interview conducted in July 2011, the commission does not have any investigative staff on its payroll. It therefore depends on the local and state police, in order to investigate complaints and issues the commission takes *suo moto* cognisance of.

It is difficult to say that the UPSHRC has got its act together with its limited resources. To begin with, the commission has not taken any initiative to make itself accessible to the public, let alone tried to spread awareness about human rights among the wider public. While other states with SHRCs have created informative websites, despite their commissions' more recent formation, UPHRC does not have a website of its own, giving relevant information regarding their location, who can approach them, how to file a case, what resources are available, etc.

43. Ibid

Basic contact information for the UPSHRC can be obtained on NHRC's website, but this site is replete with obsolete information. It lists several addresses and telephone numbers, but most of the addresses are of personal residences, and most of the telephone numbers are inactive. The commission has not even bothered to change its address after moving the office from one location to another.

During a number of visits to the UPSHRC office in Lucknow, it was difficult to meet the chairperson. The public information officer revealed that the chairperson stays in Noida (near Delhi), and comes to the office only when cases are to be heard. He has no fixed days during which he can be approached, and attends the office once a week, or for a few days together in an entire month. The other two members are available at the office for a few hours daily, and can be met with prior appointment.

For an institution that was set up to hold the state accountable for its actions, the UPSHRC is extremely lethargic and reticent. It was very reluctant to part with any information regarding its working, and made it clear that they were going to part only with little chunks of information, when forced to through a barrage of applications under the RTI from HRLN. In response to an RTI filed, regarding the annual reports that the commission had to submit to the state government, the commission said that all reports must be tabled in to the State Legislative Assembly, before they can be made public. Since not a single annual report had been tabled, they could not provide access to such details. However, subsequently, a report for the period of 2007-2008 was provided. It included a broad outline of the efforts made, workshops held, and landmark cases that were decided by the UPSHRC. It also claims that UPSHRC has developed computer software to manage assigning serial numbers, and the categorisation of cases by type of violation and other details. The program keeps electronic records of all the complaints registered, providing the UPSHRC with a reliable organisational system; an advantage over many other SHRCs.

But, notwithstanding this sophisticated information retrieval system, all the information requested was informally denied, with a request to return within a week. From April 2011 onwards, several visits were made to obtain copies of landmark orders, and to get details on statistics of complaints and their processing etc., but to no avail. Thus, accurate annual statistics regarding the number of cases handled by the UPSHRC are hard to come by, but as the chart below demonstrates they must be quite substantial.

Today, a decade after its inception, the UPSHRC does not have a building of its own. It has no independent budgeting, and members appointed to it are indifferent and singularly lacking in any background in human rights work.

INDEPENDENT PEOPLE'S TRIBUNAL IN PROGRESS

CHAPTER-II

Testimonies

Police Torture

Donda Mafi Village, Chitrakoot District

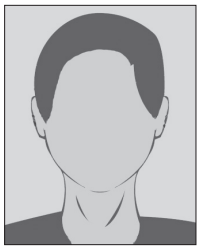
BADKAWAN

I am a poor farmer. I have been continuously harassed by the police ever since my elder brother was killed by several police officers. Although the officers involved were tried and imprisoned for life, other policemen from the station have retaliated against me. The police have now falsely accused me of theft, and registered a case against me.

On December 1, 2006, around 6pm, men from a local gang broke into my house and beat me. They fired gun shots at me and threatened my life. I was told to bring food for all of them and when I refused, they beat me again. Then they demanded one lakh rupees in payment. Next day, my brother and I went to the Markundi Police Station and registered a complaint. After submitting the report, we returned home. My brother then left for Tikaria, where the Inspector and other police officers caught him. Believing that he was involved with the notorious gang, they confronted and eventually killed him. After learning of my brother's death, our village leader came to visit me. Since I was still seriously injured, seeing my condition, he took me to the hospital and got me treated.

On April 8, 2010, Markundi police officers visited my home. On realising that I was not home, they arrested my son, Dadubhai. They kept Dadubhai imprisoned for three days. Initially, the police asked for five thousand rupees as bribe. After the head of our village intervened, the officers reduced the amount to three thousand rupees. They told me to keep the money exchange secret. After I paid the bribe, my son was released on April 10, 2010. Shortly after my son's arrest, the police visited me again to intimidate me. They said that they had released my son for a very small amount and that I should pay a higher amount. They told me that I should sell my belongings if I didn't have enough money. The inspector again sent me a notice that I was suspected of another crime. I sent a prompt response. During this time, I was arrested for a day, and released after paying a sum of five thousand rupees. At present, I am harassed by both the police and the dacoits local gang. I stay near the jungle, on my own land. I have no other resources and am bound to live within the confines of the village.

A complaint was filed with the NHRC on April 17, 2010. Despite the ongoing harassment, the NHRC has failed to take any action.



Custodial Death

Raipura PS, Chitrakoot District

Anupam Bhargav's father deposed his son's tale of torture and death

ANUPAM BHARGAV (DECEASED)

My son, Anupam Bhargav was picked up by two constables, two police officers and Bhairo, another man from Bhauri Village on July 18, 2010. He was taken to Raipura Police Station. When he didn't come back in the evening, I made a complaint the next morning, on July 19, 2010, to the SP requesting his release. The SP assured me of my son's return by evening.

When Anupam didn't return, I took food for him and went to the police station on July 20, 2010, around 10am. The police took the food. When he saw me, Anupam broke down and started to cry. He told me that he was brutally tortured and beaten while in custody, naming Inspectors Dharmender Singh and Om Prakash Sharma, Constable Rajdeb Saroj, and one more constable. He said he had been stripped down, beaten with sticks, repeatedly hit over his head, and electrocuted by the above named policemen. While I listened to my son cry, I saw many injuries covering his body. He begged me to sell our family land, so that we might be able to use the money to buy his freedom. After letting me see my son for only a few minutes, the inspector returned and took Anupam back to lock-up. He chased me out of the police station.

