



ASIAN HUMAN RIGHTS COMMISSION

19 Floor, Go-Up Commercial Building, 998 Canton Road
Kowloon, Hong Kong . Tel: +(852) 2698-6339 . Fax: +(852) 2698-6367
E-mail: ahrchk@ahrchk.org . Web: www.ahrchk.net

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Ms Louise Arbour
High Commissioner for Human Rights
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
SWITZERLAND

Fax: +41 22 917-9012

Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: India - Constitutional promises and international obligations remain empty rhetoric

The systemic failure of the justice dispensation system in India is marring the state of human rights in India. Fifty-eight years since independence, India is plummeting further into lawlessness and a complete collapse of the rule of law. Challenging violations of basic rights remains inaccessible to the ordinary people of the country, and is becoming ever more so.

The failure in justice dispensation mechanisms has meant that avenues to domestic remedies are effectively closed to millions of ordinary persons. This is enabled by the following factors: fear of reprisals, a lack of protection mechanisms, enormous delays in justice procedures, extreme difficulty in obtaining proper legal assistance, taboos emanating from caste discrimination, and ineffective laws and improper implementation thereof. The Government of India has failed to ratify many of the international conventions and covenants, or has opted out from essential provisions, so as to block victims' access to international complaints and remedies mechanisms, such as that of the Human Rights Committee. There is a complete collapse of the rule of law in India.

The Asian Human Rights Commission (AHRC) has documented numerous cases in India, which establish a consistent and widespread pattern of denial of rights. Of particular concern are cases of: custodial torture and related impunity by the police and security forces; complete inaccessibility to domestic mechanisms; enormous delays in judicial procedures; and caste based discrimination. AHRC has highlighted these issues as part of a special report published on the occasion of International Human Rights Day, December 10, 2005.

Coupled with draconian laws in the name of fight against insurgent activities, brutal forms of torture were reported in India in 2005. The Government of India has consistently refused to acknowledge the fact that the rule of law in India has completely collapsed. It has shut its doors to any who sought accountability, either by way of domestic procedures or by way of international assistance. The long pending report to the UN Human Rights Committee has been due since 2001.

The Government has also denied the request of the UN Special Rapporteur on Torture to visit the country. The request has been pending since 1997.

Torture is not only practiced as a crude form of investigation, but is also used to impart fear upon citizens so as to cater the rich and the influential. Torture in India is widespread, unaccounted for and rarely prosecuted. Lack of investigative skills, the absence of equipment and training for modern investigative procedures - particularly relating to autopsy procedures - and the resultant absolute impunity enjoyed by the law enforcing agents are the trademarks of the law enforcement agencies in India. This has also led to a completely unchallenged state of corruption within the agencies, where justice is auctioned as a commodity in public.

A decade of waiting for decisions on a case is not much time in India. The delays are equally applicable to civil and criminal proceedings. The courts in India are crowded, inefficient and dangerously slow in providing justice to the people. This is even applicable to the High Courts and the Supreme Court. On 4 December 2005 the Chief Justice of India himself stated that there are a minimum of 2.6 million cases pending before various courts in India. The people no longer have any trust in domestic legal mechanisms in India, particularly the poor in the country and the members of the lower caste in the prejudicial caste hierarchy.

The brunt of this complete collapse of the rule of law in India has most affected the dalits and the lower castes in India. Deaths from acute starvation and cases of extreme malnutrition are not only reported from remote areas but also from the cities. Cases of starvation deaths reported from Howrah in West Bengal and Mumbai in Maharashtra are two examples. It is an irony that India is rich and self-sufficient in food and is engaged in yearly dumping of grain, which it finds difficult to stock in its granaries, while people within the country die of acute starvation perpetuated by collapsed systems. Discriminatory attitudes in providing assistance are practised all over the country. The case of tribal community from the state of Gujarat and the 'untouchables' from Varanasi of Uttar Pradesh state are examples.

Yet another international day for human rights may not mean much to the ordinary Indian. Many might not even be aware of this day. India's Constitutional promises and international obligations remain empty rhetoric. Judgements made by courts and orders for implementation are unheeded. International intervention and pressure is completely absent. In spite of this, the Government of India is looking forward to a permanent position on the UN Security Council. When the state itself has failed to deliver to its citizens the basic minimum guarantee of respect, protection and fulfilment of rights, how can it justify its claims to be offered a permanent membership in an international body where human rights is of prime importance? Thank you for the attention you will give these issues.

Yours sincerely,

Basil Fernando
Executive Director



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FOR IMMEDIATE RELEASE

December 7, 2005

A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

INDIA: The lack of domestic remedies for human rights victims and the collapse of the rule of law

Introduction

A few hundred people from the dalits and the members of the backward community in Belwa village of Varanasi district of Uttar Pradesh, the most populated state in the largest democracy in the world, India, have been able to cast their vote in local elections for the first time in 27 years. The election was held on August 17, 2005. In the past they were not allowed to vote and whoever tried to, face immediate consequences, including mass lynching, social ostracism and even death.

The Constitution of India is the repository of guarantees that ensure the right to vote and the right against discrimination. The Constitution of India, among other things, guarantees a plethora of rights, which include: right to life; right against discrimination and the right to participate in the democratic process. There are also local legislations catering for these rights to be implemented at the domestic level, such as the Criminal Procedure Code, the Penal Code, the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. The domestic mechanisms in the country, more specifically the Constitutional Courts, have made use of the powers emanating from the Constitution to interpret it, in order to ensure that Constitutional guarantees are met.

However, the operation of domestic law and the ability to challenge violations of basic rights have remained inaccessible to the ordinary people. When the executive organs of the state fail, and instead become perpetrators requiring reparation be given to victims, as is the case in relation to the police in India, it is often to the courts that people look to redress their grievances and to seek remedies. Even though the courts in India on various occasions have risen to the mark of the expectation of the people, and have come up with directives, far too often these directives remain in the theoretical realm, and are of no use at all to the people.

Domestic remedies often remain inaccessible to the people. This inaccessibility is due to various reasons. Fear of reprisals, a lack of protection mechanisms, enormous delays in justice procedures, a lack of proper legal assistance, taboos stemming from caste discrimination; and ineffective laws and/or improper implementation of laws. This has been categorically spelt out in the Concluding Observations of the Human Rights Committee in its report dated August 4, 1997.¹ India is yet to positively implement the directives of the Committee and has failed in submitting its periodic report to the Committee, due in 2001.

¹ Concluding observations of the Human Rights Committee : India 04/08/97 CCPR/C/79/Add.81

The failure to safeguard human rights standards has resulted in a complete collapse of the rule of law in India. It is reflected in day to day life, and as of today for an average Indian, the concept of the rule of law is a mirage which never yields result. The government, on the contrary, has taken refuge in its domestic laws and Constitution to ward off any criticism. The Asian Human Rights Commission (AHRC), through its work in India, has identified various elements in domestic mechanisms that must immediately be addressed if the human rights situation in India is to improve.

Key areas of concern:

- Custodial torture by the police and the security forces and the impunity enjoyed by these perpetrators
- The lack of accessibility to remedial measures, the absence of judicial process and the failure of justice dispensation mechanism and its procedures
- Caste based discrimination

1. Custodial torture and impunity by the police and the security forces

India signed the International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment on October 14 1997. However, it failed to ratify the convention and all requests and pressures for this have been warded off by the government on the pretext that the domestic mechanisms available in the country are well-enough equipped to prevent custodial torture in India.

From its work in India, the AHRC has come across numerous cases of custodial torture in 2005. AHRC has so far received 73 new cases of custodial violence from India during this year. A study of each case would indicate that torture is widely practiced in India and that there is a consistent and widespread pattern of the use of torture, not only as an instrument in investigations, but also as a means to impart threats and fear upon the people, often in order to cater to the rich and influential.

