



INDIA

The state of human rights in 2007

If there is one place on the face of earth where all the dreams of living men [and women] have found a home from the very earliest days when man began the dream of existence, it is India.

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1. Introduction:

India is 3.3 million sq kilometer of geographical expanse, home for an estimated 1.2 billion people speaking 844 different dialects. India has 22 official languages. Of the 1.2 billion population, an estimated 80.5% are Hindus, 13.4% Muslims and the rest is a mixture of Christians, Sikhs, Buddhists, Jains and other religious sects. While predominantly a Hindu dominated society, India has the third largest Muslim population in the world. It is also home to all five major racial types – Australoid, mongoloid, Europoid, Caucasian and Negroid, finding their representation in India.¹

The pure vastness of the country and the diversity of the population that it encompasses is a fertile soil for differences than harmony. Yet, after sixty years since independence the country has remained sutured together with a national identity, despite the demands for recognition and consideration from a growing number of factions claiming a separate national, political and ethnic identity. In spite of all these India is also one of the fastest developing economies in the world and as economists assess, is far more likely to be a stable economy than its immediate rival China.²

To summarise the issues arising out of this milieu of differences and commonalities is a difficult task. To narrow it down to prioritised concerns is even worse. Any such attempt requires detailed studies and in-depth knowledge about India, its institutions and more than a billion strong population that draw on these institutions. In the absence of such a wide and deep experience, the Asian Human Rights Commission (AHRC) and its sister organisation the Asian Legal Resource Centre (ALRC) are attempting to summarise some of the key concerns regarding India through this report. The report is prepared drawing from the experience the AHRC and the ALRC have gained about India from their work on India during the year 2007.³ The concerns expressed and the issues articulated are evolved not only from the AHRC's intervention on human rights issues in India during the past twelve months, but also through the understanding the AHRC has gained from its work in India for slightly more than a decade.

The AHRC and the ALRC being regional human rights groups based in Hong Kong, most of our information sources are secondary in nature. This is because the AHRC's intervention in India or for that matter in any country in the region is through local



network groups. Interventions are made locally, regionally and internationally through institutional collaborations with grass-root human rights groups spread across the region. Said this, the AHRC and the ALRC is still to establish a nationwide network of organisations in India. Yet, from where it began a few years before with just one organisation in Kerala, the AHRC have developed a considerable network of partnerships with human rights groups and activists spread across the country.

In addition to the specific cases where the AHRC has tried to intervene, information provided through other secondary sources like the media and the researchers the AHRC is engaged with has been used to assess the human rights issues in India. Given the priority of the work and its nature, the AHRC is primarily concerned about the following issues in India. The issues are:

- Caste based discrimination
- Policing and custodial torture
- Right to food
- Low intensity armed conflicts

Discussing human rights is mostly about discussing institutional frameworks and the legitimate space for dispute resolution between conflicting parties and their interests. The above issues from India, irrespective of the region, have surfaced time and again throughout the year. Most of these issues, on analysis, are found to be arising not merely from any particular mindset of the people. The conduct of a given society is not static. General human conduct evolves and changes to suit the circumstances in which they live. Change however requires impetus - rewarding or punishing. In India, violation of human rights in theory is a conduct that calls for punishment, however trivial the punishment may be vis a vis the severity of the violation. But the fact that violations of human rights continues unabated indicates that the deterrence the punishment may carry is either not severe enough or there are no deterrence at all. This is where the role of the justice mechanisms in India plays a pivotal role. These above issues that continue to cause dents upon peoples' life are thus closely connected to the administration of justice in India. It does not however mean that a well functioning justice system if in place will be complete solution for all the human rights issues in India.

The perceived notion of the justice institutions is not that these institutions function in a vacuum, detached from the social milieu in which these institutions situate. The justice institutions are administrated by individuals who relate their daily activities to the realities within the society within which they function and live. Their modus operandi is a reflection of the socio-political climate within their jurisdiction. Those who function within the justice delivery system are considered to be socially privileged than the ordinary person. For the same reason any friction between the ordinary people and the justice machinery tends to isolate the people from these institutions, giving more space for those in authority or those who are able to exploit their position with the authority in a manner adversarial to a less privileged individual. As of today in India this isolation is becoming more and more vivid.