On July 27, 2010, Anupam's elder brother, Avadh Bihari, went to the district headquarters and met the SP. The SP again assured Avadh that he would release Anupam that evening. Before my eldest son returned to our village, the news of Anupam's death arrived. The police reported Anupam's location of death at a farm two kilometers away from the police station. When I heard of this report, I gathered many of the other villagers and approached the police station, to protest about my son's murder. Upon vehement protest, the SP issued orders to register the case in the Raipura Police Station. The First Instance Report (FIR) still stated Anupam's location of death as the aforementioned farm.

When no further action was taken, we filed a complaint with the UPSHRC. To date, no action has been taken by the commission. We are being threatened and harassed to settle for an out-of-court deal with the officers involved. The SP has not shown any interest in the case, despite repeated requests.

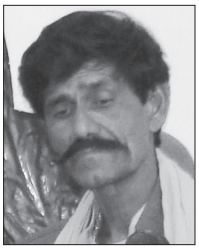
Murder and Police Inaction

Abhishek Pratap deposing his brother's case

KRISHNAJI TECH (DECEASED)

On August 1, 2007, my brother Krishnaji Tech was coming home from Delhi. He was kidnapped, assaulted and killed by Santosh Misra, father of our village priest. It was a revenge killing. After this, Santosh Misra was given protection by the local legislator. I tried to lodge an FIR with the police but they refused. Santosh Misra and his relatives were on the run for 15 days. On August 15, Rural Labour Union members decided to take action and brought a black flag, calling the villagers to come. After this protest, I was assured that the culprits would be caught. Santosh Misra and Akash Yadav were arrested an hour later, from the house of the legislator.

I have been threatened ever since, and therefore approached the UPSHRC, but the threats are still being made. Nothing has been done about this case. Meanwhile, pressure has been mounting over time from the administration, who alleged that my brother was a miscreant who broke his own house and shop. They are trying to put the blame on us. To this end, the charges of having destroyed our farm, among others, have been imposed on us.



Police Inaction

BAKU

My brother and I are farmers in Danegra village, which is surrounded by a jungle. Mountain bandits are a very big problem for us and they often demand food and ransom money. My farm has been robbed by them. One day in 2006, these gangs descended on my farm. I closed the door and tried to stall them but they opened fire. They finally broke down the door and began to beat my sister and daughter. They beat me very badly too and broke my hand. The next day, my elder brother was killed and some money was taken from us.

We filed a complaint with the police, but that case did not result in any relief. Some other people who were also victimised, have been compensated, the people are very upset. Men came and took Rs. 20,000. After one gives money to the crop inspector, one has to then give food to the bandits too. The police got hold of my son last year and I was forced to give them Rs. 3,000 to get him back. I sent them a notice accusing them of being bullies, who pretended to offer protection for Rs. 3,000. They leave only when they have been fed.

I reported the matter to the UPSHRC, the NHRC, and the women's commission, and at first I was relieved that I did. The UPSHRC and NHRC, however, said that they had not been made aware of this situation and refused to help.

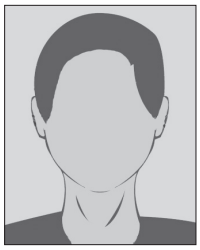
Illegal Detention

Sonebhadra District

CHOTE LAL

On November 13, 2006, I was beaten by the owner of a carpet factory in Pageeya, a near by village, Arangi. After the beating, the police approached me, to inform me that the local station officer had summoned me. They took me into custody and brought me to the *thana.* In the *thana*, I was kept waiting for hours. During this time, I was threatened again and again. After some time, I was released. But I continue to live in fear of my attacker, and of the police.

On November 14, 2006, Lal Bahadur, my brother, filed a report with the Superintendent of Police in Sonebhadra. After no action was taken, on August 10, 2007, a complaint was recorded again with the Superintendent of Police, and with a number of other commissions, including the UPSHRC in Lucknow. Again, after no response or action was taken, Dr. Lenin Raghuvanshi, of the *People's Vigilance Committee on Human Rights*, filed a complaint with the NHRC on April 18, 2008. To date, no action has been taken.



Murder and Police Inaction

Chitrakoot District

HARISHANKAR (DECEASED)

Bharat, the brother of Harishankar, was killed on November 23, 1998. As an eyewitness to the case, Harishankar was to appear before the court on December 24, 2008, and give testimony. On December 22, 2008, at approximately 1pm, the accused in Bharat's case and his gang approached Harishankar, abducted him, and took him to Devangana valley. There, they brutally beat him. Harishankar was admitted to the district hospital, but in vain. He died in the hospital, before getting the opportunity to testify against his brother's attackers.

The post mortem was conducted on December 24, 2008, in Karvi Medical Hospital. On December 25, 2008, the complainant, Rudra Prasad Mishra of Court Compound, Karvi, approached the police station to file a complaint, and had a First Information Report (FIR) registered. Initially, officers Jagdev Singh Tomar and Sanger Munshi refused to register the complaint, claiming that Harishankar's death was the result of an accident. On December 29, 2008, an application was sent to the Superintendent of Police and the UPSHRC by post. No response was ever received.

Dalit Atrocity and Police Inaction

Chitrakoot District

JUGUNTHI

I am a dalit *Anganwadi* worker in my village. My family are employed as labourers in the village. The accused are from the dominant caste in the village, and own a transport business. One of my sons is a driver in the village with the transport company. On September 12, 2009, as part of my son's daily work, he was loading goods and passengers into a jeep. On that day he entered into an argument with the accused, which later turned into a fight. Because a dalit, who is lowest in the social structure, dared to argue with them, they became enraged. They attacked my house at night and burnt it down. They abused and threatened me and my daughter. I went to lodge a complaint with the Rajapur Police Station, but they refused to file my complaint. Instead of acknowledging the complaint and taking action on the same, they filed a false case against my son and sent him to jail.

After this incident, I approached the police, the district administration and the UPSHRC, but no one helped me. I managed to obtain court orders, but the police still refused to register the complaint. The accused brought a petition to stay the previous order, but I appealed. Finally, at the direction of the high court, the police acknowledged and registered a First Information Report (FIR). Despite the FIR, the police failed to arrest the accused. The final report states that I had given a false statement to the court. The UPSHRC never addressed my complaint.