Brutal forms of torture are reported as being used in India. These include beatings with wooden poles, rapes and cases of extra-judicial killings. This is reflected in the report of the Special Rapporteur on Torture to the 44th Session of the Commission on Human Rights.² In this report the rapporteur observed:

The methods of torture reported include beatings with fists, boots, lathis (long bamboo canes), pattas (leather straps with wooden handles), leather belts with metal buckles or rifle butts; being suspended by the wrists or ankles and beaten; kachcha fansi (suspension of the whole body from the wrists, which are tied behind the back); having the hands trodden upon or hammered; application of electric shocks; burning of the skin, sometimes with a hot iron rod; removing nails with pliers; cheera (forcing the hips apart, sometimes to 180 degrees and

² Commission on Human Rights : Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38 E/CN.4/1998/38

often repeatedly, for 30 minutes or more; and the roller method (a log of wood or ghotna (pestle for grinding spices) is rolled over the thighs or calves with one or more police officers standing upon it); and insertion of chili peppers into the rectum.

1. (a) The lack of skill, equipment and training

The lack of proper training and absence of proper investigative tools force the police to resort to inhuman acts while investigating a crime. Police stations lack basic infrastructure, in many places even telephones. In the state of Kerala, police stations' telephone connections have been severed for prolonged periods since the state government had failed to pay its telephone bills. A similar problem arose for police vehicles, when local petrol pumps refused to provide petrol and diesel to police vehicles, due to the non-payment of bills.

The state police are also severely under-staffed. Police officers are required to parade in the streets for protocol duties for ministers and dignitaries, keeping them away from their primary duty of protecting the citizens. Politicians, their partners in trade, the rich, and criminals, have undue influence on the policing system. It is a common feature in the police stations in India that the moment a person is arrested, the local leader of the political party either gives a call to the police station ordering release of the person or even comes to the police station asking for the immediate release of the detainee. All these elements add up to heap pressure upon the police to solve crimes, for which they are ill-equipped.

1. (b) Autopsy procedures

One shocking example of a lack of equipment and mechanisms is the primitive nature of post mortem procedures in many states in India. One such state is West Bengal. The procedure for post-mortem examinations in West Bengal is unreliable at best. Most morgues in the state are located in sub-divisional and district hospitals. The conditions defy description: without air conditioning and freezers, or other equipment to deal with the bodies, corpses rot within hours. Even though the doctors must perform post-mortem examinations according to Indian laws, in fact this is left to a caste group, the Dom, a sub-group of Dalits (so-called untouchables) who are officially assigned the task of handling dead bodies.

The Doms, who are usually completely uneducated, open the bodies with hammers, rusty nails and axes, and call out what they see to the doctor, who is sitting 30, 40 or perhaps 50 metres away. The doctor then records their observations, and the body parts are discarded. The failure to treat a victim's body with due respect and diligence is a serious violation of the rights of the dead and their family.

The lack of autopsy procedures not only obstructs the investigation into a crime, but also benefits the corrupt police officers and the criminals in uniform. As of today, there is no credible mechanism in West Bengal which could be relied upon in cases of custodial deaths. Scientific medical examinations, as mentioned above, are open to extreme manipulations which undermine their credibility in any investigation. The private, but government-recognized agencies that also could be used for such examinations, if not for autopsy, but for other scientific examinations like DNA finger printing, are extremely costly and are beyond the reach of even the of average Indian middle class, let alone the poor. A simple examination of blood to decide parentage would cost more than 2000 US \$ and would take at least three to four years. Expenses coupled with delays

make these alternate means even more inaccessible to the needy. There are no other alternatives or initiatives by the government to correct this problem.

However, a more serious problem is that the failure of the system for post-mortem examinations is deeply connected to the failure of the legal system in India. In particular, in terms of the cases of torture or extra-judicial killings committed by the police, the situation is worse and these abuses tend to be corrupted systemically. In many cases, the perpetrators manufacture false post-mortem reports with close cooperation by the doctors and the police. Then, these false reports are used as important evidence in court. As a result, the perpetrators enjoy total impunity.

1. (c) Torture exploited by the rich and the influential

Contrary to the concept that torture is often resorted to as a brutal tool for investigation of cases, in India, torture is also resorted to as a tool for oppression.

The case mentioned in the introduction is one such example. In Belwa, in the past, the police used to take members from the dalit and backward communities into custody if they dared to file a nomination for the election or if they tried to voice their protest. The police misused their authority to please the local political leader who had won the election uncontested for the about 27 years. The one and only time he remained out of power was when the constituency was reserved for a woman candidate, at which time he placed his wife as a candidate and got her into the power unopposed.

The absence of any sort of opposition and absolute impunity is one of the primary reasons for torture continuing to prevail in India. Anyone who dares to complain against the police must do so at the police station or with a higher ranking police officer, who entertains jurisdiction over the policemen who are alleged to have committed the offence. Any person who dares to complain about police officers in India faces the wrath of the law enforcement agency.

As with so many others, this was the experience of Mr. Madhusudan Seth, a businessman from Bardhaman district, West Bengal. Mr. Seth was taken into custody on a petty charge, for which the prescribed punishment is a fine of less than 250 Rupees. However, Mr. Seth was detained in custody at Manteswar police lockup for the night, where he was allowed to wear only his underwear. The next morning he was paraded in public semi-naked and then put onto a public bus and taken to Kalna Magistrate's Court. The magistrate did not take any action about the parading and presenting of the detainee in court in only his underwear, despite Mr. Seth making a complaint regarding this.

The police had detained Mr. Seth after he lodged a complaint against a police officer from Chapra police station in Nadia district. Mr. Seth complained that the officer had behaved in an inhuman manner and used vile language when Mr. Seth had attended the Chapra police station regarding another matter. Mr. Seth further lodged a complaint with the National Human Rights Commission, although the Commission is yet to take any action. Mr. Seth is perhaps lucky, as many in his position have been killed in retaliation for complaints that they have made, notably those who are detained in prisons.

1. (d) Prisons and places of detention

The conditions of prisons in India are deplorable. The money spent on prison reforms and the development of their basic amenities is negligible. The Government of India ignores the plight of

thousands of citizens languishing in custody under horrifying conditions. It is common to find convicts and pre-trial prisoners held together in crowded cells, without proper facilities for basic human existence like fresh air, moving space, decent food, clothing, medical attention and communication. Many are tortured, killed, or face other abuses at the hands of fellow detainees and the authorities.

Of particular concern are the conditions of detention of juvenile prisoners. The Prisoners Act of 1900 (Act No. 3 of 1900) regulates India's prisons and all aspects of prisoner management to this day. State governments can also legislate, wherever permitted by this Act. Apart from the Prisoners Act, all states except for Nagaland, have acts on children that provide for the management of juvenile prisoners.

Despite legislation protecting juvenile prisoners, children committed to prisons in India experience extreme cruelty and neglect. In most cases, juvenile prisoners are put together with hardened criminals. They are often sexually abused and compelled to do hard labour. Older detainees make them do the heavy work allotted to them, usually in connivance with jail officials. This takes place in spite of a Supreme Court ruling stating that care is to be taken to ensure such practices do not occur.

Legal provisions for the counselling of children are often ignored. The government does not concern itself with appointing mental health professionals to vacant posts, and where it does, the persons filling them are invariably inexperienced and ill-motivated, defeating the purpose of counselling. Children are frequently denied access to their parents and it is also common for prison officials to demand 'gifts' from parents coming to meet their children.

Corrupt prison officers also arrange preferential treatment for prisoners with connections to crime bosses. Such treatment may be the provision of entertainment - including sexual pleasures, often at the expense of another inmate's liberty and body - unrestricted movement inside the jail, and uninterrupted visitor sessions. Meanwhile, common convicts in the same jail will be denied even basic facilities. In Viiyur Central Jail, Kerala, affluent prisoners are allowed to bring food from the best hotels in town, a share of which goes to the prison officials and other designated inmates. They also enjoy the privileges of freshly ironed clothes brought from home, the use of mobile phones, and comfortable beds with pillows and mosquito repellents.

