



ASIAN HUMAN RIGHTS COMMISSION

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INDIA: The Human Rights Situation in 2006

I. Introduction

Any reference to India often includes superlatives, such as the world's largest democracy, the second fastest growing economy and the second most populated country. India has managed to convince the world's diplomatic community of its status and has become one of the leading voices in the United Nations, which was reflected in the UN Human Rights Council elections. India secured the maximum number of votes among the Asian countries in the election to the Council.

Based on this, the government of India projects the country as being a model to several other countries concerning the rule of law and human rights standards.¹ This, however, only applies if the comparison is limited to India's immediate neighbours, such as Nepal, Burma, Bhutan, Pakistan, Bangladesh, Sri Lanka and Afghanistan. Regarding economic development, the fact is that India has charted a 9.2% annual growth rate for the final quarter of 2006, and is expected to continue with such growth next year too. This growth is, however, not an indicator of the improvement of the rule of law and human rights standards in India, even though the government claims otherwise.

If economic growth is an indicator of the improvement in the standards of the rule of law and human rights, then the question to be asked is how many of the 1.2 billion Indians benefit from this development? Of the 1.2 billion Indians, an estimated 74% are living in the country's rural villages.² The improvement in the living standards and quality of services available to this 74% of the population, guaranteeing them the basic minimum rights, would be better proof of the improvement of human rights and the rule of law *vis a vis* economic development in India.

For the past twelve months, the Asian Human Rights Commission (AHRC) has been receiving reports from various parts of India that paint a dismal picture about the human rights situation found there. Most of these cases are from the villages in India. These cases are posted as urgent appeals by the AHRC calling for urgent intervention. In most cases the victims are poor and from financially marginalised communities.

It is presumed that the justice dispensation system in India does not discriminate between the poor and the rich. However, if it can be shown that the justice dispensation system does not serve the poor and it is out of reach to them, one can safely argue that the system

¹ Press Information Bureau - India, *Management of Globalisation Process*: Pranab Mukherjee [Union Cabinet Minister – Defense]; 10 November 2006

² *India at a Glance – Rural Urban Distribution*: The Registrar General and Census Commissioner of India, 2005 report

is not catering to the promotion, protection and fulfilment of human rights and fails to ensure the rule of law. The cases dealt with by the AHRC indicate that the justice dispensation system in India is on the brink of collapse, particularly the criminal justice dispensation mechanism. The issues covered are diverse and include custodial torture, corruption and the right to food.

This report highlights the areas of concern that play contribute to the possible downward spiral of the rule of law that is diminishing the scope of human rights in India. The report will analyse each issue using cases taken up by the AHRC to show that the views expressed by the AHRC are not based on abstract terms, but rather on its own experience in dealing with these cases.

II. Areas of concern

- a) Judiciary – especially the lower judiciary, which is plagued by a lack of sensitivity and enormous delays. The discussion also covers the human rights commissions in India.
- b) Policing which is reeling under ineptitude and corruption, and in which the practice of custodial torture is prevalent.
- c) Discriminatory approaches by the government towards certain regions within the country – for example the north-east.
- d) Caste-based discrimination – often leading to starvation deaths

III. Judiciary

A magistrate court is often the first place to lodge a complaint in many cases of human rights violations in India. The magistrate court also functions as a first instance court for anyone who wishes to lodge a complaint against atrocities committed against the person, particularly if it is related to custodial torture.

Under Section 190 of the Criminal Procedure Code, 1973, a person can file a complaint at the magistrate's court requesting the court to take action upon the complaint. However, such a complaint will eventually be directed to the local police for their inquiry, and, if necessary, for investigation. This is because under the existing legal framework in India, there is no possibility for the court or an agency other than the local police to investigate such complaints. This process often proves to be a futile attempt, since the local police do not investigate the complaint impartially.

A person can also complain to the court when he/she is brought before the court by the police. The law mandates the presiding officer with making arrangements if a person produced before him complains about an incident of assault and requests a medical

check-up.³ These procedures are in addition to the mandatory provision that any person arrested must be produced before a magistrate with jurisdiction over the area within 24 hours of arrest.⁴

However, many magistrates do not follow these procedural rules and in some cases even remand the detainee for further periods in police custody without even seeing the detainee. In the worst case scenario the magistrate court is literally run by police constables, as reported from West Bengal in the case of Mr. Vijay Kumar Jaiswal and Mr. Mohhamad Siraj.⁵ In this case even though the victims were arrested several days before the date recorded in the arrest memo, the magistrate did not take any action. It was later discovered that the order, allegedly made by the magistrate, was in fact prepared by the police constables and merely signed by the magistrate.

In yet another case, in spite of a specific complaint by the detainee, the magistrate refused to order a medical inspection.⁶ Mr. Yengkokpam Langamba Meitei and Mr. Leitangthem Umakanta Meitei were produced before the Imphal [Manipur state] magistrate in a pitiable state of health after being brutally tortured by the security forces and the police. They complained to the magistrate that they were illegally arrested and then tortured while in custody. The magistrate failed to take any action and remanded them in custody for investigation. Of the two victims, who were released later, after immense pressure from civil society groups and the general public, Umakanta is a human rights lawyer practicing in the very same bar.

Enormous delay in dealing with cases is yet another issue which haunts the judiciary in India.⁷ Criminal trials take years to complete or even to record evidence. Delays occur due to several reasons. Basic requirements, like office equipment, are often denied to the courts. For example many courts lack even a telephone. Months of waiting to get copies of documents and a lack of prosecutors and other court staff including the judge are also regular phenomena.

However for Ms. Hasna Mondal, a victim of rape, none of these were the reasons for her case to be delayed for about 11 years before the court to deliver a judgment.⁸ The court continued adjourning her case from month to month in spite of the fact that the witnesses were present in the court. After 11 years, when the court finally delivered the sentence, many police officers who were also accomplices in the crime were acquitted, while one officer died during the trial. In the meantime Hasna had to face threats and intimidation from the accused in the case, including the police officers.

³ Please see Section 54 of the Criminal Procedure Code, 1973

⁴ Please see Section 57 of the Criminal Procedure Code, 1973

⁵ Please see urgent appeal UA – 040 – 2006 issued by the AHRC on 27 January 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1494/>

⁶ Please see UA – 278 – 2006 issued by the AHRC on 25 August 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1928/>

⁷ About 20 million cases are pending before the lower courts and another 3.2 million before the high courts. This estimate is prepared by Data Net India Private Limited www.indiastat.com

⁸ Please see UP – 136 – 2005 issued by the AHRC on 30 June 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1816/>

Delays in deciding cases are not limited to the lower judiciary. Even the Supreme Court of India, which cannot complain about a lack of infrastructure, also takes similarly long periods to decide cases.⁹ A recent example of such a case is *Prakash Singh & Others v. Union of India and Others* which took ten years for the court to decide.¹⁰ However, the Supreme Court often pressures the lower courts to speed up the hearing of cases and often sets targets for monthly disposal. Pressured by the directives from the Supreme Court, the lower courts dismiss cases in order to meet the statistical requirement. Such dismissals often concern cases where the parties find it difficult to appoint a lawyer. Most human rights cases belong to this category. Being the Apex Court in the country, which also enjoys the privilege of monitoring powers over the lower courts, the Supreme Court of India is not morally justified in asking other courts to speed up the time they take to decide cases. The end result is that most cases of human rights violations are dismissed and those which remain take decades to be decided.