Domestic Violence

Chitrakoot District

MAMTA DEVI

I belong to the Kol caste and live in Azad Nagar, Majhara Gahur Village, of the Chitrakoot District of UP. I work as a labourer, i.e. breaking bricks. My neighbour, Deep Kumar, is also engaged in the same work. Throughout 2002 to 2003, Deep Kumar made false promises to me. He promised to take me to Delhi and Bombay. One day, he forced himself on me. Eventually, I stopped resisting and acquiesced. He continued to force himself on me until eventually, I became pregnant. When our parents found out, they demanded that we marry. He refused, and instead told me to get an abortion. This matter was known to the entire neighbourhood after a few months, and on November 28, 2003, the villagers asked us to stay together as husband and wife. I stayed in his house for three months and during that time, his parents accepted me as their daughter. On December 19, 2003, I gave birth to a girl. After just two months of giving birth, in February 2004, Deep threw me out of the house. Because I am now an unwed young girl with a small child, I have no home and so will not be accepted by society.

I made a request for rehabilitation and compensation. I managed to get orders from the court under the Domestic Violence Act, on February 8, 2011, but those orders have been ignored by the accused. I approached the UPSHRC and filed a complaint on March 26, 2011. The commission has taken no action.

Illegal Mining and False Case

Mahoba District

MANGAL SINGH

(In the Mahoba district of the Bundelkhand area in Uttar Pradesh, environmental threats related to land, water and jungle are grave. Illegal rock blasting, stone manufacturing and mining threaten the lives, livelihood and health of local farmers, labourers and villagers on a daily basis.)

For some time, dust and debris from rock blasting and stone quarrying has been dumped onto our farmlands. The dust, when dumped on the land, affects the crops. The dumping makes the land unusuable as farmland and deprives all of the farmers of the only livelihood we know. I began to protest this dumping. I initially started this protest in order to save my farm and my produce. Over time, I was joined by other farmers in the village. We approached the district administration and the police about this, but no one would respond. I eventually approached the Allahabad High Court, through the help of a civil society organisation, and filed a petition.

Court orders to cease the dumping were obtained, but the Mining Director, Mr. A. K. Jain, illegally reopened 87 mines. Women, children and farmers are badly affected. I filed complaints with the National and State Human Rights Commission on November 14, 2010, along with a copy of the PIL filed in the high court. No action was taken by either of the commissions.

The court orders to investigate the matter disturbed the entire administration of the mines and the local mafias they use to protect themselves. Ms. Farhat Sultana, owner of one of the Kabrai Stone Mines, filed a case against me on March 11, 2010. When a civil society organisation raised this matter in a meeting with the Chitrakoot DIG, he ordered an independent probe into the matter and stalled my arrest.

The final report cleared me of any charges and I was set free. However, I have not been provided any personal security and as a result, I am being constantly threatened by mine owners. The district administration has not provided me with any protection. The UPSHRC and NHRC have not taken any action. I strongly believe this is because the state administration has chosen to look the other way, since it is a known fact that local politicians earn a good deal of money from these mafias. On December 2, 2011, the UPSHRC rejected my complaint. They stated that the matter is in front of another authority, and that appropriate results are expected.

Police Inaction

Mangala's father deposed the case

MANGALA

Arvind Dadua wanted my daughter killed. Around my village, he dominated the police station in '*Thanedari',* and he and the police beat people. On February 20, around 10pm, Arvind and the police came to my village. My village has about twenty-five houses, and Arvind and his partners in the police destroyed all of them – accessories, food items and everything. They tried to rape a girl who was 14 or 15 years old. Some elderly people were in the village and when they protested, he beat them very badly.

When this matter came to my attention, we first tried appealing to the police. The minister was forced to speak with them, and asked whether they were in the village when the incident took place. An FIR was filed on February 27, which put pressure on Arvind. The incident was investigated by the police. To date nothing has been done about this incident. We have received no respite in any way.

A complaint was filed with the UPSHRC, but no action was taken. None of the families whose homes were destroyed have received any aid whatsoever.

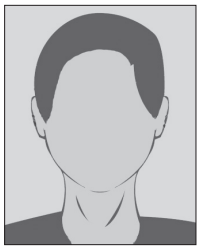
Rape and Police Inaction

Banda District

MIRA

On October , 2010, at 4:30pm, my father and mother left home to go and carry out some farm work. Bijju, my neighbour, along with three of his friends, Kuttan, Sattidin, and Mewalal, came to my house. They stole my family's jewellery, worth fifty thousand rupees, kidnapped me, and took me away from my village. I screamed, but by the time anyone heard, it was too late. They took me to Kuttan's village, Amlor. There, they raped me. After some time, they took me to another village called Bahruva Sumerpur and again sexually molested and raped me. On the third day, they brought me to Makari village. We stayed there for the next two days. All the while, I was being continuously raped and beaten. At night, around 8pm, they brought me to Khaipar Colony, where I was gang-raped by all four of them.

When my father discovered that I was missing, he approached the local police. The police tracked down Bijju and the others, and were able to recover me too. My father identified me and two of the accused, Kuttan and Mewalal, were arrested. However, Bijju and Sattidin were not. The two arrested were booked, but not tried. My family is now constantly being threatened, and told that we must retract the case. On November 22, 2010, my father filed a complaint with the UPSHRC and asked that every necessary action be taken, including trial and just compensation. No action has been taken yet.



Rape and Police Inaction

Chitrakoot District

PURUSOT DWIVEDI

The Uttar Pradesh Legislator, Bana, raped me. His relatives live in Chitrakoot and his son's wife is the village's chief woman. He raped me at gunpoint with his relative's tacit consent. I was very scared, and my family was also intimidated, and so I hid the rape incident for two months. I reported it in 2006 and filed a FIR, but no action has been taken. The CBI has been involved in this case for over one year, but so far no arrests have been made. The charge sheet was scrapped by the magistrate's court and after this, a notice was sent to his boss by the Leene C.O., to inform him that the charges had been dropped. My family and I tried to bring our case again at the magistrate's court but to no avail.