Jail rules often provide for inspections by higher officials, and sometimes by judges or the State or National Human Rights Commissions. During these inspections, however, inmates are not in a position to make complaints, since jail officers accompany the visitors. Anyone daring to make a complaint faces the consequences once the inspection is over. In a case reported from the Viiyur Central Jail, contraband drugs were allegedly seized from a convict. However, at the trial, it was proved that he was being falsely implicated because he had tried to lodge a complaint about prison conditions when a local magistrate made a visit to the jail.

Ill-treatment of prisoners is common throughout India. In Kerala, for example, every male convict entering prison must face the ordeal of 'jail call'. Immediately on arrival, the prisoner is told to bend down, after which a few heavy blows are delivered, causing serious pain along the length of the victim's spine. The inmate's cries of pain can be heard throughout the prison, and so this is known as the 'jail call'. While female inmates do not get this treatment, they suffer continuous ill-treatment throughout custody, often including sexual harassment and rape.

In a country where the privacy of free citizens is often at stake, it comes as no surprise that prison inmates have none at all. Jail wardens read all letters coming in and out. Although done on the

pretext of ensuring security, this is an unquestionable intrusion into inmates' civil rights. Prisoners are also denied the right to vote while in jail.

1. (e) Criminals in uniform

Many officers in the police and law enforcement agencies in India are criminals and killers in uniform. Torture in India is widespread, unaccounted for and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts of the country. Recently, the police in India are also engaged in making extra money, collecting funds from the people to settle civil disputes. In the past, it was done by local criminals, but now the police have stepped in to replace them, and are accepting money to bully people. Even private money lending firms are employing police to collect money from defaulters. In the hands of the wealthy and influential, Indian law enforcement agencies have also strengthened their links with criminal elements. Even the judiciary in India cannot sever the nexus between police and criminals.

1. (f) Impossibility to complain and to prosecute

To register a complaint against the police, one needs to register a complaint with the police. This complaint, if registered, is considered as the First Information Report. However, the police often refuse to register the complaints, with the only option left to the complainant being to approach the court. What happens when the person approaches the court is even more tragic. This is dealt with in detail in the latter part of this report.

However, to summarize, a person who dares to file a complaint risks running the chance of facing organized brutality by the police. Often false charges are filed against the victim and in most cases such charges are for non-bailable offences, which ensure the detention of the victim for lengthy periods. The victims have to face enormous hurdles if they are to successfully prosecute a perpetrator of torture, which often pose an insurmountable barrier for any ordinary Indian.

To successfully prosecute a perpetrator, a complaint has to be registered in the first place. Due to the absence of any monitoring mechanisms and a lack of proper laws, the only course available is under the Criminal Procedure Code of India, where a person can either register a complaint against the police officer at the same police station where the officer is working or approach the court by way of a private complaint. The fate of a complaint at the police station where the officer in question works is none other than to be thrown into a waste paper bin. If the complaint is instead filed in court, the only option available to the court is to direct the complaint to the same police station to conduct an inquiry and to register a crime, if the inquiry reveals a crime to have been committed. So in any case, the odds are against the complainant.

These procedures and the lack of a credible mechanism facilitate the complete impunity of police officers. In spite of all this, the government of India still maintains that the domestic mechanisms are sufficient to prevent custodial torture in India. The landmark case where the Supreme Court of India ruled and issued directives regarding the procedures to be adopted at the time of arrest, detention and investigation was in the year 1997.³ The court ordered:

- (i) *police personnel carrying out arrest and interrogation should wear accurate, visible and clear identification and name tags with their designations, the details of which should be recorded in a register;*

³D K Basu v State of West Bengal

- (ii) *a memo of arrest (including the relevant date and time) shall be prepared by the arresting police officer and shall be attested by at least one witness (either a relative of the arrestee or a respectable local person) and countersigned by the arrestee;*
- (iii) *one friend or relative of the arrestee (or another person known to him or her who has an interest in his or her welfare) shall be informed, as soon as practicable, of the arrest and detention at the place in question;*
- (iv) *where the next friend or relative of the arrestee lives outside the district or town in question, he or she must be notified by the police of the time, place of arrest and venue of custody within 8 to 12 hours of the arrest;*
- (v) *the arrestee must be informed of this right as soon as he or she is arrested or detained;*
- (vi) *an entry must be made in the diary at the place of detention regarding the arrest of the person, including the name of the next friend who has been informed and the names and particulars of the police officers in whose custody the arrestee is detained;*
- (vii) *on request, the arrestee should be examined for injuries at the time of arrest and provided with a copy of the resulting report, signed by both the officer and arrestee;*
- (viii) *the arrestee should undergo a medical examination every 48 hours by a doctor from an approved panel;*
- (ix) *copies of all documents regarding the arrest are to be sent to the appropriate local Magistrate for his or her records;*
- (x) *the arrestee may be permitted to meet with his or her lawyer during interrogation, though not throughout the interrogation;*
- (xi) *a police control room must be established at all district and State headquarters where information regarding the arrest should be received within 12 hours of the arrest and displayed on a conspicuous notice board.*
- (xii) *These requirements are in addition to existing safeguards and do not detract from other directions given by the courts on this matter. They will apply with equal force to the other governmental agencies which have the power to detain and interrogate individuals. They need to be followed strictly; failure to comply shall render the official concerned liable for departmental action and contempt of court proceedings.*

Eight years have elapsed since this judgment was pronounced. However, the AHRC could quote at least a few dozen cases which were reported from West Bengal during 2005 where none of these guidelines were followed.⁴ Even though such cases were brought to the notice of the Supreme Court, the court is yet to take any action on these cases.

1. (g) Draconian laws

If for the rest of India the police is playing havoc with people by employing torture, it is the security forces which replace the police in the eastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The special law promulgated by the government of India grants special powers to the security forces deployed in these states to impart torture and violence under the pretext of counter-insurgent activities.⁵ This law provides for:

Any commissioned officer, warrant officer, non commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area-

⁴ Please see the Urgent Appeals Programme of the Asian Human Rights Commission at <www.ahrchk.net/ua>

⁵ Armed Forces Special Powers Act 1958

(a) if he is of opinion that it is necessary so to do for the maintenance of Public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that Purpose use such force as may be necessary.

Section 6 of the Act also provides for:

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

The Armed Forces Special Powers Act (AFSPA) contravenes the Indian Constitution and international human rights standards. This Act is in derogation to the fundamental rights as guaranteed under the Indian Constitution and also surpasses many provisions in the Criminal Procedure Code.

The government of India has again extended the period of enforceability of the AFSPA by repeating its declaration of the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura as disturbed areas for a further period of one year. Under international human rights and humanitarian law standards, there is no justification for such an act as the AFSPA. The AFSPA, by its form and in its application, violates the Universal Declaration of Human Rights (the "UDHR"), the International Covenant on Civil and Political Rights (the "ICCPR"), the Convention Against Torture, the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for Protection of All Persons Under any form of Detention, and the UN Principles on Effective Prevention and Investigation of Extra- legal and summary executions.

1. (h) Summary

Torture is widespread and has routinely been practiced at police stations in India. Unchallenged and unopposed, it has become a 'normal' and 'legitimate' practice. Torture often leads to custodial deaths, disappearances and deaths in 'encounters'. The numbers of reported custodial deaths are

quite high and keep escalating. Besides this, there are fatal injuries, permanent disabilities, mental derailment, loss of faculties and psychological trauma.

With the emergence of new sanctions for torture - like the Prevention of Terrorism Act, Terrorism and Destructive Activities Act (Prevention), and Essential Services Maintenance Act - that justify or legalize any amount of torture, the police enjoy enormous freedom of action, and freedom to abuse. The use of extremely crude and filthy language is very common at police stations. It amounts to cruel, inhuman or degrading treatment, grossly derogatory to the dignity of the human person. Torture has also been practiced on women and girls, in the form of custodial rape, molestation and other forms of sexual harassment. Torture has been inflicted not only upon the accused, but also on bona-fide petitioners, complainants or informants. The police deliberately delay the submitting of First Information Reports and unnecessarily harass and torture such persons for no reason.