Human rights concerns in India whether it is a socio, economic or cultural issue or a civil and political issue have a direct bearing upon the functioning of these systems. Matters ranging from the continuation of the caste based discrimination to the low intensity armed conflicts in India are somehow or other related to the justice mechanisms in India. What India is in theory is a total negative of what it is in practice. Discussion of human rights issues in India invariably leads to examining the functioning or the non-functioning of the particular segment of the justice system that allows a specific derogatory conduct, whether it is from the government, its agent or from the ordinary citizen. Needless to say, in the following report the discussion of each issue culminates in discussing the justice mechanism that fails to prevent a particular human rights abuse.

1.1. Why the four concern areas?

The Scheduled Caste and the Scheduled Tribe is estimated to comprise of about $\frac{1}{4}$ of the total population of India. A discussion about India without referring to such vast a community is never complete. The backbone of rule of law is policing. It calls for a special mention in any human rights report on India. Policing is often the key for promotion and violation of human rights. The state of policing in India is still in doldrums. Consistent calls for attention to improve the state of policing in India within India and outside has been largely ignored by the administration. Even attempts by the Supreme Court regarding this issue have faced a stone-cold response from the government. A large proportion of human rights abuses reported from India are concerning the police.

An empty stomach is no place for any other concern. While India has repeatedly claimed itself to be self-sufficient in food grains and other food stocks, a considerable proportion of Indians live in abject poverty, deprived of daily food. This poorest of the poorest Indians who are deprived of food security are found in rural and urban backdrops. Being exploited by the rich, most commonly as a free form of labour, the poor sections of the society also is a fertile ground for secessionist ideologies. As of now there are a considerable number of districts in India under the spell of such secessionist ideologies, which in the long run will be counter productive for a developing nation and its people. Right to food has been an area in which the AHRC is interested and the cases of starvation that are reported from India does not in anyway justify India's great leap forward as a fast developing nation.

Several states of India are facing low intensity conflicts. Of the 607 districts in India about 170 are reportedly affected by armed conflicts. The armed conflicts in these districts are not aimed to break away from the republic, but a response to utter neglect and brutal oppression of the people by feudal landlords or corrupt government agents. It is a shame that in a country like India that has a best justice delivery mechanism in theory fails to address its people's concern in practice and force several of them to take up arms.

The response of the state administration to the armed conflict is presumable. It is neither admirable nor productive. The implementation of draconian laws and the state sponsoring private armed militia has further worsened the situation in these places. The people living



in these regions are looked down by the state with suspicion and relative contempt. Such an attitude has not only resulted in further isolating the people from the government, but has resulted in the people developing sympathy towards a violent mode of communication and an affinity towards its carders.



2. Caste based discrimination

*"The Brâhmana was his mouth, of both his arms was the Râjanya made. His thighs became the Vaishya, from his feet the Sûdra was produced."*⁴

Caste based discrimination is one of the most heinous forms of discrimination practiced by humans. Distant entities like the European Parliament have expressed concern about the issue.⁵ Caste being a qualifying quotient in social life in India, attributed by birth and fortified by religious beliefs, once born into a particular caste, the stigmas and/or benefits continue till death. It is precisely for this reason that caste based discrimination is considered as a form of discrimination that haunts a person from cradle to grave.⁶

In the past one year, the AHRC has reported several cases that depict the brutality of caste based discrimination. Of particular importance is the case of Suresh Musahar, a primary school student who was facing discrimination based on caste not only from his classmates, but also from his teacher.⁷

Suresh Mushar is the son of Mr. Sajjan Musahar and a resident of Ayer Musahar ghetto, under the jurisdiction of Cholapur police station in Haranhuwa block of Varanasi district. Suresh is 8 years old and is studying in class two at the Shivrampur Government Primary School. On 2 August 2007 Suresh complained to his class teacher Ms. Sangeeta Agarwal regarding his missing school bag. The bag could not be traced out on that day. On August 4, 2007 Sangeeta returned the bag to Suresh. While returning the bag, the teacher asked why Suresh has to be concerned about the missing bag and books since the members of his community will invariably end up raring cattle and working for the upper caste. Saying this, without any further provocation the teacher started caning Suresh.