A complaint was filed with the UPSHRC, but no action was taken. I am still waiting for my rapist to be prosecuted, and to receive some compensation from the government for their blatant inaction.

Goondaism and Murder

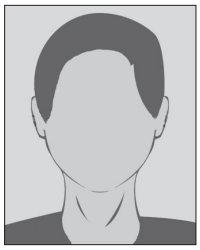
RAJBALI (DECEASED)

Brij Mohan and Dwarika belong to the Kol Tribe, and are poor farmers. They work in the jungles and fields. One night, at 11pm, an infamous local gang, lead by Dadua, attacked the village. They went around the village asking each member how much land they owned. Out of everyone, they pulled out six families. Brij Mohan and Dwarika were told to sell their land, buy a tractor, and give Rs. 20,000 each to four members of the gang. Out of fear of death, they did accordingly and sold the tractor for Rs. 80,000.

On the same night Dadua told Brij Mohan's son Rajbali to drive the tractor. When the local police came to investigate the tractor incident, the inspector tried to get hold of the tractor. Rajbali handed it over to his relative, Dyanendra Singh. When Dadua came to know about this, he threatened Dyanendra Singh and he handed back the tractor. Later Dadua pulled Rajbali out of his home and started to beat him with sticks, and killed him. Thereupon, around ten people put his body in a sack, put the sack in the tractor, drove it into the jungle and burned it. Brij Mohan and Dwarika did not tell anyone, and did not have the courage to report it to the police.

In 2007, Dadua was killed in a police encounter and the tractor was confiscated. *Tehsildar* later sold the tractor. The bank is now after Brij Mohan and Dwarika to clear the tractor debt. They fear even today to tell others about this incident. As they cannot pay their debt, they are contemplating suicide.

A report was filed with the UPSHRC, the NHRC, and the SC/ST Commission. No action was taken on any of the complaints.



Sexual Molestation and Threats by Police

Varanasi District

RABRI DEVI

In the middle of the night, the police constable doing picket duty in my area entered my house. The constable lifted my sari up and put his hand on my breast. I felt someone touching me, and I immediately woke and struggled to free myself from his clench. I felt helpless, and cried out. The constable ran out. My husband Pappu, Uncle Sita Ram, Ram Chandra, Birju and Champa immediately rushed to my aid. Though I was feeling ashamed, I told them what had happened.

Later that day, someone called the police station and reported the incident. The next day, the story was published in the *Amar Ujala* daily newspaper. After that a station officer, with four or five police officers, came to my house. They started abusing us with filthy words and took my husband Pappu, Uncle Sita Ram and Birju into their custody. On the way to the Lohta Police Station, the officers started threatening all three of them. They asked them why they were blaming the police. They said that the police would involve us all in a fake case, then we would understand what it means to allege police in any matter. For three hours, they were held in custody. The people of our caste, with the assistance of others, held a *dharna* on the road to pressure the police to release them. After three hours, they were released from police custody.

A complaint was filed with the UPSHRC on December 8, 2006, through the *People's Vigilance Committee on Human Rights*. No action was taken by the commission.

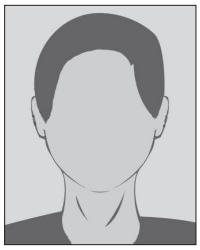
Custodial Torture

Jaunpur District

RAM LAL GUPTA

Vinod Kumar Gupta, and his father Ram Lal Gupta, were illegally detained and faced police brutality in custody. On February 12, 2010, at approximately 11:30pm, five or six policemen in *mufti*, along with the shop-owner's son Vicki Gupta, went to Vinod Gupta's house. They forcefully detained the entire family, including the women and children. Vinod Kumar Gupta's wife was alone in the house when they came. The police sexually assaulted her and used abusive language against her. On February 13, 2010, they released Vinod Kumar Gupta's mother, Gayatri Devi, after beating her and injuring her knee. The others were finally released on February 18, 2010, at around 8pm. After being released, Ram Gupta approached the *People's Vigilance Committee on Human Rights*. On camera, he testified that, "During the time of illegal detention, I was kept in three police stations: Cholapur, Phulpur and Sindhaura. In custody, they severely tortured us, compelled us to drink urine, and put petrol in the ear of Vinod. Now we are living life under threat and expect to be killed by the shop-owner at anytime. Due to this incident, my other sons have been dismissed from their jobs, due to fear of the powerful shop-owner."

On February 13, 2010, a letter was faxed to the police, the UPSHRC, the Chief Minister of Uttar Pradesh and the Chairperson of the NHRC about the incident. No action was taken by any of the notified institutions.



Dalit Atrocity

Allahabad District

SANGEETA

Around 3 o'clock in the afternoon, several men came to Sangeeta's home. They used bad language towards her and her family, and verbally abused her mother, and her caste. They threatened to burn their house down, unless they left immediately. They beat her brother, mother, father, and sister, and threw them out of the house. Later, they returned to Sangeeta's home. They bragged about the way they had recently beaten up some "chamaars" [Scheduled Caste people], and that they would similarly burn Sangeeta's father alive. Threatened, the victim's father fled the home, leaving Sangeeta, her sick mother, and her younger brothers and sister, to be beaten and driven out of the house. They demolished Sangeeta's house, a *kaccha* house with a thatched roof, and constructed their own *pukka* house there.

As a consequence of these incidents, Sangeeta's younger brothers, Dharmraj, Rahul, and Arvind, and her sister Sunita, cannot return to their home. Their father has not returned home because of the threat to his life. The entire family now survives by begging for food. They now live under constant threat.

A complaint was filed with the UPSHRC and NHRC. Neither commission has taken any action.

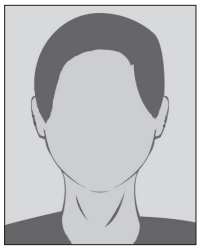
Police Torture

Shikarganj and Chakiya Police Station, Chandauli District

RAM SURAT YADAV

I was sitting in my shop when a white jeep stopped in front of it. Three police constables entered the shop and asked me to come to the police station along with them, saying that a notice had been issued in my name. On the way to the station, they stopped, pulled me out of the car, and started beating me and using abusive language for me. Once we arrived at the police station, they tied me to a pole. They inserted objects into my anus and physically tortured me. As a consequence, I now cannot sit properly, and continue to feel threatened.