There is no impartial mechanism for receiving complaints against torture. The complaints must be made to the police authorities themselves. This only allows the police to pressure and harass the victims, who are de facto complainants. The Convention against Torture requires impartial investigations. Unfortunately, the police are not impartial concerning cases where members of police are the alleged perpetrators of abuses. In India, the police are not independent. The National and State Human Rights Commissions, and other national institutions of India, have neither the power nor the provisions to deal with torture effectively. The National Commission for Police Reforms many years ago recommended that the police in India should be made independent. The National Human Rights Commission itself has gone to the Supreme Court with a plea that the recommendations of the National Police Commission be implemented. However, the absence of political will has meant that these attempts have failed.

Torture and the fabrication of cases are closely linked. In attempting to save offenders for various, corrupt reasons, the police implicate innocent people and impose any amount of cruelty and torture on them until a 'confession' is extracted.

Torture is not treated in India the way required by the Convention Against Torture. Only section 330 in the Penal Code deals with punishment for the use of force in obtaining confessions. However, if torture is to be dealt with effectively, it is essential that it be made an offence, as per the terms of the Convention. This also involves provisions for the adequate punishment for acts of torture. Thus, the law against torture in India is extremely defective in terms of international understanding and social jurisprudence.

The prosecution system as it exists now in India only militates against the rights of victims of human rights violations. The prosecutors act in many ways to protect the perpetrators. Prosecutors should be independent, competent, and appointed through a judicious process to scrupulously uphold the cherished values enshrined in the Criminal Procedure Code.

In the present criminal justice system in India, the victims or complainants have no decisive role in seeking redress. Everything depends on the mercy of the investigating officer and the state prosecutor, who are often subject to manipulation and malpractice. Therefore, the de facto complainants or victims, if they are resourceful and confident, should be allowed to appoint their own lawyers to conduct prosecutions on their behalf.

With India not having ratified the Convention Against Torture, its citizens do not have the opportunity to find recourse in remedies that are available under international law. Indian practices with respect to torture do not come under international scrutiny. Access to the UN

Committee Against Torture, and other mechanisms, is effectively denied people living in the largest democracy in the world. Since the country has also not signed the Optional Protocol to the International Covenant on Civil and Political Rights, its citizens also do not have the right to make individual complaints to the UN Human Rights Committee. The victims are trapped within the local system, which in every aspect acts against their rights. Many victims conclude that a justice system accessible to the poor of the land does not exist at all.

The so-called "Human Rights Court" is a misnomer. What exists is an additional duty appended to already overworked judges. Thus, adjudication on human rights matters is trapped within the same cycle of delay and neglect that affects other cases. The general principle that 'justice delayed is justice mocked' equally applies to these courts. The concept of Human Rights Courts needs to be revamped and re-envisaged so that an effective mechanism can be introduced. Judges who sit in such courts need to have thorough knowledge of human rights law and should be endowed with a deep sense of the sublime supremacy of human life over all else.

The early ratification of the Convention Against Torture is imperative to defend the human rights of torture victims. It is mandatory for any attempt at reforms in the police system as an effective mechanism for law enforcement and administration of justice.

Most countries in the world have ratified this Convention and India being a signatory has no excuse for not ratifying it. In fact, the unwillingness of the Indian government to ratify the Convention brings only discredit to its people and places the country in a very shameful situation.

Meanwhile, it is highly necessary to document torture cases in a meticulous way. The lack of proper documentation only permits the unfettered continuance of barbaric methods of torture and the acquittal of the culprits. Had there been proper documentation, it would not have been possible to hide the colossal and devastating atrocities of the police, whose constitutional mandate is to protect the people. NGOs should undertake scientific and systematic documentation of torture and follow-up on these cases.

The communal and caste divide in India is closely linked with torture. Police and law enforcement agencies have been instrumental in much of the recent communally charged violence in the country. Torture remains unaccounted for and not prosecuted. It leads to total anarchy and the rule of vandalism and lawlessness. When police become a party to such violence, it becomes a state-sponsored crime against the people. The national and state human rights commissions have no authority to change this situation. There is no independent body to inquire into reported cases of torture. Commission orders are mere recommendations and are often ignored. Where torture is state-sponsored, the recommendations rarely get executed. The Human Rights Act is simply eyewash for the international community; since it cannot be enforced, it is useless.

India has signed the CAT, but not ratified it on the pretext that existing laws have adequate provisions to prevent torture, in addition to constitutional safeguards. But the provisions of the Criminal Procedure Code, Indian Evidence Act and Indian Penal Code are worthless, since there is no procedure for independent inquiries into torture and compensation for victims. Apart from this, the government has implemented new draconian laws like the Prevention of Terrorism Act, which denies the accused any guarantees to a fair trial. Constitutional remedies too are meaningless for most victims. The Constitutional Courts are virtually inaccessible to ordinary people, and even if a victim is successful in getting a case heard, these usually experience huge delays. The lack of motivated lawyers and legal assistance, and a defective prosecution system, worsen this situation.

2. The question of the lack of accessibility to remedial measures, the absence of judicial process and the failure of justice dispensation mechanism and its procedures

2. (a) Court delays

A decade of waiting is not much time in deciding a case in India. It is equally applicable to civil and criminal trials. The legal process in India is always protracted, with parties being made to spend an unlimited amount of money and to run from one place to another in pursuing their claims in court. There are numerous reasons for this protracted process, which in fact could be eliminated by conscious efforts. In civil cases, one such delay is primarily caused by technical snags and delaying tactics by the lawyers. The attitude of the judges once the case has finally been heard, resulting in the reservation of any open pronouncement of the judgement for years, is another contributing factor. In criminal cases the delay starts from the inability or often refusal of the investigating agency to submit a charge sheet in time after the proper completion of and investigation.

Even if the charge sheet is submitted, the prosecutors' office also plays a role in delaying the process. Many courts do not have sufficient prosecutors to represent cases as and when they are taken up. In a local Magistrate Court in Wadakkanchery, Kerala State for instance, prosecutions are stalled for years due to the fact that the only prosecutor available was on deputation from another court. Only when this officer had enough spare time would he turn up at the Wadakkanchery court. By the end of one year the number of criminal cases pending disposal before the court was so large that it will take several years to clear off these cases, given the fact that every year the number accumulates to the existing backlog. It is shocking to note that when the backlog of cases increases, judges connive with police officers and force people to plead guilty on charges so that cases can be summarily tried.

Another element causing delay in proceedings is the lack of infrastructure to deal with evidence. The police in India are neither trained to gather evidence scientifically, nor understand the importance of forensic evidence. It is common for material objects to be wrapped in newspapers and bound by threads and then produced in court. The safety of the contents depends upon the quality of newsprint. Given the climatic conditions in India, this evidence can be easily damaged within a few months, which is often well before any preliminary hearing is heard.

In cases where there is a need for forensic examination, the situation is even worse. The objects requiring forensic examination will be detained at the central or state forensic lab for anywhere up to 15 years. This reflects upon the facilities provided for these labs and also the work habits of the forensic technicians. The evidence held at such labs is also prone to manipulation or destruction, as demonstrated in the state of Kerala, where an 'accidental' explosion destroyed several pieces of evidence pending examination. The handling of human remains and dead bodies is equally bad. In cases where there is a requirement of finger print examination or handwriting examination, the minimum period required for the result to be sent back to the referral court from the forensic lab is ten years. These contrived delays in government labs leads to a necessity to hire private experts, which is only to the benefit of 'government recognised' private experts. The hiring of private experts or labs is highly expensive and often the management of private labs pay kick-backs to officers at the government lab to have this work awarded, engendering systematic delays.

The technical hindrances that cause delay in court proceedings further affect the quality of evidence given by witnesses. When a witness is required to testify for an incident she saw a decade earlier, her recollection of events will often be tempered by time. This may affect the quality of her testimony, as well as the entire trial. Evidence can also be affected due to the lack of witness protection provided to those willing to testify. Witnesses may alter their evidence out of fear or even withdraw from the case, as they are more susceptible to threats and intimidation the longer a case is drawn out.