Suresh's mother who came to know about the incident complained to a local human rights group seeking intervention. Mr. Vijay Bharati, an associate of the People's Vigilance Committee on Human Rights intervened. Bharati organised a meeting of the parents from the Musahar community whose children are attending the government school along with Suresh. In the meeting the parents and the children complained that most of the Musahar children were treated similarly by Sangeeta as well as the other staff in the school. The children also complained that the teacher discriminated them due to their lower caste and had instructed them not to touch her thereby 'polluting' her.

2.1 Caste, a tool for exploitation

The practice of caste based discrimination has been so much engraved into the social fabric that even legal deterrence could not make the slightest dent upon this evil practice. Out of those who suffer the worst from caste based discrimination are the rural poor who are still under the repression of the feudal landlords.⁸ In the absence of a comprehensive land reforms policy in India, in the rural villages in India the majority of the land is held by upper caste landlords who literally rule the villages as feudal lords. Most of the agricultural land holdings are with these landlords who force the Dalits to work for them



for a pittance. Often wages are in the form of a meal for the family once a day. Once the agricultural season is over the Dalits are left with no food or work.

Majhuwara village in Chandauli district of Uttar Pradesh is a classical example of how the socio-economic conditions coupled with caste based discrimination keep the Dalit communities under repression of the upper castes. There are about 150 families in Majhuwara village of which 130 families are from three Dalit communities - Kol, Chamar and Musahar. None of these families have their own property. They entirely depend upon the landlord, who also happens to be the head of the village. In the state government records however, the property held by the landlords belong to the forest department as reserve forest. Most of this land, which extends to more than 2000 hectare, has no semblance of any forest but are vast extents of paddy fields.

The wages are paid in kind, not in money. For a day's work a person is paid about 5 kilo of paddy. Paddy cultivation being a short-term crop that last only 90 days, the Dalits will have work only for about 40 days in a year, even for which they are not adequately remunerated. For the rest of the year, these families are at the mercy of the upper caste families for everything. When a member of the family gets sick, they are forced to borrow money from the upper caste landlord who collects 125% interest for the paltry sums given on loan. The enormous rate of interest makes it impossible for the Dalits to pay back the debt, which forces them to accept bonded labor at the upper caste farms.

Caste based discrimination is not limited to remote villages in India.⁹ The practice is reflected even in urban settings where caste plays a decisive role in daily life. Mr. Kali Charan Shakwyar, an assistant teacher in a junior high school of the Maharajpur village of Jalaun district's Madhaugarh block in Uttar Pradesh state faces harassment by both non-Dalit children as well as their parents. He cannot reprimand non-Dalit students. If he does so, then their parents quarrel with him. He is not even invited to upper caste marriages.¹⁰

2.2 The curse of manual scavenging

Caste based discrimination is not limited to a particular region in India. Even academic curricula in schools downplay the practice of caste based discrimination.¹¹ Evil practices associated with caste based discrimination are practiced across the country. For example in the state of Tamil Nadu the Dalit community Arunthathiyar is forced to work as manual scavengers. Manual scavenging is prohibited in law in India.¹² The government of India had declared that the practice of manual scavenging would be completely eradicated in the country by 2007.

The programme of liberation and rehabilitation of scavengers has three necessary components, which between them should have been sufficient to achieve the objective. These are: (1) Legislative back up to prohibit dry latrines and manual scavenging in the form of 'the Employment of Manual Scavengers' and Construction of Dry Latrines (Prohibition) Act. 1993; (2) an alternative to dry latrines in the form of low cost sanitation units for which loan and subsidy are provided under the 'Centrally Sponsored



Scheme of Low Cost Sanitation Scheme for Liberation of Scavengers'; and (3) the National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents for training and rehabilitation in alternative occupations. There is a separate scheme of scholarships for children of families practicing unclean occupations under which children of families engaged in manual scavenging are eligible for pre-matric scholarships. Despite these provisions, the programme has not achieved success in removing the practice of manual scavenging.