Through the *People's Vigilance Committee on Human Rights*, complaints were filed with the UPSHRC and the NHRC. No action was taken on the complaints.



Custodial Death

Lucknow District

SANJAY SINGH (DECEASED)

Sanjay Singh, of Pai Village, was picked up by the police on June 14, 2006, for questioning. While he was in custody, the family heard rumours that Sanjay was to be killed during a false police encounter and so they spent two days writing letters to state ministers, senior police officers and the UPSHRC, in an effort to stop the attack. On June 16, they organised a sit-in protest at the District Magistrate's office with over two hundred people. Later, Sanjay Singh's family learned that the Ghazipur police had killed Sanjay Singh. The police claimed that he was a gangster, carrying a reward of Rs. 25,000 on his head. Singh's family found that he never had a single FIR lodged against him anywhere in the state, let alone a reward registered.

The police refused to give Singh's body to his family for the last rites. The family approached the *People's Vigilance Committee on Human Rights* (PVCHR), which, after a legal battle of three years, managed to register an FIR against the thirteen police officers involved in Sanjay Singh's death.

A complaint was filed with the UPSHRC, no action has been taken so far.

Police Inaction

Mahoba District

UTTAM PRAJAPATI (DECEASED)

Uttam Prajapati and his family lived near a government mine. Around 4:30pm, a blast occurred at the mine and a five kilo stone was projected approximately one kilometer away, onto the house of eight year old Uttam Prajapati. Uttam was playing in the house and was injured. He died on the way to the Mahoba District Hospital.

After the incident, agitated villagers protested at the police station, and under pressure the police registered a complaint. When the accused learned about the complaint, they approached Uttam Prajapati's family and threatened them, in an attempt to pressure them to withdraw the case. They tried to settle the case with money. The entire incident forced Uttam Prajapati's family to flee the village and take refuge in a nearby village. At the police station, Uttam's father was forced to give a false statement. It was recorded that Uttam died while playing in the house and not because of the blasting in the mines.

When the incident was taken up by local organisations, a visit to the site revealed that the case was wrongly registered. Uttam's house did not have a roof. While the FIR states that the cause of Uttam's death was the blasting, his father was later forced to change his statement. The matter was brought in front of the National and State Human Rights Commission on February 20, 2011, but no action has been taken.

CHAPTER-III

Jury Report

BACKGROUND

The Human Rights Law Network organised the IPT at the Press Club, Lucknow, on March 26, 2011, with the support of, and in collaboration with several other human rights and civil society organisations. During the event, several activists as well as many victims provided their testimonies to the jury panel comprising of:

- Mr. S. R. Darapuri, Ex-IPS Officer;
- Mr. Ram Kumar, Dalit Right Activist;
- Professor Pradeep Kumar, Ruhelkhand University;
- Ms. Shruti Nagvanshi, Women Rights Activist;
- Ms. Roop Rekha Verma, Former Vice Chancellor of Lucknow University.

INTRODUCTION

All those who are concerned with human rights in the state of UP, were initially very optimistic about the UPSHRC, with its constitutional mandate and wide ranging powers. Today our optimism seems misplaced.

The Protection of Human Rights Act, 1993, was promulgated by the act of the Parliament and received the assent of the President on January 08, 1994. Its objective was to 'provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in the states and Human Rights Courts in every district, for better protection of human rights and for matters connected therewith or incidental thereto.' The functioning of the commission, as stated under section 12, Chapter-III of the Act, provides the power to:

- inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of …
- violation of human rights or abetment thereof; or
- negligence in the prevention of such violation, by a public servant ;
- intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of such court;
- visit, under intimation to the state government, any jail or any other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- review the safeguards provided by or under the Constitution or any law for

the time being in force for the protection of human rights, and recommend measures for their effective implementation;

- review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- undertake and promote research in the field of human rights;
- spread human rights literacy among various sections of society, and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- such other functions as it may consider necessary for the promotion of human rights.

Under Chapter-V, Section 21 of the Act, there is a provision for the constitution of State Human Right Commissions (SHRC), as well as an express assertion that each state government may constitute their own SHRC. However, from 1993 through 2001, the Uttar Pradesh Government had never bothered to constitute a UPSHRC. Even after the *People's Union for Civil Liberties* filed a Public Interest Litigation writ petition in the Allahabad High Court and obtained a judgment for the constitution of the commission, the state government kept on dragging its feet. In fact, it was not until a petition to hold the state in contempt of court was filed by the *People's Union for Civil Liberties* and notices were issued, that the state finally constituted the Uttar Pradesh State Human Rights Commission.

After the constitution of the UPSHRC, Supreme Court Justice A. P. Mishra was appointed as its first chairperson. Throughout his tenure, Justice Mishra complained that the state had not provided sufficient structural and financial support, to enable the proper functioning of the commission. When Justice J. S. Verma, Chairperson of the National Human Right Commission, visited Lucknow, Justice Mishra expressed his anguish. Justice Verma met with members of the Uttar Pradesh Government and tried to press the issue, only to be ignored. Finally, when the *People's Union for Civil Liberties* again filed a Public Interest Litigation praying for a budget increase, the state government allotted some financial resources.

However, the systemic issues that plagued the UPSHRC persisted. After the term of Justice Mishra expired, no new chairperson was appointed for more than one year. It took yet another Public Interest Litigation by the *People's Union for Civil Liberties* to fill the position again. Only when Chief Justice H. L. Gokhale of Allahabad High Court passed an order directing the state, was a new Chairperson, in Justice H.K. Sema, of the Supreme Court, appointed. Justice Sema accepted the appointment on the condition that, he would stay in Noida, whereas the main office of the UPSHRC is at Lucknow. We find this appointment of the second chairperson very ironic.