The lack of basic infrastructure within the entire justice system is another crucial issue that causes delays and inefficiency. When a prosecutor's office wants to communicate with a particular police station, there is no mechanism available other than the initiative of the prosecutor to spend from his own pocket or to make the interested party pay for this communication if the entire proceedings are not to be stalled. This lack of basic infrastructure not only results in delays to proceedings but is also a root cause of corruption.

Not even the Supreme Court of India - the highest court in the country - is immune to delays. Its much acclaimed judgment in the D.K. Basu case in 1997, known for its directives aimed at preventing custodial torture, took ten years to be reached. If a judgment takes this long in the Supreme Court, what can be expected from courts of lesser authority?

2. (b) Summary

According to recent statistics, acknowledged by the former Chief Justice of India, Justice Bharucha, the judge population ratio is 12 to 13 judges per million. On April 10, 2004 there were 163 vacancies at various High Courts throughout India. A study conducted by the Ministry of Finance reveals that at the current rate it will take 324 years to dispose of the backlogs of cases in Indian courts. The Law Commission of India, in its 189th report, published in February 2004, acknowledged that over two million cases are pending in about 13,000 district subordinate courts. About two thirds of these are criminal cases, while about a million are sessions cases which involve heinous offences such as murder, rape, or dacoity (armed robbery). About 30 per cent of the sessions cases have been pending for at least three years.

The denial of justice through delays is a mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system in the country. This has led to people settling scores on their own, resulting in a growing number of criminal syndicates in the country and reflecting the loss of people's confidence in the rule of law.

2. (c) Office of the public prosecutor

The prosecutor's office plays a key role in any criminal case. It plays a vital role in the 'fact finding' mission of the court and is expected to assist the defence as well as the court in its journey to justice. However the quality of this office has deteriorated to such depths that the public no longer has any confidence in it. The prosecutor is often viewed as an extended arm of the police, in court, in a different uniform.

The reasons for such deterioration are manifold. They include: deep rooted corruption, nepotism, inefficiency, caste prejudices, political influence, the influence of the home department of the state and that of the central government. Unless the impact of these effects are not put to an end, the office of the prosecutor will deteriorate further, beyond any possibility of recovery.

The office of the prosecutor is responsible for approving the charge against the accused, and can influence the court in decisions regarding bail for the accused, streamlining the selection of witnesses in a case, and each and every tenet of decisions made in the process of criminal justice. However these duties and responsibilities are discharged with such callousness that throughout the country, with some exceptions, the office of the prosecutor is disgraced.

The appointment to the prosecutor's office only requires qualification, competence and efficiency as its parameters, as per law. However, in practice, these terms have different meanings. Qualification - the amount of money one can offer to the kingpins who play the 'pivotal' role in deciding things and the influence one can invoke on such persons through other external means. Competence - the allegiance you have to the 'god fathers' in the government and your political background - or in some cases how good you are in beating your colleagues in the race. Efficiency - how good you are at not asking questions and ignoring duties, and, in extreme, cases how good you are in accepting money/favours from 'interested parties' in ditching the interest of the real victim, or in some other cases, in the creation of false accused persons and witness.

The prosecutor's office has two different levels. Firstly, the district prosecutor, who is appointed for a period of three to five years - mainly at the pleasure of the government: and the other at the lower magistrate courts, who are appointed on a permanent basis. For the former the appointment is often in consultation with the district collector and the principal district judge, and a few other players, like the local representative to the legislative assembly. The role of the district judge is limited to that of mere consultation and often his advice is ignored (provided the judge himself does not play into the hands of those in authority). The final say is from those who are at the capital. All the above-mentioned parameters satisfied, the appointment is made. These officers resign at the pleasure of the ministry. This is the case for the high courts as well.

For those in the lower judiciary - in this case the magistrate courts - the appointment is more permanent in nature. Here also the 'key stake holders' decide things, screening away 'unwanted elements' and submitting their list for the approval of the godfathers. Often these appointments get stalled for months and sometimes years, due to internal feuds within the ministry and to high competition.

When these 'prosecutors' appear in court they do a 'good' job. For every bail application at the session's court they request for time to get feed back from the police. However, this request is the indicator to the defence lawyer to 'feed' the requirements. The ignorant defence lawyer will soon learn the 'trick' since, unless this 'feed back' is obtained, the bail application will get postponed on the pretext of gathering detailed information from the concerned police in order to decide whether the bail application is to be opposed or not. It is common that bail applications are decided at the discretion of the prosecutor, even though the law mandates a considered order taking into account the circumstances of the case and an application of a 'judicious' mind.

Furthermore, when the trial commences, the prosecutor is the person who accesses the criminal records at the last moment. Often, the prosecutor cuts a sorry figure in court not knowing the relevancy of the witnesses whom he presents. This is an advantage to the defence lawyer, if the defence is clever enough to get the maximum benefit of the situation. Court proceedings would be stalled waiting for the prosecutor, since he would be engaged with some other 'important' matters. It is a common scene in any criminal trial that the prosecutor is forced to scramble through with the file and return a blank stare to the questions put by the judge.

The prosecutor's office is provided with the least conveniences. The payment for a public prosecutor is so meagre, that an average lawyer makes more money out of his private practice. In

the Trichur court, Kerala state, the public prosecutor's office often has its the telephone line disconnected due to non-payment of bills by the state government to the telephone department. There are no subscriptions to any law journals or any good textbooks. The only 'regular' subscription is the state gazette, which is mailed to the office. There is no mechanism with which the prosecutor's office can establish any communication with the concerned police station in case he needs any feed-back on a case. None of the police would be willing to take the prosecutor to a scene of the crime and the prosecutor does not make such a request, since such requests would be never met and on top of this, they are not interested.

Many of these public officers allow their offices to deteriorate, by conniving with the police officers, so that they get references from the police station in motor accident cases. This link is used by the prosecutor to get clients who need to file accident compensation claims. Even though this could be termed as 'ambulance chasing' in ethics, this is not a concern for the 'ethics' of the prosecutor's office.

Caste prejudice is another issue that dominates appointment at the prosecutor's office. The vacancies are divided between the different castes that form the majority in the government. It is therefore obvious that those from the lower caste are excluded. If the prosecutor is a person who comes from an upper caste using his money, power, caste influence and political allegiance, one can imagine in which way he would prosecute an accused in a crime against the lower caste.

2. (d) Summary

There are simple ways for correcting these erring officers. Appointments should be on the basis of competency and not on allegiance, nepotism and influence. The office of the prosecutor should be made accountable for the mistakes it makes while conducting prosecutions, which is not limited to a remark in the judgment. Political influence in appointments should be fully removed. This might require amendments to existing state legislations. The role of the prosecutor should be redefined from that of a clerk in robes to that of a socially committed, independent, professional officer of the court. The prosecutorial office should also be made attractive with conveniences, to attract better professionals. All these require motivation from the people and through the people. As they say, the people get the government they deserve, as is the case with the prosecutor.

3. Caste based discrimination

3. (a) Discrimination at all levels

The concept of a caste system brings in stratification of society based on duties. It is a defining tool with which to cast obligatory duties on people by birth that can not be taken away. On the surface, it seems to paint a beautiful picture of societal obligation and duty. In reality, it is used as an instrument of exploitation by the upper castes against the lower castes.

The tsunami that hit countries around the Indian Ocean on December 26, 2004 brought misery to all living along their coasts. India was no exception. However, in India, the suffering of the Dalits - so-called 'untouchable' - communities affected by the disaster has been exacerbated due to caste-based discrimination in the provision of relief supplies and other assistance. The world is unaware and the government of India has not acknowledged that relief operations are being carried out with caste as a determining factor.

Places such as Kadapakuppam and Pattipulam of the Kachipuram district in Tamil Nadu have received no relief whatsoever. This is despite 175 families in Kadapakuppam and 280 families in Pattipulam having felt the brunt of the disaster. Despite complaints by villagers in these two places, at the time of writing no government officials or aid agencies have gone to the assistance of these people. Likewise, in Pannanthittu village in Tamil Nadu's Chidambaram Thaluka, all 150 families affected by the tsunami have been denied aid. Villagers in MGR Thattu, meanwhile, protest that they are being discriminated against, as little relief has been provided to them.