It is just not delay and lack of professionalism that renders the judiciary in India a paper tiger concerning rule of law issues. There is no specific legal framework in India with which the judiciary can take action against, for example, an erring police officer. In a case of custodial torture, if a person complains to the judge, the judge can only record the statement and refer it to the local police to investigate. The impartiality of the local police in investigating such charges is obviously far below being satisfactory. This probably is the reason why the Supreme Court has not taken any action in a single case, even though its orders regarding arrest and detention issued in the D.K. Basu case are being openly violated in India.

In addition to the judicial magistrates, another category of officers responsible for protection and promotion of human rights are the executive magistrates. Even though these officers are not conventional judicial officers, the Criminal Procedure Code has conferred wide powers to these officers – both judicial and executive.¹¹ The AHRC has come across several instances where these officers use their powers arbitrarily and in violation of the law.

Mr. Santhosh Patel, a human rights activist based in Belwa village, Varanasi district, Uttar Pradesh, was arrested twice on the order of the District Magistrate of Varanasi. He was arrested because he was trying to file complaints against government officers and the food distribution agent in Belwa village. Patel is fighting corruption and caste-based discrimination in Belwa. Several cases from Belwa were taken up by the AHRC and in some cases the UN Special Rapporteurs have called upon the government of India to take action.¹²

⁹ The expense for the Supreme Court is managed through a consolidated fund sanctioned to the court, periodically, by the Union Government, on request from the court.

¹⁰ *Prakash Singh & Others V Union of India and Others* was decided by the court on 22 September 2006 giving directions to the governments to constitute mechanisms for monitoring the state police and its functioning. The case was filed in 1996.

¹¹ Please see chapter X of the Criminal Procedure Code (1973)

¹² Please see UP – 122 – 2006 issued by the AHRC on 14 June 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1778/>

The magistrate felt that such complaints will cause damage to the image of the country, which he publicly stated in a meeting in Varanasi. The magistrate thought that detaining Patel was the solution to solve the problem, without addressing the real issue. As the arrest and re-arrest took place, one more child died in his jurisdiction from acute starvation.¹³

There are other bodies in India that are empowered to promote and protect human rights - the national and state human rights commissions. However, these commissions also lack a legal framework to independently inquire into cases, resulting in such inquiries being deputed to the very same officer who is the respondent in the case or his immediate superior. The regular practice adopted by the commissions is to depute the inquiry upon a complaint to the head of the state police or to the department in which the respondent officer serves. However, such deputations, in practice, trickle down to the immediate superior and in some cases even to a subordinate of the officer against whom a complaint is made at the commission.

In the case referred to above, the complaint regarding the arrest of Mr. Patel was inquired into by a subordinate officer. The very nature of the inquiry was to pressure the complainants to compromise the case, a practice that was the subject of a further AHRC appeal.¹⁴ On the receipt of a watered down report by the inquiring officer, the Uttar Pradesh state human rights commission dismissed the case against the district magistrate.

In addition to the above infirmities there are other practical issues for which there are no solutions whatsoever that are available to the average Indian, if he chooses to approach the courts to seek redress. To find a lawyer to represent a case is almost impossible for a poor person. There is no properly functioning public legal-aid system in India. The only available recourse is to approach the State Legal Services Authority. This body is constituted to provide legal help to those who cannot afford a lawyer.¹⁵

In theory, even though the State Legal Services Authority is meant to have an office in every district, often the functioning of the authority is limited to the respective high court. In several states, such a body is yet to be constituted. Where they are constituted and functioning, its function is limited to holding settlement seminars where both parties are called upon to settle their dispute. This has been found to be effective in marital and civil disputes. A case of human rights abuse, which most often emanates from a criminal act, is yet to find a place within the practical definition of the functioning of the State Legal Services Authority. The result is that in most cases of human rights abuse a complainant will find it practically impossible to find a lawyer to represent him in court.

¹³ Please see HA – 07 – 2006 issued by the AHRC on 28 July 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1884/>

¹⁴ Please see UP – 209 – 2006 issued by the AHRC on 15 November 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/2075/>

¹⁵ Please see the Legal Services Authorities Act (1987)

All the cases cited above, and many more concerning which the AHRC has intervened in 2006, are cases of human rights violations meted out against the poor. It is the poor that find it difficult to make use of the existing legal framework in India, in order to redress their grievances. To summarise, the problems affecting the judiciary in India can be listed as follows:

- 1) A lack of a proper legal framework to address human rights violations
- 2) Enormous delays in deciding cases
- 3) A lack of basic infrastructure that prevent the courts from functioning
- 4) The absence of a compassionate attitude and proper understanding about human rights by the presiding officers, particularly in the lower judiciary
- 5) Limitations in finding *pro bono* legal assistance

IV. Policing

The state of policing in India remains deplorable and is worsening year after year. Most cases of human rights abuse taken up by the AHRC in 2006 are directly attributable to the local police. In several cases, the police are the abusers, and in a few others the police failed to take action against a perpetrator. Most often, discussions about the issues in policing in India are limited to corruption. Indeed, corruption is an issue. However, the policing system in India suffers from severe problems in addition to wide-spread corruption.¹⁶ The very concept of police investigation is itself wrongly construed in India.

The investigation of a case begins with a confession statement and ends with it. The police force is grossly neglected and it lacks all the facilities required to conduct a scientific investigation. The ground rule frequently used is that, if forced, the suspects will tell the truth. This approach has resulted in gross abuse of authority and custodial violence continuing unabated. In cases where police officers have been known to break the law, no action is taken either by the higher police officers or by any other organ of the state. Often, the approach adopted by the higher police officers is to defend their subordinate officers. This is also because of faults in the policing policies of various state governments.¹⁷ Additionally, the law governing policing in India, the Police Act, dates back to the British era in India.¹⁸ There is, however, a move to enact a new Police Act. The new law is in the pre-natal stage of consultation and drafting.

Under existing circumstances, policing suffers badly from the practice of custodial torture. This practice, along with issues like corruption, ineptitude and political interference, has resulted in the local police being feared by the ordinary people. The impression about the local police is often worse than that of a criminal. In common conversations the image of police is such that a police officer is often referred to as the criminal's associate or the uniformed criminal. Ordinary people avoid going to police

¹⁶ *Bringing Democratic Policing to Rural India*: Devika Prasad & Monica Saroha; 2006 - The Commonwealth Human Rights Initiative

¹⁷ Policing and law and order in a state is a state government prerogative according to the Constitution of India

¹⁸ *Ibid.* 16

stations even to file a complaint. Violence against women committed by the police keeps the women away from approaching the police, even when faced with extreme situations. The number of women police officers is also fairly low. The national average of women police officers in the Indian Police Service is a pitiful minimum of 3.5% which has not improved much in the past few years.¹⁹ The existing women officers also complain about harassment by male colleagues. In a study conducted by the British High Commission of India a woman police officer said '*being a woman police officer in India is a punishment*'.

Policing suffers the worst from the brutal force used by the police against the ordinary people. There is no specific law that prevents the police from using such force against suspects and innocent persons. There is also a complete absence of a credible mechanism by which a complaint against a police officer can be investigated and the erring officer brought to justice. The following cases illustrate how policing in India suffers from excessive brutality used by the police against individuals, with the officers enjoying impunity.