This sardonic history of the UPSHRC indicates the utter reluctance on the part of the state government to bring this institution into existence, and its relentless efforts to undercut the ground beneath its feet even before it takes roots. The results are there for everyone to see. We have seen many cases of gang-rape, fake encounter deaths, child abuse and other kinds of the stark violations of human rights in the state of UP over the last decade, but the UPSHRC has never taken any *suo moto* initiative to enquire or intervene in the matter, and its poor record of intervention when people approach the commission with complaints, is evident from the testimonies in the report.

OBSERVATIONS OF THE JURY

The present public hearing is a welcome initiative by HRLN. As jury panel members, our attitude should not only be to criticise the functioning of the commission, but to suggest changes to strengthen it. However we are pained to note that, during this tribunal, in which more than 100 people have participated and 25 cases were discussed, we were shocked to see that in none of these cases have complaints received any kind of remedy from the UPSHRC

Several of these cases that came to our notice today are brutal, and the UPHRC's inaction is shocking. In one case, a complaint of a custodial death of Nandu, a tribal man, while being held in the Banda jail, was forwarded to the commission. After no action was taken, reminders were also sent. Furthermore, the UPSHRC failed to even visit the jail. In another case, we found eighteen tribal women of Tikurikola Village filed a petition with the UPSHRC, claiming they have been molested and insulted, and that these violations had the direct support of the local police. The UPSHRC responded only by sending a letter to the SP of the Chitrakoot district. The Superintendent's response was to simply brush away the matter. In the case of Manoj Kumar of Allahabad, Kumar was subjected to insults and beatings fueled by caste hatred. He was violently attacked by higher caste people. The matter was sent to the UPSHRC, which, to date, remains silent over this case.

One of our panel members, Dr. Ajay Kumar, has been instrumental in the preparation of many petitions and complaints on behalf of victims. On many occasions we have found that whenever a complaint is filed against the police, and before the UPSHRC, the commission's actions are limited to ritual forwarding of the grievance to the superintendent of police of that district. Ultimately, the complaint is placed before the table of the officers against whom the complaint was made, and the result is the continuation of atrocities by the original perpetrators.

We have seen, during the testimonies at the IPT, that the targets of the atrocities are mainly the vulnerable sections of the society; Scheduled Caste people, tribals, women, children and minorities who require special protection under the provisions of the Constitution of India. The Uttar Pradesh State Human Rights Commission should have come to their rescue, but it has consistently failed to discharge its duty. Having gone through all the testimonies, we find the situation to be very alarming and disturbing. One can only imagine how much the unprotected poor of the state are disillusioned with the system of civil and police administration, the judiciary, and now also with the UPSHRC.

FINDINGS

It is with this backdrop that, with regard to the Uttar Pradesh State Human Rights Commission, we have come to the conclusion that:

- The commission has failed to discharge its duty and responsibilities, as provided in the Protection of Human Rights Act.
- The commission has not developed any defined or structured procedure to intervene in atrocities and violations.
- The members of the commission enjoy their post-retirement tenure with all salary perks and facilities, and lead a comfortable, easy life, without significantly contributing to the work of the commission.
- The commission protects the state, and chooses to ignore problems which may embarrass the government and its bureaucracy.

With regard to the Uttar Pradesh Government:

- The state government has no motivation to strengthen the commission, arm it with financial support, or encourage its proper functioning.
- The state government appears to apply direct pressure on the commission, to be complacent to, if not complicit in serious matters of human rights violations.

RECOMMENDATIONS

As chairperson and subsequent members of the jury panel, after discussion with all the members of the jury, victims, and human rights activists, we do hereby suggest:

- There should be a meeting of the jury, or a panel of human rights activists, with the members of the UPSHRC, to discuss the pending cases. A public hearing should be organised on a regional level within the state of Uttar Pradesh so that many more cases can be covered.
- The documents collected in this public hearing should be forwarded to the commission with notes. We should take the history of at least 50 cases and track them within the state human rights commission, to try to persuade the human rights commissions to perform their duty and intervene effectively.
- It was seen throughout this public hearing that the papers and other documentation brought by marginalised people from remote areas of the state are incomplete and generally not kept properly. We must coordinate the civil society organisations (CSOs) at the district level, in order to provide a network that poor and illiterate persons may approach, for preparation and drafting of complaints and petitions, so that proper follow up is possible.
- There should be a process of dialogue between human rights activists and the members of the commission, to infuse confidence in the members of the commission and to define a more proactive role, to protect and preserve human rights within Uttar Pradesh.
- There should be publication of the entire proceeding of the IPT, along with related articles, which should be widely circulated.
- A team of human rights experts must meet the chairperson and other members of the UP-SHRC in order to apprise them of the problems people face while filing complaints and petitioning before the commission. This should also serve as a means to suggest tools or other mechanisms with which to improve the UPSHRC's functioning.

CONCLUSION

We again thank the organisers and leaders of HRLN for this very successful public hearing, which brought before us these diverse cases of encounter with the UPSHRC, including dalit, minorities, women, children, tribals, environments, land acquisition, corporate intervention, etc. The general disillusionment with the commission among the people who approached the UPSHRC is quite evident. People's faith in this institution has to be re-kindled.

In order to do this, a number of ways may be employed. Amendments should be made to the PHRA. For example, in necessary cases, complainants should be availed of protection once the complaint reaches the UPSHRC. The police should be held responsible for the protection of at-risk victims. The collegiums with the power to select members should be reconsidered and the appointment procedures should be open and publicly accountable. Public institutions that work within human rights

and the public interest should choose commission members. The UPSHRC should have an established feedback mechanism. Accountability mechanisms should be built into the institutional structure of the commission.

The common refrain among civil society representatives and the commissions has been that their recommendations are not binding, and therefore no obligation is cast on the government to comply. The compliance with recommendations largely depends on the responsiveness of the concerned state government. The commissions can only appeal and persuade the government to take action but cannot direct them to do so. If the state is obdurate and considers human rights issues to be marginal, there is no concrete recourse available to the UPSHRC to secure compliance with its orders. In Uttar Pradesh, with the absence of reports on which recommendations have or have not been heeded, there is no information on the extent to which the recommendations have been complied with.