Caste-based discrimination has also been evident in relief operations elsewhere. When burying the dead, Dalits have been brought in to handle the bodies, as 'traditionally' they have been obligated to do. Community kitchens, established to distribute food to victims, were divided into two: one for caste Indians and one for Dalits, as upper castes would not consume food prepared by Dalits. It is a sad reality that even in times of extreme necessity, caste prejudices dominate social exchanges.

The tsunami relief operations in South India are indicative of persistent caste discrimination throughout the country. In the state of Maharashtra, massive evictions from tribal lands in Nasik District is yet another example. Evictions are not limited to Maharashtra, but have also been meticulously carried out isolating lower caste people in various states. If the claim for land by the Maharashtra State Farming Cooperation deprived the basic right of the tribal community in Maharashtra, in West Bengal, the eviction from Bellilious Park and Gobindpur Railway Colony was because of the apprehension that the presence of Dalits would pollute the upper caste shrine's atmosphere in the locality. In West Bengal, even the High Court affixed its seal of approval upon the eviction, ignoring the basic legal right for each party to be heard. However, evictions are not the only form of discrimination. The forced labour of manual scavenging and carrying of night soil, slave practices in granite quarries in Karnataka and Tamil Nadu, denial of education in Orissa, starvation deaths in Maharashtra, Bihar and Kerala, are all shocking realities for the Dalits in India.

The Constitution of India provides certain safeguards against caste discrimination. However, constitutional remedy is often inaccessible to Dalits and lower castes. Considering India's vastness and its limited resources and poverty, the possibility of a victim, who is otherwise deprived of basic standards of living, approaching a constitutional court is most unlikely. Compounded by the burden of expenses in litigation and the immense time it takes for reaching a final verdict, such legal attempts are rarely made by victims.

The case of the tribal (adivasi) community from Gujarat, is one such example of discrimination, even though 'technically' a tribal will not come under the 'definition of caste' since a tribal is considered even lower than the untouchable, the lowest in the caste hierarchy. Discrimination defines the lives of *adivasis*, or indigenous people, in India — discrimination in access to land, water, education, employment, health care, roads — almost all aspects of their lives are affected by discrimination.

In the state of Gujarat, the construction of the Ukai Dam about 40 years ago still reverberates in the lives of *adivasis* in Surat District. *Adivasi* families, which had had as much as 120 acres of land before the dam was built, were given only four acres, plus compensation, and even this small amount of land was up to 60 kilometres away from where their resettlement homes were located. As a result of the dam's construction, most of the *adivasis* today in Gujarat's Surat District no longer enjoy self-sufficiency and are forced to encroach on forest land administered by the Forest Service Department to survive, leading to shootings or beatings of the *adivasis* by Forest Service Department officials. Or, they may be forced to work for the district's sugarcane factories, where

families receive 3,000 rupees (US\$66) or less after cutting sugarcane for more than 12 hours a day for six months. While the sugarcane fields are irrigated by a canal connected to the Ukai Dam, most of the *adivasis* in the district are still waiting for a canal to be constructed to irrigate their fields, which was planned about four decades ago, as part of the original design of the Ukai Dam. Construction of this canal would allow the *adivasis* to be more self-sufficient and would no longer force them to be a large source of cheap labour for the sugarcane factories.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 provides for penal provisions against atrocities committed against members of the Dalit community and other lower castes. The rules formulated in accordance with the legislation also provide for protection to the lower castes and are more preventive in nature. However, the law and rules are limited. They do not address the root cause of 'the caste system'. In cases where compensation is awarded, the amounts paid in damages are far below international standards.

Section 153A of the Indian Penal Code, which provides for punishment for instigating acts of enmity between groups based on religion, race, place of birth, residence, language and so on, is far less enforceable since the burden of proof in criminal trials is high. But that does not mean the standards of trial should be brought down. The chances of a probable conviction, however, are far too low. These measures do not effectively deal with the issue of caste system in India.

The human rights institutions in the country, namely the national and state-level human rights commissions, do not have any authority to make an affirmative action on receiving a complaint. The powers of these institutions are restricted to that of an advisory nature. Sections 12 and 13 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act limit the authority of the rights commissions to receipt of complaint, inquiry, inspection and either to refer the matter to an appropriate authority for further action or to provide advice to the government.

These limitations effectively make the institutions incapable of taking any affirmative action for the protection of human rights. An order of compensation awarded by these institutions does not have an executable authority. Such an order can only recommend the government to collect the fine from the perpetrator and disburse the amount to the victim. If the perpetrator is not an employee of the government, the possibility of implementing the compensation order will be low. Even when the perpetrator is a government employee the order is often not executed. That makes the system itself a mockery and may result in discouraging the victims from approaching these institutions.

India also has limited its ratification to the primary international covenants by opting out from the authority of independent committees constituted under the covenants to receive individual complaints. Hence, for a victim of human rights violation, the matter needs to be addressed within the country, where the remedies are inadequate or almost unachievable.

The caste system is in violation of international human rights standards. It tends to weaken the human urge to excel and be free, since there is no liberation from its clutches, unless a person is very determined. Often this determination is clamped down due to societal pressure. It requires collective effort and massive movements to free society from this system. This may not be attained in a short period of time, but conscious effort from the government, which will affect the population, is a necessary prerequisite to counter this abhorrent system.

There is considerable international human rights jurisprudence supporting the link between caste and racial discrimination. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) provides five grounds for direct or indirect "racial

discrimination" being "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin." The U.N. expert body, the Committee on the Elimination of Racial Discrimination (CERD), has reiterated that discrimination based on "descent" referred to in the ICERD convention, does not solely refer to race but equally covers caste situations and perform racial discrimination includes acts of discrimination based on caste.

The U.N. Sub-Commission on the Promotion and Protection of Human rights (Sub-Commission), in August 2000, passed a significant resolution declaring discrimination based on work and descent as prohibited under international human rights law, while making reference to several basic features of the caste system. The Sub- Commission employed the broader term "work and descent" to encompass caste-like as well as caste discrimination. The August 2001 working paper of U.N. expert Rajendra Goonesekere, appointed by the Sub-Commission, also notes that this "discrimination based on descent manifests itself most notably in caste - or tribe-based distinctions" and refers to widespread practices. Also noteworthy is the inclusion of discrimination based on descent and work in paragraph 109 of the report of the World Conference Against Racism (WCAR), within its broad mandate of dealing with "racism, racial discrimination, xenophobia and related intolerance."

3. (b) Summary

The respect for international norms and obligations can help the government to fulfil the task of the complete elimination of caste based discrimination in India. There is international concern about the caste system in India. However, international pressure and help can only be fruitful if the country opens up its doors for criticism and development.

To conclude, the Indian government should face international criticism in a positive way and recognize it as a corrective force to help eradicate the caste system. It should admit the fact that the caste system is a tool for societal segregation and labelling.

Domestic laws should be considered for amendment to incorporate the full spirit of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The amendments should make these international laws enforceable in India. The human rights institutions in the country should be given more power so that they can have independent inquiry mechanisms and that their rulings can be executed without delay.

India should also withdraw the reservations made to the international conventions, especially the ICCPR and CERD, allowing a person to approach the international forums for help through non-governmental organisations, and at the same time allowing international bodies to exert more pressure to improve these situations. The Indian government should positively consider recommendations of the national and regional non-governmental organisations to rid India of the caste-based discrimination and exploitation.

4. India's systemic denial of the right to food

4. (a) The right to food

To be free from hunger is a basic right denied to a significant proportion of Indian citizens. While this right falls under the economic, social and cultural rights category, it is firmly linked to civil

and political rights, primarily the right to life; food is a basic necessity to the enjoyment of the right to life.

India is not a food deprived country; it is believed that over 50 million tons of grain reserves exist across the country. Yet half of India's population remains under-nourished and hungry. It is therefore obvious that India does not have a food scarcity problem so much as it has a food security problem, where laws, assistance programmes and distribution systems are failing in various ways.