The Act ('the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993') does not prohibit dry latrines and manual scavenging in a direct fashion. It operates after the particular state government issuing a notification fixing a date for enforcing the provisions prohibiting employment of manual scavengers and dry latrines in the specified area. The notification itself can only be issued after giving a notice of ninety days, and only where 'adequate facilities for the use of water-seal latrines in that area exist'.

While government estimates suggest that there are about one million manual scavengers in India, 95 percent of whom are women, unofficially the figures are much higher and all this, more than a decade since the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Even the Indian Railways employs manual scavengers. According to a petition filed in the Supreme Court – in its recently announced Integrated Railways Modernization Plan (IRMP), the Indian Railway does not have the elimination of manual scavenging on its radar. The Tenth Five Year Plan, however, has mentioned the eradication of manual scavenging by 2007 as a goal.¹³

In spite of all this most of the Indian states have not adopted the Act, and those who have adopted the law have not enforced its provisions to achieve the intended results.¹⁴ As a result of the complete failure by the state governments to implement the law within their jurisdiction, the practice of manual scavenging continues even as of today in India.

2.3 Caste based discrimination vis a vis legislative framework

Discrimination based on birth and caste is condemnable. The government of India also in theory condemns this practice. There are a series of laws in India that not only prohibits caste based discrimination but also penalises such practices. Discrimination is prohibited in the Constitution of India.¹⁵ Untouchability, one of the worst practices of the caste system is specifically prohibited in the Constitution. Article 17 of the Constitution abolished untouchability and its practice in any form is forbidden. Article 25(2b) of the Constitution provides that Hindu religious institutions of a public character to be open to all classes and sections of Hindus.

The Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 criminalises certain acts against the members of the Scheduled Castes and Scheduled Tribes. The Bonded Labour System



(Abolition) Act, 1976 provides for a special program for identifying bonded laborers, and for their liberation and rehabilitation. While this law does not specifically mention Scheduled Castes, it is significant to them because the majority of bonded laborers belong to the Scheduled Castes. The practice of requiring Dalits to clean/remove human feces by hand continues despite the prohibition of manual scavenging by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

The question is in spite of all these domestic laws and the legal framework in India, why is that caste based discrimination still continuing in India. For example the practice of untouchability is practiced widely in India.¹⁶ The answer probably lies in the fact how far these laws are practiced? Enacting a law is one thing, but implementing the law is a completely different game. In India, the implementation of the laws and the mechanisms available to implement the laws has somehow failed to meet the challenge. The implementation of the domestic laws have failed to that extent that even registering a complaint based on these laws calling for an action from the authorities itself is a difficult task. Where implementation fails, the law fails and thus the evil practice of caste based discrimination continues. The failure of implementation of laws however is not limited to caste based discrimination.

2.4 Caste based discrimination and food security

Of the series of issues that arise due to the practice of caste based discrimination, the most important is the denial of right to food to the members of the lower caste. The ALRC in its report to the United Nations Committee of Racial Discrimination for its 70th session has submitted a report detailing how caste based discrimination results in denying the right to food to the most marginalised communities in India, to which the members of the scheduled caste belong.¹⁷

Caste based discrimination in the milieu of overwhelming corruption spread throughout India not only perpetuates the practice, but also hampers development. The denial of development is not however limited to the lower caste but also affects the entire country.¹⁸ Even government assisted programmes like the Food For Work Programme and the National Rural Employment Guarantee Act, 2005 fails to deliver result due to caste based discrimination and widespread corruption.¹⁹ Even the Union Minister for Rural Development Mr. Raghuvansh Prasad Singh acknowledges this fact.²⁰

2.5 Conclusion

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.

India has ratified the International Convention on the Elimination of All Forms of Racial Discrimination.²¹ The ratification of the convention and the obligations attached to it is in addition to the obligations by the state under the Constitution and other domestic laws. However, in reality most of these obligations remain as sections and clauses in the domestic laws and fail to reach out to the Dalit communities across India. This is evident from the concluding observations made by the Committee on the Elimination of Racial Discrimination after reviewing the report submitted by India during the CERD session held in Geneva from 19 February to 9 March 2007.²²