Mr. Wilson, a welder by profession was asked to come to the police station by the officers attached to the Mannuthy police station in Thrissur district, Kerala state, as part of an inquiry into a case of the murder of a boy. At the police station Wilson was abused and tortured in order to force him to confess to the crime. Later it was found that Wilson had nothing to do with the murder and another person was arrested as the murderer. The AHRC had previously issued an appeal calling for immediate intervention. Later it was also revealed that Wilson was tortured under instructions from the Superintendent of Police, who had instructed his subordinates to use force to make the suspect confess to the crime.²⁰

An internal inquiry was initiated, based on a complaint filed by Wilson. However the inquiring officer, a Deputy Superintendent of Police, informed Wilson that such practices, including torture, are allowed in the police and are also permitted by law. Surprised, Wilson sought help from a local human rights activist who talked with the senior police officer who justified his subordinates' action. The officer also threatened the activist and said that the practice of reporting cases of police abuse to external human rights organisations is wrong and must be discontinued. To date, Wilson is trying to get his complaint registered in court and take action against the police officers who assaulted him.

The practice of using violence is not limited to the investigation of a crime. Maintenance of law and order is carried out through the use of violence and by terrorising the people. Mr. Mohanan from Thrissur district, Kerala state, was taken into custody by police officers from the Pazhayanoor police station. Mohanan was taken into custody when he objected to the flashing of a torch in his face by one police officer, while the officer was on patrol duty. The officers who took Wilson into custody after an initial assault, threw

¹⁹ *State of Women in Urban Local Government*: The United Nations Economic and Social Commission for Asia and the Pacific – India Report 2000, p. 11

²⁰ Please see UA – 349 – 2006 issued by the AHRC on 25 October 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/2043/>

him into the police jeep. Wilson was severely beaten inside the police jeep and, as a result, he defecated inside the vehicle. He also lost his consciousness. The officers waited and when Wilson regained his consciousness, he was asked to clean the vehicle. Later a case was registered against him implicating him as a suspect in a theft case.²¹

Police officers also use their power and impunity to work for private financial companies as repossession and recovery agents. Mr. Sadiq, a travel agent from Kunnankulam was taken into custody by police officers from Kunnankulam police station as the result of mistaken identity.²² The officers, who came in a private vehicle, stopped in front of Sadiq while he was waiting for a bus and asked for his name. He said his name is Sadiq. The officers shouted at him saying that changing his name will not help him to avoid repayment of a loan and assaulted him and took him to the Kunnankulam police station in the vehicle. Later, at the police station, the officers realised that they had picked up the wrong person. Sadiq's friend, who also came to the police station, was detained. Both persons were released later. However, when Sadiq tried to lodge a complaint with the Deputy Superintendent of Police of Kunnankulam, the officer threatened Sadiq, saying that he would personally initiate a case against him if he dared to complain against his subordinates. The officer also informed Sadiq that the officers who assaulted him were probationary officers undergoing training under him and that he did not want any complaints registered against them.

In an inquiry conducted by the AHRC, it was later revealed that the officers who assaulted Sadiq were also working for a private money lender who had paid them to assault persons who defaulted on payments. Even probationary officers enjoy impunity, and their superior officers allow this to continue. These officers will be in regular service in a year's time and one can easily imagine how they will behave once they have been inducted into regular service.

Thirteen cases of death under suspicious circumstances involving the state police have been reported from Kerala state in the past few months. In response to a media outcry the state government responded by constituting an inquiry commission to look into the circumstances of these cases and to advise the government. The commission is probing the custodial deaths and other atrocities that were reported from various police stations and jails in Kerala between April 1 and September 16 this year. It is expected that the state government will take action at least upon those cases which the commission inquired into and will punish the police officers responsible for the death of innocent persons. Kerala is considered to be a far better state in comparison with the other states in the country in terms of public response to issues like the state police.²³ If this is what is

²¹ Please see UA – 69 – 2006 issued by the AHRC on 23 February 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1546/>

²² Please see UA – 236 -2006 issued by the AHRC on 18 July 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1854/>

²³ *Power to the (Malayalee) People*: Richard W. Franke and Barbara H. Chasin; Critical Asian Studies : Vol:38, No.3, September 2006

happening in Kerala, the situation in the other parts of the country, where the public is under the grip of fear against the police is beyond comprehension.

There are specific procedures in law to be followed by the police or any other law enforcement agencies at the time of arrest, questioning and detention of a person. This can be found in the Criminal Procedure Code and also in case law in the D. K. Basu case.²⁴ However, the implementation of the law and the Supreme Court's judgment is limited to pasting the court's order in a police station. In all the cases dealt with by the AHRC this year, these procedural requirements were found to be being violated by the police.

A discussion about policing in India is not complete without referring to the Jalangi police station in Murshidabad district, West Bengal state. In 2006, the AHRC has received more than two dozen cases involving this police station, where police officers are either engaged in violence against innocent people or aiding the paramilitary forces [the Border Security Force (BSF)], in carrying out unabated violence against the people. The case of Mr. Bajlur Rahman is a typical example which illustrates how the police are engaged in such acts in Murshidabad district.²⁵

On August 28, 2006, at about 3 am, six officers led by Mr. Tuhin Biswas, Sub Inspector of Police from the Jalangi police station, raided the house of Bajlur. The officers who raided the house did not inform the family who or what they were looking for. After arresting Bajlur, the officers tortured him in front of his mother. He was later taken to the Jalangi police station in a police jeep. It is alleged that Bajlur was also tortured at the police station.

Bajlur's mother Mrs. Anesa Bewa tried to contact Mr. Somnath Banerjee, the officer in charge of Jalangi police station to find out why her son was tortured and what the reason for his arrest was. However, she was not provided with any details by the officer. Subsequently, she contacted MASUM, a local human rights organisation, on August 30, 2006. On receipt of a complaint by Anesa, MASUM contacted the District Magistrate and the Superintendent of Police of Murshidabad. However, both officers failed to provide any help or information regarding the case. Bajlur was produced in the Court of the Chief Judicial Magistrate, Murshidabad on August 31, 2006. The police also produced false charges against Bajlur to justify the arrest.

²⁴ The Criminal Procedure Code of India only provides for the minimal basics regarding how an arrest is to be made and the time limit [24 hours] within which a person is to be produced before a judicial officer. It was the Supreme Court of India, in the decision rendered in the D. K. Basu case, which stipulated the modalities to be followed by the law enforcement agency at the time of arrest, detention and questioning of suspects. The court ruled that the person arrested must be informed about the reason for arrest, the place where the person will be detained and also for medical examination of the detainee. The court also ordered that the guidelines of the court must be implemented by the government without failure and that it must be pasted in all police stations in the country for the police officers to follow and the general public to be aware of.

²⁵ Please see UA – 283 – 2006 issued by the AHRC on 31 August 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1937/>

Once MASUM had intervened and on receipt of a complaint from the mother of the victim, the Jalangi police then doctored a statement by one Ms. Khusi Bibi of Pune, Maharashtra state, who is allegedly involved in a case of female trafficking, to also frame Bajrul in this case. The allegedly doctored statement by Khusi Bibi was made by her while she was in the custody of Jalangi police. The police have also created a false arrest memo, which has now been produced in court, in which Khusi Bibi has been made a witness to the arrest. This contradicts the purpose of the arrest memo. According to the rules framed by the Supreme Court, the witness to the arrest memo must either be a family member of the arrested person or a respectable person in the locality, as which Khusi Bibi does not qualify, given the current circumstances. Bajrul alleges that the reason why he was arrested, framed in a case and tortured was because he was voicing his protest against the police officers at Jalangi police station, having questioned why the officers take bribes, when he went to the police station on a previous occasion. At that time he had declared that he would report the criminal activities of the officers to the higher authorities. The officers had warned him that they would take him to the station next time as a criminal and then they would let him know why the people pay the officers and what happens if they do not pay.