Social and cultural factors are a significant factor of India's food problem. Women, scheduled castes, religious minorities and forest dwellers all suffer a greater incidence of malnutrition and famine because of discriminatory social and cultural practices that are deeply embedded. Marginalised groups in India are still regarded as inhuman and are not integrated into the rest of society. Starvation is also complicated by land issues, where people who do not own land are unable to support themselves in agricultural areas, and where people who do own land are displaced when the government and private enterprises evict them from their homes.

In response to this hunger situation, the Asian Human Rights Commission (AHRC) launched its hunger alert programme in September 2004. The programme highlights violations of the right to food in an attempt to subsequently address factors responsible for the violations, such as government inaction, land and housing rights, caste discrimination and gender disparity. The programme is at present in its developmental stages and focuses primarily on cases from India.

4. (b) India's obligation to respect, protect and fulfil the right to food

Together with an abundance of grain, India has an abundance of international and national laws to respect, protect and fulfil the right to food. India ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on April 10, 1979. Under article 11 of the ICESCR, India is obliged to respect, protect and fulfil the right to food.

There is a common misconception that respecting the right to food is done through the provision of food assistance during times of drought, famine, disease, economic hardship, ethnic discrimination or natural disasters. In fact, the right to food requires the right to live with dignity, and therefore obliges governments to provide an environment in which its citizens can support themselves and their families.

In theory, India has an impressive national legal framework to safeguard its citizens' right to food and other economic, social and cultural rights. Furthermore, using a creative and rights based approach, the Supreme Court of India has interpreted the country's constitution and given justiciability to those rights in the past considered non-justiciable. The expansion of the right to life under article 21 of the constitution from a mere right to be alive to that of a right to live with dignity is the most significant such interpretation. Many laws exist to enhance a person's right to live with dignity: the Anti Corruption Laws, Land Reforms Act, Essential Commodities Act, Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act and the Bonded Labour (Prevention) Act. The Supreme Court has made many judgments encompassing these laws, which in principle should protect and fulfil a person's right to live with dignity, and be free from hunger. In reality however, the laws and the judgments do nothing to feed a hungry Indian citizen, let alone provide redress for other human rights violations.

This can be seen in the Murshidabad district of West Bengal. A Supreme Court judgment of 2001 called for the implementation of the food-for-work programme in over 100 districts throughout

India, including Murshidabad. Until today however, the programme has not been implemented and thousands of residents go to bed with empty stomachs. The public distribution shops meant to cater to the poor and needy remain closed, and are in fact used as storage places for goods to be smuggled to neighbouring Bangladesh. Although the district administration as well as the Supreme Court were notified of these malpractices, silence has been the only response. This situation is found in many parts of the country. In this way, India fails to protect, respect and fulfil its citizens' right to food at every level.

4. (c) Violations of the right to food are linked to violations of civil and political rights

Denial of the right to food requires the use of force for social control. In any society where people's food needs are ignored, this is the result of deliberate actions taken by state authorities. These actions can include threats or abuse of hunger complainants, the non implementation of food and other assistance schemes, physical attacks or detention of human rights defenders. In other words, when the right to food is denied, there exists a collapse of the rule of law.

Hunger then, in India as in many other countries, is not primarily caused by natural disasters, but by systemic denial and neglect. The response of local authorities and even state governments in India to reports of right to food violations are either an unwillingness to acknowledge that hunger exists or to ignore the situation. Such blatant neglect of the victims and their predicament serves to worsen the situation. This attitude also exacerbates food security issues in times of natural disasters, particularly among scheduled castes or indigenous peoples, such as after the 2004 tsunami.

Denial and neglect is prevalent in Jalangi, Murshidabad district, West Bengal where the AHRC has reported closely on severe malnutrition and starvation. The area itself suffers from several problems, one of which is the erosion of the Padma River; over 10 years the river has eroded more than six kilometres of land, swallowing the homes and agricultural land of farmers who were once entirely self sufficient. In the last monsoon season a further half kilometre of land was lost, displacing a few hundred more villagers, who lost their homes and livelihoods. At least seven people died of starvation in the past year, and thousands are unable to eat even one meal a day.

To date however, the government has taken no action to provide any type of compensation, assistance or rehabilitation to the affected persons. In fact, the government has repeatedly denied that a food problem exists, despite the many protests and submissions made to various state agencies and officers. For this reason no measures have been taken to prevent further erosion, distribute land, rebuild homes, provide monetary compensation, create jobs as alternative sources of incomes, establish medical and educational facilities and provide basic food assistance. Until November 2005--over ten years after the problem began--no one from the local administration had even acknowledged that hunger, malnutrition and starvation is prevalent in the district.

In addition to government neglect and denial of food insecurity, victims in West Bengal have been prevented from voicing their grievances through intimidation and force. In April 2005, a mob of over 500 people, reportedly led by local politicians, attacked the home and relatives of Gopen Sharma, a local human rights defender who has been raising the issue of starvation in Jalangi. In September 2005, Mr Sharma was illegally arrested, detained and assaulted by officers from the Block Development Office in Jalangi for helping starvation victims lodge complaints at the office. In July, a protest against the government by more than 800 hunger victims was attacked by a group of Communist Party of India – Marxist (CPIM) leaders. Furthermore, Jalangi

residents are in continuous conflict with the Border Security Forces that strictly control the area, as Jalangi lies on the border between India and Bangladesh. Many villagers are not permitted to enter arable land near the river due to the presence of the BSF, who are not shy to use force against the villagers.

Over 500 villagers of the indigenous Munda community were twice threatened not to speak of their grievances by officials visiting their homes in Kumarpukur village, West Bengal in May 2005. On the first visit, local CPIM leader, Jayanta Bhattacharjee, warned villagers not to speak to reporters and human rights activists about their concerns. Two days later, uniformed policemen in police vehicles again warned the villagers to remain quiet. The victims are currently lacking all basic necessities including food and water; many have taken to eating roots and leaves for survival.

Forced evictions of the rural and urban poor are also commonplace in India, usually with no compensation or rehabilitation provided to those evicted. In urban Howrah, West Bengal thousands of Dalits were evicted from Bellilious Park in February 2003, when the municipality decided to tear down their homes in order to beautify the area. The majority of the Dalits were manual scavengers employed by the municipality, and were given this residence several decades before. While they did not formally own title to the land, under the Law of Adverse Possession and Limitations the Bellilious Park residents should not have been evicted. The evictees now live in huts built on the garbage dump where they work, and have difficulties in attaining all basic necessities including food, education and healthcare.

Hunger as seen in India is primarily a social problem and therefore most prevalent among scheduled castes, scheduled tribes, children, women and the disabled. Among these marginalised groups, a violation of civil rights often precedes or follows a violation of economic, social and cultural rights, where the poor remain hungry as a result of being discriminated against, in many instances by the very agencies established to assist them.

4. (d) Ineffective and inefficient national, state and local assistance programmes

A plethora of government assistance and employment schemes are failing to provide effective relief for victims suffering from malnutrition and starvation. The majority of victims are not aware of these, but even if they are aware, there is little to be gained from such schemes. The Public Distribution System (PDS) in Jalangi for instance, has yet to actually provide food assistance. A list of over 500 hunger victims was submitted to the local administration in early September 2005, where authorities concluded that each person was in critical need of aid. Nonetheless, Below Poverty Line (BPL) cards have still not been provided since the list was posted in ration shops, and two more people have since died of starvation. The PDS in Jalangi is also highly corrupt and inefficient: it is common knowledge that many of the ration dealers sell rice and wheat on the black market and turn away BPL card holders when they come to buy rations. None of the dealers have been prosecuted for this crime, however.

In Raup village, Sonbhadra district, Uttar Pradesh BPL cards have been distributed. However, the 35 kg of rice and wheat provided to each family is not sufficient to sustain the family for one month. Most end up hungry and begging for food after ten days. Other times, several months pass before rations can be bought again because the shop owner either closes his store or refuses to sell to certain cardholders. Age discrimination is also prevalent in Sonbhadra, where elderly people receiving assistance through the Annapurna (old-age) welfare scheme are many times turned away from ration shops empty handed.