In the light of these findings, we feel only an earnest action on the part of the commission, in the spirit of a constitutional guarantor of human rights, could bestow sufficient moral authority to force the state to comply with its recommendations.

CONCLUSION

As the social audit report reveals, the human rights commissions in West Bengal, Assam, Karnataka, Kerala, Andhra Pradesh and Uttar Pradesh are not functioning the way they were envisioned. Though much of this is due to a weak Protection of Human Rights Act, the lack of political will and a clearly absent zeal to promote and protect human rights are also contributing towards the failure of the SHRCs. The comprehensive analysis of all the dimensions driving the functioning of the SHRCs and the testimonies of the victims who have engaged with these institutions are a clear reflection on the current state of affairs. While one might argue that the representation of just a few people and their tales of injustice is not sufficient to ascertain the functioning of a constitutional body, it has to be noted that the background research has looked into all the other aspects related to the functioning of the SHRCs. Reports by retired high court judges, leading academicians and eminent members of civil society are clearly indicative of a desire for amendments in the PHRA and for the smooth and effective functioning of the SHRCs.

To conclude this volume, it is pertinent to highlight major findings coming out of this social audit comprising background research, Independent People's Tribunals and jury reports. The findings are not confined to six states only as the research and analysis establish a clear pattern that can be applied to assess the functioning of the other SHRCs in other states and the NHRC at the centre.

COMPOSITION AND APPOINTMENTS

The composition of a SHRC and the appointment process followed to select members is the key indicator that determines its effective functioning. The appointment process should be more transparent and democratic and needs to include the representation of a wider civil society. At present, although the appointments are being done by a group of parliamentarians and assembly members, we shouldn't forget that at the end of the day a majority of them are members of the ruling political party. Even the inclusion of a few members from the opposition party is not going to change things, as they are in the minority even in the appointment committee. The appointment should be made through an open announcement, asking for nominations from civil society, as recommended by experts. It should be validated by a special committee comprising both executive and civil society having equal power. People who form part of the appointment committee should also have a proven record of and experience on human rights issues.

There is a need to restructure the composition of the commission members. Though there is no denying that the representation of retired judiciary members adds value to the commissions, it has to be noted that the appointment of recently retired judges has always served the purpose of the State. Therefore, the retired members of the judiciary may be appointed only after a minimum of two years after they have finished serving the courts. This will help in upholding the independence of the commissions and in keeping any favouritism at bay.

As observed in the appointments pertaining to members of the commissions, they are mostly from the judiciary, bureaucracy and police. Many of them lack any practical knowledge and experience of human rights. There is a need for human rights activists to be part of the commissions. This will not only make the commissions more sensitive and responsive, but also their diverse experience and expertise in the arena of human rights will make the commissions more accessible to the people.

One of the prime factors missing in the appointments in all the state commissions is the representation of members from the marginalised communities. Most of the victims/complainants that deposed in front of various juries in all six states are poor and from marginalised groups -- dalits, tribals, women and members of minority communities. The representation of members from these communities in the commission will make it more sensitive towards the distinct problems faced by the victims/complainants who approach the commissions in the hope of getting justice. The commissions, in many instances, as repeatedly observed throughout the IPTs, lack sensitivity and empathy with and towards these members of society. These are progressive suggestions that should be incorporated into the PHRA.

ACCESSIBILITY

The commissions are located in the state capitals. They are highly inaccessible for common people. Though the cost of petitioning the commissions is not much, apart from printing and copying, the travel and postage costs incurred are high. For a poor person from a far-off district, approaching the commission incurs a lot of travel costs, and is time-consuming, which also makes the complainant lose out on several days' earnings.

Many of them get discouraged after sometime and this has been very evident in the various oral and written depositions presented during the IPTs.

The commissions need to move out of the sphere of the state capitals, and they need to be present, at the very least, in each district in the state. This could be done through appointing district officers with specific powers, who in turn are approachable to the people. Local NGOs and CSOs need to be capacitated to further the reach of the commissions. The commissions are not currently working closely with these people, and their functioning is suffering as a result.

Moving out from the state capitals will not only make the commissions more accessible for people and ensure faster remedies, but it will also increase visibility and trust among them. On the issue of accessibility, it is important to mention that none of the six commissions discussed in this volume are disabled friendly. It is impossible for a person of disablity to walk through the doors of the commissions and represent himself/herself.

Another point that came up during the discussion with several civil society members pertains to the location of the commissions in the state capitals. In all the states, the commissions are located either in the state secretariat or in some government office. This makes it difficult for the victims/complainants to approach them. It makes the commissions seem like any other government body, an uphill task for the victims struggling their way through an authoritative bureaucracy. Commissions should be located in approachable areas having independent space and infrastructure, with minimum facilities available like counselling, shelter etc.

INVESTIGATION

Investigation remains one of the major flaws in the functioning of the commissions. It is one of the prime reasons for the poor complaint handling mechanism. As observed, the commissions have repeatedly asked the same department, more often the police which is accused of the violation, to investigate the matter. In almost all the instances, the response of the concerned department to the violation amounts to a vehement denial, that no violation ever took place. And the commissions appear to be too willing to believe their response and dispose of the matter. Even matters of custodial deaths and police torture are treated in the same way. It has also been made clear that the commissions often have to give several reminders to the concerned department to furnish the report, and the complainant is treated according to the whims and fancies of the commissions.

Commissions don't have their own investigation wings. Even if they have, they seriously lack manpower, other resources and willingness. Ironically, the commissions which have been established to protect and promote human rights, have the investigation wing made up of the police, who in most cases are accused of the violations. Not all human rights violations are of a criminal nature and even those which are can be investigated without the police. Human rights violations can be investigated by any eminent persons, outside police, or others who have a profound knowledge and experience in the field of human rights. Such investigations can be comprehensively con-

ducted by a team of human rights activists, doctors, academicians, psychiatrists etc.