On production of Bajlur at about 3 pm in court, the Chief Judicial Magistrate, Ms. Subrata Hazra Nee Saha, judicially remanded Bajlur until September 14, 2006. Even though the Magistrate had received a written complaint regarding the manner in which Bajlur was arrested and tortured in custody without being produced before the court within the stipulated time of twenty four hours, the Magistrate did not ask Bajlur whether he was arrested in the manner mentioned in the complaint or whether he was tortured by the police. The Magistrate also did not appear to care whether Bajlur require any medical attention.

The Criminal Procedure Code, 1973 of India requires the law enforcement agencies to follow certain procedures at the time of conducting a house raid. Section 47 (1) of the Code requires the police officers to inform the occupants of the house whom they are looking for and seek their prior permission before entering the house. It is only when the occupants refuse permission to the police to enter and the officers believe that the refusal is in order to facilitate the escape of a person that they are seeking to arrest, that officers can use force to enter the house. However, in this case, the officers barged into the house without complying with any formalities. Section 47 (2) also requires the officers entering a house where a woman resides to allow the woman to step outside the house before the search, which was also violated in this case.

Section 49 of the Code prohibits the use of unnecessary force during arrest. Section 50 requires the officer to inform the person arrested of the reason for the arrest, including the alleged offence for which the person is being taken into custody.

The statutory requirements have been reiterated by the Supreme Court of India, when it ruled that at the time of arrest, a memo must be prepared by the arresting officer. This memo must contain the alleged crime, the place, date and time of arrest, and also the place to which the person will be taken for detention prior to being produced before a

Magistrate. The rules framed by the Supreme Court also require the officers to ask a person to witness the arrest memo.²⁶

Bajlur was arrested on August 28, but he was produced before a Magistrate only on August 31. Section 57 of the Criminal Procedure Code requires the police to produce the detainee before a local Magistrate within twenty four hours. In Bajlur's case this law was not observed. Bajlur's mother has also filed complaints with the Chief Judicial Magistrate Murshidabad alleging illegal detention, torture in custody and non-compliance with the law and the directives of the Supreme Court.

While Bajlur's case shows how the police victimise innocent persons to meet their corrupt ends, the following case depicts how the police aids the Border Security Force [BSF] in smuggling.

On November 10, 2006, Mr. Mohammad Sayab Ali Mondal, an agricultural labourer, was going to his property to attend to his crops in Murshidabad District, West Bengal. While he was approaching his property, he witnessed some officials from the BSF - 'C' Company of Battalion Number 90, posted at Out Post Number 6, unloading some goods from a vehicle. Without any reason the officers approached Sayab and started beating him with bamboo sticks. Sayab suffered serious injuries in the assault and soon became unconscious. The BSF officers left him to die. The alleged reason why the BSF officers assaulted him was because they were dealing with smuggled goods from or to Bangladesh.

Once Sayab regained consciousness, he managed to get to the nearby hospital at Sagarpara, where he received treatment for his injuries. An X-Ray revealed that he had suffered compound fractures of his wrist.

On November 15, Sayab visited the Jalangi police station to lodge a complaint. The complaint was prepared by Mr. Gopan Sharma, a local human rights activist associated with MASUM. However, the Officer-in-Charge [OIC] of the Jalangi police station, Mr. Somnath Banerjee, insulted and intimidated them and threw away the written complaint. The officer said that he cannot entertain any complaints against the BSF. The officer also shouted at Sayab saying that it is better not to do anything after hearing advices from human rights activists and also said that these activists are creating problems in the locality by taking up issues against the police, BSF and other government agents.

Dejected by the attitude of the local police, but determined to act, Sayab contacted the Additional Superintendent of Police [ASP] of Murshidabad district, West Bengal with the help of Gopen. On receipt of the complaint, the ASP directed the Jalangi police to accept the complaint without any further delay. However, the OIC still refused to accept Sayab's complaint.

According to the latest information, the Jalangi police is harassing Sayab because he has involved human rights activists in helping him with his case. The police have also

²⁶ Please refer to D. K. Basu v. State of West Bengal 1997 (1) Supreme Court Cases p. 416

threatened Gopen, stating that he would face serious consequences if he continued with his work. There are further allegations that the Jalangi police failed to arrest Mintu Siek's killers in spite of an order from the court. Mintu Siek was allegedly killed by cross-border smugglers on March 12, 2003. It is alleged that the police are refusing to arrest the criminals since they are paid off by the smugglers.

Sayab's case is not the only case the AHRC has been informed about that depicts a clear nexus between the smugglers, local police and the BSF. Throughout the past three years, the AHRC has issued a series of urgent appeals calling for immediate intervention to curb the violence perpetrated by the BSF against the local villagers. In all these cases, the facts suggest that the violence against the local villagers had a direct connection with the BSF handling smuggled goods and the local police supporting them.

Cross border smuggling is rampant along the Indo-Bangladesh border. The BSF, a paramilitary wing, is posted along the border to prevent infiltration, smuggling and illegal cross-border activities. Being a para-military unit, the BSF enjoys absolute command of operational issues over the local police in the areas where they are deployed. The domestic legislation provides certain impunities to the officers for acts committed during an operation. However, the offences committed by the BSF officers, like smuggling and beating people, are not covered under this law. The local police have every legal right and duty to take actions against these officers.

The first step in such an action is to register a First Information Report and also to report the matter to the Commanding Officer of the Battalion. The police must also investigate and file the charge sheet at the local court which entertains jurisdiction over the case. However, many police officers, the officers from Jalangi police station in particular, fail to initiate any action against the BSF and the local people allege that this is because they receive kickbacks from the BSF for not registering cases.

Police corruption not only has a say in the poor law and order situation in the area, but also facilitate other malpractices in various welfare programmes. This keeps the poor in a state of helplessness, making them easy prey for smuggling and other criminal racketeering operations in the area.

Murshidabad district in West Bengal state, is one of the poorest in the state. Natural calamities such as massive erosion of land by the river Padma and the lack of other alternatives to find jobs for the predominantly agricultural community have resulted in several deaths from acute starvation in the district. The government of India has various schemes to distribute free and subsidised food among the poor regions in the country and Murshidabad is one among them. However, owing to corruption in the distribution of this food and the lack of police action, food is being smuggled across the border to Bangladesh. The local people to whom this food is supposed to be distributed free or at subsidised rates are forced to work as smugglers to smuggle food across the border to Bangladesh for a pittance. The complete irony of this situation is obvious. This situation is controlled by local police officers. The officers at the Jalangi police station are notorious for this.

The AHRC has repeatedly complained to the authorities in India about the situation in Murshidabad. Not a single case has been investigated by the authorities and no action has been taken against any police officers. This lack of action by the authorities has resulted in providing near to complete impunity to the police. A similar attitude by the authorities in the rest of the country shows how far the government is interested in taking action against erring police officers or members of other government forces. One of the alleged reasons for government inaction is that even the state government considers people in this border district as being illegal migrants from Bangladesh.

The situation is further worsened in the militarized north-eastern states of India, for example in Manipur.

18 year-old Mr. Longjam Surjit is a resident of Samurou Makha Leikai, within the jurisdiction of Wangoi police station in Imphal West District, Manipur. He was shot dead by troops from the 22 Maratha Light Infantry posted at Mayang Imphal on August 31, 2006. It is alleged that Surjit was shot dead by the army when he went out looking for his missing horse by the banks of the river Nambul with his friend, Mr. Naorem Brajamani from Samurou Naorem Chaprou. Brajamani heard ten shots from the direction Surjit had been walking in, and ran home scared.