Caste based discrimination is worse than slavery.²³ 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 or descent. Once born as an untouchable one remains an untouchable. Dr. B. R. Ambedkar who is also known as the father of Indian Constitution and also a Dalit by birth stated that untouchability based on caste is worse than slavery. '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. Dalits, 99% of them are poor with less than 1USD per day as their income. Oppression of the 160 to 180 million Dalits, who are viewed as being too low to even be part of the caste system, is one of the most repelling, but enduring, realities of the India. Equally oppressive is the violence perpetrated against them, especially the women. To be a Dalit today means having to live in a subhuman, degraded, insecure fashion: Every hour, two Dalits are assaulted. Every day, three Dalit women are raped, and two killed.²⁴ In most parts of India, Dalits continue to be barred from entering Hindu temples or other holy places - although doing so is against the law. Their women are banned from wearing shoes in the presence of caste Hindus. Dalit children often suffer a form of apartheid at school by being made to sit at the back of the classroom.

Yet, the Dalits are resisting. In parts of the country, they are organizing politically to demand their rights. A Dalit woman rules the largest state, Uttar Pradesh. However, breaking the barriers laid down by the Hindu caste system is an uphill struggle, especially when the government does little to uphold the law of the land that prohibits discrimination on account of descent.



3. Policing and custodial torture

India is hardly different from any of its neighbors. To the outside world, India is a democracy marching ahead with sustainable development. In fact, within India democratic values have suffered a major dent due to non-democratic approaches in governance. A true democracy is where basic guarantees are assured for the protection of persons and property, and where life is free from fear and repression.

The mere existence of a Constitution and the possibility to cast a vote once in awhile is not what democracy means. Democracy involves and demands good governance. Good governance must be reflected in every aspect of public life where state agencies are respected and considered as instruments and institutions of service, not as sources of suspicion and fear. The Prime Minister of India declared in a public speech early this year that India would soon ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Since then, nothing has been heard about India's preparation to ratify this convention.

One of the best indicators of good governance is the perception of the ordinary person about his state institutions. The failure of any single state institution suggests defects in governance. When the law enforcement agency becomes a failing institution, and there is no credible attempt to address this, the situation is much worse. In India, the institution that is primarily responsible for law enforcement is the state police. There are serious concerns about policing in India -- which is not much different from in neighboring countries.²⁵

3.1 Torture as a tool for investigation

Instances of custodial torture are reported all over from India. The AHRC in the past one year has documented numerous cases of custodial torture reported from India. It appears that in general, investigation of a crime begins and ends with a confession. In most cases the arrest of a suspect precedes the investigation of a case. The arrest is often followed by a prolonged period of illegal detention during which the detainee is tortured.

The case of Mr. Pahallu Musahar is a classical example.²⁶ Pahalu Musahar is the second son of Ms. Chanda Musahar. Chanda has four sons and two daughters. Of the six children Umesh, the third son, was involved in some criminal activities and has run away from home since the past ten years. The family had no information whatsoever about Umesh's current whereabouts.

On May 21, 2007 at about 6pm a police constable from Cholapur Police Station came to Pahalu's house and asked to give directions to his sister Bibi's house. Pahalu asked the constable why the constable wanted to go there for which the constable informed him that he wanted to question Bibi's husband about Umesh's whereabouts. Pahalu agreed and took the constable to his sister's house. At his sister's house the constable asked Bibi's husband whether he knew about Umesh's whereabouts. Bibi's husband said that since nobody knows where Umesh is they cannot give any useful information.



The constable then asked Bibi's husband to come along with him to the police station. He refused, informing the constable that even if he comes, he will find it difficult to return since he is suffering from night blindness. The constable then contacted his superior officer and Pahalu was taken to the police station. Since then what has happened to Pahalu is not clearly known, other than the fact that his mother was informed that he is been questioned regarding Umesh. Pahalu was brutally tortured at the police station to find out the details regarding his allegedly absconding brother Umesh.

On May 25, 2007 Pahalu's father filed an affidavit at the Cholapur Police Station affirming that the family does not know about their son Umesh since he has left the family ten years before and that nobody in the family had any contacts with them. Pahalu's father also faxed letters to the Senior Superintendent of Police, Varanasi informing the illegal custody of his son Pahalu and requesting the officer to release him. The family also sent a registered letter demanding similar relief. None of these letters were considered by the officers. Later it was known that Pahalu was kept at the Mirzapur Prison, being charged with nonbailable offenses. Pahalu was been charged with offenses to justify the detention and illegal arrest.