More importantly, the human rights investigation team should be present at district levels. This will considerably increase the pace of complaint disposal and local presence, with a set of diverse members who will raise the quality of the commissions' functioning too. Investigation should also include the testimonies of the victims/complainants, rather than just depending on one side of the story, and only later asking for comments from the victims which are seldom considered seriously.

In matters of grave human rights violations, the members of the commission should investigate the matter themselves along with the investigation wing. Regular and surprise visits to police stations, jails and child protection homes will help in improving the human rights situation. It is also important to have a diverse set of members on board for the investigation, which should include women, dalits, tribals etc., pertaining to the nature of the human rights violation in question. Investigation remains the most crucial link for obtaining justice and indeed it is important to ensure that it is impartial, factious and correct. Proper investigation will diminish the arrogance of the violators and the impunity with which they are currently able to act.

INFORMATION

Seldom have the victims/complainants received communication or information from the commissions concerning their cases, as reflected in these reports. Most of the victims/complainants don't know about the status of their complaint. It is revealed to them only after they make several visits to the commissions, more often from far off places. A mechanism needs to be developed whereby the victims/complainants can access information readily and easily. It can be either visiting the district office or checking for this information online. In reality, checking online about the status of the complaint is not a viable solution for all those who approach the commission, and in such cases the district office can bridge this gap. This will also ensure the safety of the victims/complainants, as in many instances people have suffered harassment after filing a complaint.

Obtaining information about the commissions and their functioning has been the most challenging part of this exercise that has culminated in this report. It is evident from the social audit that commissions seldom furnish information in the public domain. Despite the fact that they are human rights institutions, it is very hard to get information on their functioning. A number of RTIs had to be filed in order to access annual reports in most states. There is very little available in terms of functioning and the progress with complaints that will help anyone who approaches the commissions to take stock of things, even for academic or media purposes.

Most of the commissions do not even publish annual reports. Even if they do, these can't be circulated among the public till tabled on the floor of the state assembly. The state is supposed to furnish its compliance and action taken report, an obligation which is not adhered to. Even those state reports which do come out now and then, are mostly in English and therefore inaccessible to the common people. Annual reports don't mention the details of all the cases dealt with by the commissions, and it

remains unclear whether recommendations have been complied with by the concerned authorities.

None of the commissions have an updated website providing the necessary information. Most of the commissions' websites are dysfunctional, and contain merely the name of the office bearers and the PHRA. A complaint can't be tracked online, nor can the annual report be accessed. For the states which have functional websites, updated information can't be obtained, and the information that is available is mostly in English. Though not perfect, the NHRC website can be sort of a model for SHRCs to develop websites.

The commissions have denied applicants information on many grounds, even when applied for through the RTI. One of the main reasons mentioned was the volume of the information, and the commission asked for a huge surety of money to be paid for photocopying the papers. Information has also been denied on the grounds that the name of the information-seeker is not mentioned in the complaint, even when the status of the complaint was asked for. The commissions appear to be operating in a closed and somewhat clandestine manner, and are not willing to share much information with civil society, media, and researchers.

EDUCATION

One of the mandates of the commissions is to engage in human rights education and trainings. However, the commissions have seldom shown a sense of willingness towards this. It was surprising to observe that in many instances even the human rights activists and lawyers were not aware of the locations and even the existence of the commissions in the states. The commissions need to network with local NGOs and CSOs, and hold various awareness and educational programmes. Such activities and networking has been initiated in the state of Rajasthan by the human rights commission there. There should be an adequate fund reserved to undertake such activities. As part of fostering a culture sensitive to rights, students should be encouraged to intern with these bodies.

Human rights education should not be restricted to common people only. Police, security forces and different government departments should also be included in the human rights trainings that need to be imparted. A model needs to be evolved in order to inform people about rights through training programmes.

POWERS

Though the PHRA is not a perfect law from human rights perspective in the Indian context, there is still enough in the law that remains non-implemented. Commissions are not completely toothless, as generally described by many civil society groups and activists. They have been enshrined with certain powers which they don't exercise. The commissions, despite several provisions lacking and desired, can ensure that some sort of justice is delivered and adhered to by the State, if the commission members have the political will.

The commissions have the power to take suo moto cognisance of certain instances of human rights violations and take adequate actions. Seldom have the commissions taken suo moto cognisance, if recent years are any indication to go by. Despite grave human rights violations like encounter killings and custodial deaths, tortures and enforced disappearances, the commissions have by and large been a mere spectator. Even if suo moto cognisance was taken, in most cases such exercise has proved to be a mere eye wash.

The commissions have the power to move the courts when their orders are not complied with. However, the commissions have not used this power in most instances. It has been very rare that the commissions have dared to go against the State. Even though they have the power to enquire into sub-judice matters with the permission of the court, the commissions seldom exercise this power, and most complaints of this nature just get disposed of as matters sub-judice.

Although the commissions have no jurisdiction over the central security forces, apart from the NHRC which has, the commissions should assist the courts and take matters up with the concerned authorities where allegations of killings and torture by security forces are rampant. The PHRA should give the powers to the commissions to investigate matters of human rights violations by the security forces and to move courts if these allegations are confirmed.

The PHRA clearly provides for the establishment of human rights courts in all districts. A sessions court in each district has been notified, in most cases, to function as human rights court. However, this is an exercise which remains only on paper and human rights courts are yet to see the light of the day. The commissions should ensure that the state governments make sure that the human rights courts are operational and effective. A mechanism needs to be established to ensure that the commissions and the human rights courts are functional and aid each other.

Thus, this volume is an attempt to analyse the functioning of the state human rights commissions in India with a view to strengthen the mechanisms in the law towards protection and promotion of human rights. The idea is not to flay the human rights institutions, but to look at the provisions in the law and the practices on the ground critically. It is also to ensure that civil society groups and people in general that have a cynical view of these institutions, try to engage and work in close coordination with commissions. It is hoped that the findings of this exercise will help in bringing about progressive changes in these institutions, in the law, and in the attitudes of members of these commissions in particular, and civil society and people in general, thus strengthening us as a peace loving people, a just society and a vibrant democracy that is often cited as the largest in the world.