In the morning Surjit was found shot dead and the army claimed responsibility for the killing, claiming that they had to shoot Surjit since he had tried to fire at the army officers. The army also claimed that they had recovered arms and ammunition from Surjit, the possibility of which his family has denied. Brajamani has made a statement to the local media concerning these events, which was recorded on September 1 and was published in local newspapers.

A meeting by the residents of the area was held at Samurou Bazar (a local market) on September 1 and 3 to protest against the killing. In the public meeting it was decided that Surjit's family will not claim his body from the RIMS mortuary, where the body was kept. Surjit's family asserted that unless there is an independent investigation into this case, the army officers responsible for the murder of Surjit are punished, and the Armed Forces (Special Powers) Act, 1958 is withdrawn from the state they will not claim the body from the mortuary.

The meeting also expressed strong resentment about the paramilitary forces and the state police's practice of pronouncing an innocent person guilty after killing him, including the planting of arms to make the person appear as being as a cadre of a secessionist group. There is no mechanism to regulate the weapons seized by the police and the military from arrested cadres of secessionists groups and, as such, the repeated use of weapons and ammunitions seized from such persons are often reported. There is no independent authority to verify the claims of both the armed forces and the police.²⁷ In accordance

²⁷ *The Committee to Review the Armed Forces Special Powers Act, 1958*: Government of India, Ministry of Home Affairs [The Committee submitted its report in 2005. The Committee was chaired by Justice B. P.

with the decisions to launch agitation until their demands are met, the residents of Samurou and other adjoining villages blocked the Mayai Lambi Road which connects Mayang and Samurou with other districts in Manipur.

Extra-judicial executions and custodial deaths by both the army and the police are a regular feature in Manipur. The killings are abetted by draconian laws that empower the army to operate with impunity there. This is done under the pretext of aiding civilian law enforcing agencies to combat secessionist groups in Manipur. Statutory impunity is provided to the armed forces of India by virtue of the Armed Forces (Special Powers) Act, 1958 which permits them to suspend the right to life, to kill a person on mere suspicion with full legal immunity.²⁸

Manipur was an independent country for centuries but, after being defeated in the Anglo-Manipuri War in 1891, became a British protectorate until August 15, 1947. After independence, a constitutional monarchy was established, but the Indian government annexed Manipur on October 15, 1949. Since then, Manipur, a small border province in the remote north eastern region of India, with a population of 2.3 million, has been the centre of an armed conflict. In order to control the active armed opposition groups, the Indian armed forces were deployed under the Armed Forces (Special Powers) Act, 1958, commencing the full scale deployment of Indian Military forces in Manipur.

Often, people are killed after being arrested from their homes. The armed forces repeatedly claim that they were killed when they tried to escape from army custody. However, the explanation given by the 17th Assam Rifles (a paramilitary unit in India) in the case of rape and murder of Miss Thangjam Manorama on July 11, 2004, after arresting her from her residence at Bamon Kampu, Imphal, that she was killed while attempting to flee from the army's custody, led to disbelief and an outpouring of anger among the people of Manipur, leading to massive agitations. This compelled the Union Government of India to institute a Review Commission of the Armed Forces (Special Powers) Act, 1958, although to date nothing has happened concerning the process of repealing the Act, due to the lack of interest in this by the government.

In the past few months, demonstrations to have the Armed Forces (Special Powers) Act, 1958, repealed have taken place in New Delhi. The demonstrations were spearheaded by Ms. Sharmila, who is on a hunger strike to the death until the Act is repealed. The agitation that continued in New Delhi forced the government to reconsider the pace of repealing the Act. However, despite this, the Act is still in operation to date. There is no discussion about what should be done concerning the past cases in which innocent people were killed by the armed forces in Manipur.

Before parting with the discussion about policing in India, one more case is worth mentioning. Very often in cases of police atrocity, the blame is put on low-ranking police

Jeewan Reddy, a retired judge of the Supreme Court of India and included Lt. General V. R. Raghavan, Dr. S. B. Nakade, Mr. P. P. Srivastav and Mr. Sanjoy Hazarika as its members]

²⁸ *An Analysis of The Armed Forces Special Powers Act, 1958*: The Asian Centre for Human Rights; PUCL Bulletin, March 2005

officers. The case of Mr. Deepak Sanyasi shows how high-ranking police officers make use of their subordinates to settle personal rivalries and even family disputes.²⁹

On August 23, 2006, Deepak and his father Sanyasi were arrested by Mr. Rabin Das, the Inspector in Charge of Bantra police station. It is alleged that they were arrested by the officer under the directions of Mr. Niraj Kumar Singh, the District Superintendent of Police in Howrah, as a favour to his superior officer, Mr. Sadan Mondal. Mondal is the Inspector General of Police [Intelligence Branch] of the West Bengal State Police.

It is alleged that after the arrest, Deepak and Sanyasi were taken to Bantra police station where they were tortured. Even though they were released by about midnight on the same day, a false charge under Section 290 of the Indian Penal Code was registered against them. This is the provision in the penal law of India concerning the causing of a public nuisance, which is a petty offence.

Deepak is a businessman running a lathe machine. It is alleged that Mondal was not on good terms with Deepak due to some personal feud between the two. It is also alleged that while in custody, the police officers intentionally damaged the SIM card of Deepak's mobile telephone to destroy any possible evidence of communications between Deepak and Mondal's family members.

The AHRC has been raising the alarm regarding the deteriorating law and order situation in India. Often the government of India and its state governments blame low-ranking police officers for breaches of the law and the use of violence against ordinary people. However, as is evident from Deepak's case, in many cases such violence emanates from either dereliction of duty or willful misuse of authority by police officers. In this case, Mondal is the Chief of the Intelligence Branch of the West Bengal State Police.

As the head of the intelligence branch, this officer is responsible for inquiring into allegations against police officers. His office is also responsible for investigations of crimes against national security. If the allegations are true, and if the state's highest-ranking police officer has not only misused his office but also ordered others to commit a crime of torture, to pacify his personal vendetta, the fate of ordinary people who face brutality on a daily basis from the police can be understood. Incidents of this nature also throw light into why many cases of police atrocities are not investigated in India.

The fatal cancer affecting the policing system in India has several roots. The complete lack of a sensible and strict procedural and legal framework that makes the police accountable for its action is foremost among these. Almost 99% of crimes committed by the law enforcement agencies, such as the local police, are not investigated. When high-ranking police officers, like the chief of the intelligence branch, order a crime to be carried out, the chance of having internal inquiries and the possibility of disciplinary action being taken against a subordinate police officer by this senior officer are virtually zero. Under the current legislative framework, the only law that provides for action to be

²⁹ Please see UA – 279 – 2006 issued by the AHRC on 25 August 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1929/>

initiated against a police officer for having committed a crime is the Criminal Procedure Code. The aggrieved person will have to approach a court by filing a complaint against the officer in question.³⁰ The court, devoid of any authority to conduct its own inquiry, can only forward the complaint to be investigated by a senior police officer. Such an inquiry is completely at the disposal of the officer to whom the court has directed the case.

In general, this officer will at a later stage return the file to the court without having conducted a proper inquiry, with a note 'no case to be registered, complaint found to be false'. The only option then left to the court is to record an objection statement by the complainant and then decide whether there is a cognizable offence. If the court feels that a crime is to be registered, the court could then direct the police officer to register a crime and further investigate the case. The officer that receives such an order from the court can easily ensure that his colleague avoids being framed, by registering a case against his colleague but not properly recording the statements of the witnesses.