Neither Pahalu, nor his family is informed why Pahalu was taken into custody and on what charges. Pahalu's family was not aware where exactly he is detained. Pahalu was detained merely to force his brother Umesh to surrender before the police. While detention of this nature is prohibited in law in India, it is mandatory for the police to inform the detainee about the charges for which he is taken into custody. The police are also required to inform the nearest relative of the detainee about the arrest and the details of the member of their family. Pahalu was tortured in custody to force him to divulge information regarding his allegedly absconding brother.

3.2 No domestic law penalising custodial torture

Torture is not expressly prohibited in law in India. As of now there are only indirect means through which torture can be addressed in India. For example the Criminal Procedure Code, 1973 which lays down the rules of arrest, detention and enquiry does not prohibit the use of torture, but only prohibits 'unnecessary use of force'.²⁷ Section 50 of the Code 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.²⁸

Whatever be the law, when it comes to following it, in spite of dozens of directions from the courts and also recurring orders from the state the police still stick to their habit of



torturing the suspect. Often such instances defy human conscience. The case of Mr. Giasuddin Mandol is an example.²⁹

Mandol is an iron scrap dealer from the North 24 Parganas district of West Bengal. On August 2, 2007 at about 7:30pm, the Sub Inspector of Police Mr. Ayub Ali from Deganga Police Station along with other officers came to Mandol's shop and took him into custody.

Mandol was later brought to the police station. At the station, the Inspector in Charge Mr. Julfikaqr Ali Mollah started questioning Mandol. After a while the officer forced Mandol's head under a table in the police station and poured/sprayed some acidic liquid into Mandol's rectum through his anus. It is reported that Mandol who suffered intense burn from the liquid started bleeding through his anus.

Two days later, that is on August 4, 2007 Mandol was sent to Biswanathpur Hospital for medical checkup. But the medical checkup was not done properly and Mandol was under threat not to complain to the doctor about his bleeding. On the same day after the medical checkup Mandol was produced at the Barasat Magistrate Court. Mandol was produced in the court as a suspect in case number 154 of August 4, 2007 registered at the Deganga Police Station. The charge leveled against him was under Section 399 [making preparations for dacoity] and Section 402 [assembling people with an intention to commit dacoity] of the Indian Penal Code, 1860 read with Section 25 (1) a [possessing or carrying firearms or ammunition without license] of the Indian Arms Act, 1959.

The Magistrate ordered judicial remand for Mandol till August 13, 2007. The Magistrate also ordered for the treatment for Mandol at the Jail hospital. But at the prison he Mandol was sent to R. G. Kar Medical College and Hospital on August 13, 2007 since Mandol's condition was serious. At this hospital Mandol underwent a surgery on the same day and was later returned to the prison. On September 3, 2007 Mandol was allowed bail and was released the next day.

Later the local police also implicated Mandol with two additional cases; case 57 and case 58 dated March 17, 2007 of Deganga Police Station. A local human rights organization, the Committee of Protection of Democratic Rights came to know about Mandol's case and organised a protest meeting, locally, against Mandol's treatment at the police station. The organisation as well as the victim has lodged a complaint against ill-treatment at the State Human Rights Commission.

3.3 Criminal justice and custodial torture

The criminal justice dispensation system of India depends much upon the policing and the proactive role played by the judiciary, specially those officers from the lower ranks of the judiciary. Even though scholars and experts argue that the judiciary and the police are two independent institutions responsible for maintaining the rule of law in the country, in practice they are both interdependent and at times, very deficient in their functioning. This interdependency continues all the way through from the very stage of institution of a



criminal case to that of the prescribing of punishment if the accused is finally convicted and sentenced for imprisonment or acquitted as the case may be.³⁰

It is an alarming trend in India that in an increasing number of cases if the police are certain, according to their "conviction," that the suspect in custody was involved in a serious crime, often the suspect is killed, allegedly in an "encounter." It appears that the government is increasingly tolerating the misuse of authority by law enforcement agencies. The cases of "encounter killings" reported from the states of Gujarat, Uttar Pradesh, Karnataka, Chhattisgarh and Andhra Pradesh show a consistent and alarming pattern of tolerance for the use of violence by state agencies.