Also in Uttar Pradesh, there have been several starvation deaths of persons registered under the food-for-work programme. Most notable is the case of Chirauji Devi, who died on July 10, 2005 from acute lack of food. One month prior to her death, Chirauji was employed as a pond digger under the food-for-work programme. Despite several visits to local officials and the village council requesting her wages and food coupons, she received no compensation for her work. Chirauji died of starvation after having not cooked food in her home for 14 days. She leaves behind seven family members who can barely provide for themselves and are undernourished.

A National Rural Employment Guarantee Act was recently passed in September 2005, which guarantees 100 days of daily work with minimum wages for any adult living in rural areas. If the programme is effectively implemented, it may be able to secure rural livelihoods. The Indian government should learn from the disasters of its earlier schemes and ensure that this scheme does not follow suit.

4. (e) Civil groups and human rights defenders must create a network enabling their concerns to be heard on a larger scale

In India, there is a false notion that food problems only pertain to one or two victims living in remote areas. This is mainly due to the lack of knowledge by civil society and the outright denial by state authorities. In fact, hunger and starvation are common problems that necessitate a wide audience for the problems to be accepted and assistance to be provided. Thus, human rights activists need to create a network which enables their concerns to be heard on a larger scale. This network should include international agencies, UN mechanisms, local media and local and national level organisations concerned with economic, social and cultural rights.

Such a network has been created in Uttar Pradesh, where small but necessary steps have been made to combat the hunger and poverty concerns. Human rights defenders have linked up with non-profit organizations and the local media to increase the reporting of all human rights violations, including hunger. The starvation deaths of several people in the weaver communities of Varanasi in the past months have therefore been reported. After consistent pressure on the local administration by concerned parties in the media as well as human rights activists, several of the affected families have received food assistance, ration cards and widow's pensions.

A Right to Food Campaign has also recently been established in India where persons concerned with food, as well as the justiciability of economic, social and cultural rights, informally convene to raise awareness on hunger in the country. The campaign is in response to the 2001 Supreme Court hearing where the People's Union for Civil Liberties petitioned the Union of India to have India's food stock immediately used to combat hunger. Through the Right to Food Campaign, a network of grassroots organisations and volunteers have come together to address specific programmes that include mid-day meal schemes and the Rural Employment Guarantee Act. It is hoped that through these networks a greater understanding and appreciation will be found for economic, social and cultural rights in India, particularly the right to food. However, greater reporting is still needed to bring large scale attention to hunger problems in the country.

The United Nations Children's Fund (Unicef) and the World Food Programme (WFP) are two prevailing international aid organizations concerned with hunger and malnutrition in India. Under Unicef's mandate, child nutrition is a primary concern in India. The organisation claims half of all children in the country are undernourished and that this poses a great threat towards development and learning. The WFP also works towards improving nutrition and the quality of life for the poor in India, particularly among marginalised groups, women and children.

The limitations of these two organisations however, is that all aid is routed through state governments. Therefore, both Unicef and WFP do not provide assistance to complaints made by victims themselves, but rather only provide funding for existing government food assistance programmes, many of which are failing, as already mentioned above. For this reason, while the WFP acknowledges each individual case of hunger brought to its notice by the AHRC or local groups, it simply reiterates that under its mandate assistance cannot be provided to individuals or groups. Many of Unicef's programmes relating to victims of hunger and malnutrition, particularly in West Bengal, have not been realised. It is thus important for civil and other groups to attempt to work more closely with these and other international organisations regarding food issues to strengthen the work of these organisations as well as their own network.

4. (f) National Human Rights Commission's mandate excludes right to food

The National Human Rights Commission of India (NHRC) was established by the central government in 1993 under the Protection for Human Rights Act 1993. The NHRC's main functions are to inquire, investigate and intervene into petitions made by victims on either the violation of a human right, or the negligence in the prevention of such a violation.

To date, the NHRC has received hundreds of reports and has made recommendations on several cases involving custodial deaths, police torture, bonded labour, atrocities on minorities and women, and armed forces violence. However, little has been received on economic, social and cultural rights, and nothing has been done to address these violations.

The AHRC refers all hunger cases in India it receives to the NHRC. Of the 35 complaints the AHRC has registered, not one has resulted in any recommendation or action by the NHRC. The NHRC periodically sends notification that the complaint has been received. The only action stipulated in the notice is a deferral of the matter to the local district magistrate in the area where the right to food violation has occurred. Not one case, even after repeated inquiry by the AHRC on the current status of the hunger cases, has received further attention.

This is a blatant disregard for economic, social and cultural rights. Under its mandate, the NHRC is obligated to investigate and intervene into any violations presented to its office. Instead however, it is clear that when it comes to human rights violations, economic, social and cultural rights are secondary to civil and political rights.

4. (g) India's obligations as a party to international treaties

India severely lacks in regular reporting and submissions to UN bodies regarding the situation of hunger. India's last report to the Committee on Economic, Social and Cultural Rights was submitted in 1990. In the past 15 years, three more reports have been due but have yet to be submitted.

The right to food of ordinary Indians will not be fulfilled until the government respects all of its international obligations and protects all human rights.

5. Conclusion and recommendations

From an analysis of the cases reported from India in 2005, one could safely conclude that there is a consistent and wide spread pattern of the erosion of human rights standards in India. At this pace, which is alarming, the country is headed for a complete collapse in the near future. India, as

it is divided in various forms by region, culture and religion, needs immediate attention to improve its human rights standards. This must start at the domestic level.

As of today India, is one of the countries that has ratified the least number of International Conventions and Instruments. If India is to hold true to its claim that domestic mechanisms are capable of respecting, protecting and fulfilling human rights, then it must first make significant changes to its existing domestic laws and practices. This must start with the ICCPR and the ICESCR. The old and obsolete Criminal Procedure Code must be amended to incorporate the provisions of the ICCPR. Draconian laws like the Armed Forces Special Powers Act must be repealed.

Changes in domestic laws alone will not bring in improvement. The implementation of domestic laws also requires immediate attention. Some of the key areas which require immediate attention are policing, the prosecutors' office, the courts and the Human Rights Commissions. Corruption and nepotism in all of these offices must be eradicated forthwith and measures to protect against subsequent contamination must be put in place.

One easy way of implementing this would be the ratification of the Convention Against Torture. The ratification would necessarily require the country to implement the convention at the domestic level. This would ensure independent inquiries into police excess and a separate procedure for prosecution. This would also ensure that remedies are accessible to the ordinary Indian. Correcting the policing system in India would definitely go a long way in improving the human rights situation in India. If the entire state is considered as a machine, policing is the oil which makes all parts of the machine function properly. It is this oil which is contaminated in India and until this has been addressed, whatever changes are brought in will have no effect. To start with, India must admit that its human rights record is poor and the chances of remedies are much less for an Indian, when compared to its neighbours.

Concerning the international instruments ratified by India, especially the ICCPR, India must withdraw its reservations, thereby opening up more avenues for international cooperation and better possibilities for redress for the victims.

The national institutions like the Human Rights Commission and the courts must be strengthened by providing adequate infrastructures, so that these institutions can discharge their duties without failure or delay. Unless this problem is addressed immediately, the already established lack of trust in the domestic mechanisms would harden into complete disregard for the law, leading to a state of anarchy.

Last but not least, the burning issue of caste discrimination must be tackled in a more affirmative manner. Currently, it is left with a domestic law - Scheduled Caste, Scheduled Tribe (Prevention of Atrocities) Act - and the Constitutional guarantees. However, it has been proved time and again that these provisions are used more often used to exploit the situation rather than to solve it. Caste is deep rooted in the average Indian's psyche and for this very reason a complete elimination of the caste structure would take strenuous effort, but it must start from the admission that caste-based discrimination exist in India. Only if the government of India is willing to admit that caste-based discrimination exists in India, will it be able to address this issue.

However, admissibility is exactly the problem with the Indian government. For years it has cocooned itself within the cover of lies regarding its domestic implementation of human rights values and the rule of law. But 58 years after independence, for an average Indian, human rights and the rule of law still remain meaningless words.