The case file will later be returned to the court, for the court to try the case. In the meantime, the complainant and the witnesses are completely open to the bullying of the investigating officer, as well as the officer under accusation, since there is no witness protection mechanism in India. Additionally, issues like the absence of a medico-legal examination, the lack of any scientific investigation, and the delays of often ten years or more in court, leaves the case open to multiple types of malpractice. The end result of such a prosecution will typically be that the police officer suspected of committing the crime continues in the service, and after ten or more years, the case gets dismissed from court.

Throughout this process, the complainant will have to run from pillar to post in court to get everything sorted out. The complainant will have to depend upon the public prosecutor to conduct his case. It is an acknowledged fact that the state of public prosecution is no better than that of the police.³¹ Even to get a copy of the case file, the complainant, now treated as a witness, will have to bribe the court clerk and the record keeper and probably other staff in the court. Instances where the presiding officers also ask for bribes are also not rare.³² According to the Criminal Procedure Code, only the accused is entitled to a free copy of the case records. After all these hurdles, the chance for the complainant to get justice, and this within a reasonable time, is remote.³³

In addition to the absence of a legal framework, the policing system suffers from ineptitude. In India, recruitment into most of the civil service jobs is stained by corruption.³⁴ As much as 62% of Indians have direct experience in dealing with corruption, either being asked to pay bribes or having actually paid them to various

³⁰ Please see Section 190 and 202 of the Code of Criminal Procedure

³¹ *Public Prosecution – In Need of Reform*: Bikram Jeet Batra; India Together, 3 December 2006

³² *Judicial Corruption*: Rajeev Dhavan; The Hindu; 22 February 2002

³³ *Broken down-prosecutors, thrown-out victims*: Bijo Francis; Article2: Vol.2 No.5, October 2003

³⁴ *Public Office, Private Interest: Bureaucracy and Corruption in India*: S. K. Das; Journal of Asian Studies, Vol. 61, No. 3 (Aug., 2002), pp. 1085-1087

government services.³⁵ The current rate, which varies from state to state, to get a job as a police constable, is between two hundred to three hundred thousand Indian rupees. In states like Kerala, it has reached the level of five to six hundred thousand rupees, and this is the state of affairs in the least corrupt state in India.³⁶

Beyond corruption, the lack of training of police officers is yet another issue that the police in India struggle with.³⁷ The AHRC has come across instances where the police often use forced confessions obtained through torture as the only means of criminal investigation. This has been acknowledged by the Supreme Court of India several times.³⁸ The practice of torture is not only unscientific, but has been shown to fundamentally corrupt the nature of policing the world over. However, in India it is still widely used. This prevalent practice not only isolates people from the police, but caters to the impunity the police enjoys and creates fear in people's minds.³⁹

The lack of accountability, the absence of a proper legal framework to take actions against police officers, corruption, the lack of scientific investigation facilities and political influence all contribute to undermine the policing system in India to a critical level. This reflects in the day-to-day functioning of what is an important element of the country's justice dispensation mechanism. Whatever steps are initiated by concerned actors, such as the Supreme Court of India, are often played down by the government. The government of India and its state governments are still to admit that policing in India needs to be changed and that the image of police needs to be improved.

To summarise the problems affecting the policing system in India can be listed as follows:

1. Impunity;
2. The prevalent practice of violence and custodial torture;
3. The lack of a legal framework to ensure accountability and to prevent crimes from being committed by police;
4. Alarming low public confidence in the system, which shows that the police are not protectors, but perpetrators;

³⁵ *Satyameva Jayathe! (Is Corruption corroding India?)*: T. M. Menon, Asianet Global; 18 March 2006

³⁶ *Post Reform Corruption Scenario in India*: N. Vital Central Vigilance Commission, Government of India in a speech delivered on 20 February 2002 at CII Seminar in New Delhi. The Commissioner also noted according to Transparency International India ranks 72 among the 91 countries, worse than Ghana, Brazil, Colombia and Guatemala. According to Transparency International's 2005 report India top the world with 70% index where bribe was demanded for services to be delivered.

³⁷ *The Indian Police: A Critical Evaluation*: Arvind Verma, Regency Publications, New Delhi 2005

³⁸ In *Niranjan Singh v. Prabhakar Rajaram* (AIR 1980SC 785) the Supreme Court emphatically observed that, "The police instead of being protector of law, have become engineer of terror and panic putting people into fear." The Supreme Court again expressed its concern in *Kishore Singh v. State of Rajasthan* (AIR 1981 SC 625) and observed that, "Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights." Similar observations were made while deciding the D. K. Basu case also. Id. 26

³⁹ *Policing – A Human Rights Perspective*: Ministry of Home Affairs, The Commonwealth Human Rights Initiative and Delhi Police; proceedings of the seminar held at New Delhi, 12 February 2004

5. The lack of awareness about how to engage in better policing;
6. Political influence;
7. Corruption.

V. Discrimination based on caste

The caste structure and the injunctions attached to it control the social life and define the role of an individual in India. One is born into it and dies with it. If born a member of a lower caste or an untouchable, you die the same. There is no way out. The concept of the caste system brings in stratification of society based on duties. It is a defining tool to cast obligatory duties on people as the result of birth, which cannot be taken away. On the surface, it seems to paint a picture of societal obligation and duty. In reality, it is used as an instrument of exploitation by the upper castes against the lower castes.

Caste discrimination is worse than slavery. A person is born into the caste, whereas slavery is slightly different. A person may become a slave due to numerous circumstances. However, a slave may earn his or her freedom, whereas in the caste system there is no escape, because the only defining factor is birth. Once born as an untouchable one remains an untouchable. Ambedkar stated that untouchability based on caste is worse than slavery.⁴⁰ 'Neither slavery nor untouchability is a free social order. But if a distinction is made there is no doubt that there is distinction between the two'. 'The test is whether education, virtue, happiness, culture and wealth is possible within slavery or within untouchability. Judged by this test it is beyond controversy that slavery is hundred times better than untouchability. In slavery there is room for education, virtue, happiness, culture or wealth. In untouchability there is none,' he said.

The avenues for those who are born into the lower caste are many in theory, however, in practice, none of these mechanisms work, especially if the person is poor.⁴¹ A direct consequence of this is death from starvation.

In 2006, the AHRC has reported several cases of starvation deaths from India. Of these cases the most striking one is the case of nine-month old Seema Musahar.⁴² Seema Musahar died on July 28 in Belwa village, Varanasi, Uttar Pradesh after desperate attempts by her mother, 35-year-old Laxmi Musahar, to get help for her infant at the local health centre and other places. Laxmi had to pawn her two saris to a neighbour to get some money with which to take her child to get treatment, but still this was not enough to save her.

Laxmi and her husband, 40-year-old Chotelal, have been out of work due to the struggle that they had joined against the persistent use of bonded labour in Varanasi. They had been working as labourers at a brick kiln, for which they received only pitiful amounts of

⁴⁰ *Annihilation of Caste*: Dr. B. R. Ambedkar

⁴¹ *Cast Away by Caste*: Bijo Francis, Human Rights Solidarity Vol.14 No.5, September 2004

⁴² Please see AS – 180 – 2006 issued by the AHRC on 27 July 2006 available at <http://www.ahrchk.net/statements/mainfile.php/2006statements/661/>

low-quality grain and chaff as payment. After they had left the work, Seema's parents could get virtually no food, and Laxmi was not able to produce milk for her child.

On June 18, Laxmi's father, Phoolchand, also died of starvation. After that, the family met with the District Magistrate of Varanasi, Rajiv Agarwal - who is the responsible local officer - together with two other local officials, the Block Development Officer and Sub Divisional Magistrate. The parents explained that they had no access to any government welfare schemes. The district magistrate just gave a note to admit them to the district hospital in Varanasi. Seema was admitted to hospital on June 26 but discharged on July 1 without receiving adequate treatment.

On July 11, Laxmi wrote to the District Magistrate requesting 1000 rupees (USD 20) from emergency funds to help her family, but received no reply. So it was that when little Seema was on the verge of death her mother again took her to the primary health centre some 9km from the village in the ultimately vain hope that she could be kept alive.

Similar cases were reported from several parts of India, concerning which the government of India has initiated no actions whatsoever. The Supreme Court of India, however, being concerned about the plight of starving people within the country, has set up a commission to inquire into such cases and also to take action to prevent such cases from recurring.⁴³ However, the functioning of the commission is limited to reporting to the Supreme Court on the progress of eradication of starvation and the monitoring of the same in India. By the time the court took any action, it was too late to save several other individuals from the same locality who also died from starvation.

Caste prejudice and the failure of the local police and the administration are the factors that lead to most starvation deaths, in addition to complete neglect by the state government. An estimated number of 55 districts in India face problems of acute starvation.⁴⁴ In many cases of starvation deaths, the victims are from the untouchable community. For most bureaucrats, such people are not worthy of existence. For example, in Seema's case above, the district magistrate never took a positive step to save Seema, other than referring her to a government hospital.

Many families from the untouchable community face similar conditions to that of Seema's family. They are forced to work for the upper caste, for which they are given near to nothing in return. Wages are below the minimum wage prescribed by the government. In several cases payment is denied even after a day's work. These families are allowed to stay in patches of wasteland away from the village.⁴⁵ This is because their presence is considered to be a pollutant for the caste Hindus. A caste Hindu does not always imply Brahmins – the highest in the caste hierarchy. In Uttar Pradesh at least,

⁴³ Please visit www.supremecourtcommissioners.org for more information about the commission and its functions. The site also provides the latest updates on the issue by the Supreme Court of India.

⁴⁴ *Starvation death is a slur on society*: Times of India, 11 December 2005

⁴⁵ *Contemporary forms of slavery related to and generated by discrimination: Forced and bonded labour in India, Nepal and Pakistan*. United Nations Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights Working Group on Contemporary Forms of Slavery 28th Session Geneva 16 - 20 June 2003.

caste discrimination is being practiced by the Yadav community, which is in fact a lower caste in the caste structure. However, it is the Yadavs who currently enjoy considerable authority and power in Uttar Pradesh. The tribal community to which Seema's family belongs is considered as being untouchable (also called Dalits). Most often, it is these untouchable families that face the brunt of caste-based discrimination.

Scheduled castes (*Dalits* and "low" castes [SC]) and scheduled tribes (indigenous groups [ST]) make up 24% of the Indian population.⁴⁶ The government of India has several mechanisms in place to prevent causalities such as seen in Seema's case. The practice and propagation of untouchability is a crime. It is prohibited under the Constitution of India.⁴⁷ To give effect to this Article, parliament enacted the Untouchability (Offences) Act, 1955. To make the provisions of this Act more stringent, the Act was amended in 1976 and was also renamed the Protection of Civil Rights Act, 1955 [PCR Act]. Under the Act, the government of India also notified the PCR Rules, 1977, to carry out the provisions of this Act. As cases of atrocities on Scheduled Castes /Scheduled Tribes were not covered under the provisions of PCR Act, 1955, parliament passed another Act in 1989, to take measures to prevent the atrocities committed against them. This act, known as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, became effective from January 30, 1990. For carrying out the provisions of this Act the government of India notified the SCs and the STs (Prevention of Atrocities) Rules, 1995 on March 31, 1995. Based on the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, caste-based atrocities committed against the members of the Scheduled Caste and the Scheduled tribe is an offence punishable under the law.⁴⁸ Starvation deaths are a direct consequence of discrimination based on caste. However, the implementation of these laws, which must prevent starvation deaths among the Dalit population, depends mostly on the local police.

For example, the government has various schemes to distribute subsidised and free food to the poor. For this, the persons below the poverty line are identified and special permits are issued to them to collect free or subsidised food.⁴⁹ Food distribution is carried out by licensed shops, which are otherwise known as public distribution shops. For this the government issues licenses under the Rationing Order, a law under the Essential Commodities Act.⁵⁰ The licensees of these shops are expected to manage the shop according to the procedure set forth in the Rationing Order. This categorically prohibits the licensees from dealing with rationed articles in any other manner than that prescribed in the license.

However, the licensees, most of them from the upper caste, sell the rationed articles in the black market for a higher profit. Any complaints against such sales are to be registered by

⁴⁶ The latest census data of India - 2001

⁴⁷ Please see Article 17 of the Constitution of India

⁴⁸ Please see Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁴⁹ According to the National Sample Survey an estimated 22% of Indians are below the poverty line.

⁵⁰ Essential Commodities Act, 1955 is a central Act dealing with essential commodities and the procedure for dealing with such commodities. The Act is supplemented by the Rationing Order, which is a state legislation.

the local police. The case is then to be investigated and the accused brought to trial before a special court constituted under the Act.⁵¹ The local administration is also provided with appropriate authority to deal with corruption in dealing with rationed articles.⁵² However, the local police, in many cases in connivance with the local administrative authorities, refuse to take any action against these corrupt licensees. The experience of Ms. Neerja Rawat, a local human rights activist and a member of the lower caste, who was threatened by the local administration for complaining against one such licensee, is an example.⁵³

Ms. Rawat, representing some 200 villagers from Nindura Block, Barabanki District, Uttar Pradesh state, tried lodging complaints with the local administration to allow more ration cards and also to see to it that the functioning of the existing public distribution shop is according to the law. Rawat also complained that the village administration was collecting bribes for distributing below-poverty-line cards. However, the response to the complaint was threats and intimidation to Rawat by the local administration for working on human rights issues, particularly concerning the Dalit community.

The situation does not even change when the local administration is headed by a member of the Dalit community. The 73rd amendment of the Indian Constitution provides for the decentralisation of the administration in India. The amendment was intended to enable local bodies constituting a 3-tier system of Panchayati Raj (governance through panchayats - for local self governance) for all states that have populations of over 20 million. It also provided that an election to these bodies to be held every five years. To ensure equal participation by the Dalit community and women, a positive reservation was made in favour of the Scheduled Castes, Scheduled Tribes and women. It also ensured that not less than 33% of the total membership in these bodies must be either women or members of the Dalit community.

Mr. Prem Narayan, a resident of Vajidpur village under the Harhuan Block in Varanasi district, Uttar Pradesh state, is one such elected member.⁵⁴ He belongs to the Chamar community, who are untouchables. He was elected as village head in September 2005. However, soon after the election he found that getting elected as a member of the local village panchayat means nothing as far as he remained a Dalit. He is discriminated against to such an extent that he is yet to assume his role as village head. Narayan is being denied access to all documents concerning the administration of the panchayat, is not being consulted on any programmes being implemented through the panchayat, and is being refused access to the office building. Once Narayan tried to challenge these discriminatory practices but was assaulted by upper caste members as well as members of the former panchayat committee.

⁵¹ Please see Section 12 A of the Essential Commodities Act, 1955

⁵² Ibid, Section 6 A

⁵³ Please see HA – 04 – 2006 issued by the AHRC on 9 May 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/1717/>

⁵⁴ Please see UA – 377 – 2006 issued by the AHRC on 22 November 2006 available at <http://www.ahrchk.net/ua/mainfile.php/2006/2086/>

Panchayathi Raj is a concept that has been implemented in India since April 1993. The Act also provided the panchayats with the authority to function as institutions of self-governance. To facilitate this, certain powers and responsibilities are delegated to panchayats, to prepare and implement a plan for economic development and social justice. The panchayats are also given authority to levy, collect and appropriate taxes, duties, tolls and fees. In effect, the process was aimed to decentralise governance and also at the same time to promote, through a positive reservation, the empowerment of backward communities, women and the members of the scheduled castes and tribes in India.

With the intention of mainstreaming the lower caste, the Election Commission of India declares which seats are to be reserved for contests between members of the lower caste. Mr. Narayan contested a seat that was reserved for a member of the Dalit community and won the election.

This change tried to upset the discriminatory and inhuman caste hierarchy in rural villages, and Narayan's case is an example of how the upper caste retaliates in such a situation. What Narayan faces in Vajidpur village is a crime under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to Section 3 (x) of the Act, if a person intentionally insults or intimidates with the intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, the persons shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years and be accompanied by a fine. Physical assault is also a crime under the Indian Penal Code, 1860.

This case is an example of how development activities fail to percolate into the rural villages in India. Mr. Narayan, as village head, and also a representative of his community, is not consulted concerning anything in the daily functioning of the village. This also implies that, in the absence of Narayan's authorisation, no development activities can be implemented in the village until Narayan's term is over, which is only due in 2010. The upper caste community, which already has all the amenities that it requires, will not be affected by this stalling of the development programme. However, the lower caste community will not benefit during this period, which is an indirect way of keeping the members of this community in the village under the control of the upper caste. For Narayan, none of the domestic legal framework or the mechanisms that are supposed to rule out caste-based discrimination - even the status of being a democratically elected member in the world's largest democracy - can help him from being discriminated against in his own society.

The only remedy in such a situation is to approach the domestic courts in India. However, as detailed in the section concerning the judiciary earlier in this discussion, such remedies, including constitutional remedies, are often inaccessible to Dalits and members of the lower castes. This literally removes the equality quotient of human rights in terms of implementation. Considering India's vast size, its limited resources and the omnipresence of poverty, the possibility that a victim, who is otherwise deprived of basic standards of living, will be able to approach a court or a constitutional court is remote.

Due to the burden of expenses in litigation and the immense time it takes to reach a final verdict, such legal attempts are seldom resorted to by victims.

To summarise, caste discrimination continues unabated in India. Certain areas that the AHRC has identified as being immediate concerns regarding discrimination based on caste are as follows:

1. Caste based discrimination in India is in certain situations fatal, resulting in starvation deaths;
2. The domestic legal framework, which is designed in theory to prevent discrimination based on caste, fails due to the failure of the judiciary and the police;
3. Even positive reservations made with the intent of mainstreaming the Dalit community does not solve the problem, since justice delivery mechanisms fail to deliver results;
4. The bureaucracy in India is still under the control of the upper caste and thus prevents the lower caste from breaking away from the caste structure.

VI. Conclusion

The above discussion, based on a cross-section of Indian society, paints a dismal picture of human rights in the country. In all of these cases, a common denominator is the local police, which should play a pivotal role in promoting, protecting and fulfilling human rights. However, in India, it appears that the local police are engaged in demeaning, infringing and violating human rights. This situation has been left unanswered ever since 1947, the year India became an independent country. The AHRC does not claim that this report is a comprehensive analysis of the entire human rights situation in India. However, the issues discussed above are from the direct experience of the AHRC's work in the country, during 2006, in which the AHRC has tried to address the four major factors that are hampering the rule of law and fulfilment of human rights values in India.

Any suggested solution to address these problems must begin with making the police in India accountable for their actions and failures. To date, there is no specific mechanism in India to tackle this issue. This has also been noted in the report of the National Human Rights Commission. The commission observed that '*custodial violence and deaths due to it strikes a blow at the rule of law, which demands that the power of the executive should not only be derived from law but also that the same be limited by law*'.⁵⁵ The commission has also noted that its directions, issued in 1993, intended to prevent custodial violence are often being violated by the police.⁵⁶

As observed and studied by the AHRC through the cases that it dealt with in India during 2006 and preceding years, unless a credible, transparent and functioning mechanism is put in place to control the police and to bring it into the sphere of a true policing system –

⁵⁵ Please see the 2004-2005 report of the National Human Rights Commission of India, p. 34

⁵⁶ Id.

to replace the current undisciplined and barbaric force - the human rights situation in India will remain despicable for a large section of the population.

A well-functioning and orderly police system will bring solutions to various issues considered as being cancers in Indian society. Rooting out corruption, caste-based discrimination and starvation deaths must begin with making the police accountable for their actions and inaction. Dependence on the most unscientific method of investigation – the extraction of confession statements through torture – must be abolished and the rank and file of the police must be instructed not to resort to such practices. Anyone found violating this must be punished in accordance with law. However, it is this law that is lacking in India.

The only hope towards this end is the latest ruling of the Supreme Court of India in *Prakash Singh & Others V Union of India and Others*.⁵⁷ However the attempt by the government is to protract the implementation of the court's order.⁵⁸ There is, however, faint hope in the declaration made by the prime minister, when he assured that India is preparing to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, it needs to be seen to what extent the government of India will be honest in implementing the convention at the domestic level, following ratification.

India has a lot to improve upon before it can consider itself as being a model for other developing nations. To begin with, India must first acknowledge that it has real problems to sort out within its territory, rather than engaging in white-washing its image in international fora, such as the United Nations. A time-bound and well thought out plan must be immediately be drawn up to address the core issues concerning its policing system. The honest and legitimate participation by civil society in this process must be ensured and welcomed.

Immediate and stringent measures must be taken by the government and by the Supreme Court of India to save its lower judiciary from its current state. Any country or system that forces a person to wait for more than three years to get justice through a legitimate justice dispensation mechanism is making a mockery of justice. In such a case, India is just not making a mockery of justice, but it is asphyxiating the lower courts in to a state of coma. India must learn its lessons from the bad examples of its neighbours, such as Sri Lanka, Bangladesh and Pakistan, where the term justice has no meaning to the ordinary people.

No country can ignore the plight of 22% of its population. The Dalits in India must be considered as equal citizens with equal rights. For this the government of India must recognize that development must be carried out through a bottom-up approach, rather than spending billions in developing satellite cities catering for the neo-rich middle class. Existing legislation to prevent caste-based atrocities must be strictly implemented and

⁵⁷ Ibid 6

⁵⁸ Please see AS – 291 – 2006 issued by the AHRC on 22 November 2006 available at <http://www.ahrchk.net/statements/mainfile.php/2006statements/831/>

police officers refusing to implement such laws must be punished. A country like India, which is rich in food reserves, has no excuse to justify a single death from starvation. Each death from starvation in India must be considered as a stain on democracy. A hundred deaths from starvation a year must prove that India is a failed democracy.

A country that has left 74% of its population to suffer from conditions created by corruption, executive brutality and discrimination has no right to claim itself as a functioning state. Peripheral burnishing with statements of economic growth that caters for less than 26% of a 1.2 billion-strong population, is nothing more than a colossal bluff in the face of democracy and good governance. It may generate envy for those in countries with dictatorships and living in statelessness. However, for Indians in general, and for the 74% of the population that remain in rural villages, such economic growth brings nothing more than an increase in the amount of bribes they pay and a hungry stomach to sleep with.

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