After each reported "encounter killing" the government launches a smear campaign against the murdered suspect, justifying the act of the state agencies as if the murder were inevitable and is in fact an achievement. Custodial torture and encounter killings are closely related. State-sponsored interrogation centers -- often torture chambers -- function in most states in full public view. The suspects are brought in, kept in illegal detention and tortured as part of questioning. Later they are killed and declared as "killed in an encounter." Such centers are run under the guise of protecting ordinary citizens from anti-social and anti-national elements. These centers are the Indian version of Guantanamo Bay camps.

In a proceeding in the Supreme Court regarding a case from the state of Gujarat, the state government admitted in court that it was aware of the existence of the interrogation and torture centers. The government also admitted that in several cases the officers might have killed witnesses to an arrest and detention in order to avoid questions at a later stage. The Gujarat experience, while a shocking revelation of the state of policing in that state, is also proof that the public could be forced into silence through fear, if the state so requires. The alleged war against terror -- in its Indian version -- serves as a good excuse for allowing state agencies to resort to extrajudicial means of punishment.

In this backdrop it is a matter of concern when the judicial officers themselves behave in unwarranted manner, often breaching the procedural laws and mandates set by the Supreme Court. None other than the Chief Justice of India has remarked that about 20% of judges in India are corrupt. The Prevention of Corruption Acts, 1947 and 1988, have not succeeded in checking corruption. A.P. Bharucha as Chief Justice of India admitted that there was corruption in the ranks of the judiciary to some extent, mostly at the lower levels.³¹

3.4 Consequences of custodial torture

Even though the use of violence and imparting fear among the populace are considered among the worst methods of crime prevention in many countries, they are widely practiced in India. This is because even today the concept of law and order is based on the principle of imparting fear. The state has neglected the need to modernise and humanise the police.³² The state police are often under extreme pressure to control crime.



When pushed beyond their capacity and capability, the law enforcement agencies resort to crude forms of policing, which is often the use of brute force.³³

Widespread use of custodial torture in India is not the result of government neglect alone. It is also the result of the lack of seriousness in approaching this issue by the other justice mechanisms in India. Meager compensations awarded after decades long court cases serves no better deterrent than a scarecrow. To punish a law enforcement officer who has engaged in torture, as of now, there is no law in India.

The widespread use of custodial torture has also taken its toll upon the law enforcement agencies and is reflected in the overall state of the rule of law in India.³⁴ Ordinary people isolate themselves from the law enforcement agencies, not trusting them. The use of torture has considerably reduced the morale of the law enforcement agencies.³⁵ For example, cases that are brought to court based on evidence gathered by the use of torture often result in acquittal. The loss of morale of the law enforcement agencies is also exploited by corrupt elements in the society.

In spite of all this, neither the government of India nor its state governments have declared a policy of non-tolerance to custodial violence. In the remote villages of India, government means the local police constable. The atrocities committed by these uniformed state agents create a fertile ground for anti-social and anti-state elements to propagate and advocate violence. The increase of violence in society has resulted in the loss of a middle ground for those who do not support violence.

3.5 Reforms remain in paper

Various state governments in India and their law enforcement agencies have lost control of law and order over considerable parts of their jurisdictions -- a backwash of erratic policies. This concern is expressed by various agencies in India like the National Human Rights Commission and the National Police Commission.³⁶ The state governments are reluctant to free the local police from its political grip. Concerns regarding the political control over policing are not an altogether new issue in India. Even police officers are concerned about this. Mr. Prakash Singh, a senior police officer approached the Supreme Court of India seeking exactly this – to free the police from the clout of corrupt politicians. The court admitted the case and issued directives to the government. This case is now known as the Prakash Singh Case.³⁷

The directives of the court is intended to setup a temporary arrangement for a balanced and independent policing mechanism in India, free from political influence and to considerably remove the scope of political cronies from being appointed as head of state police service. If the directions are implemented it will free the state police from political clout, provide fixity of tenure for senior police officers, prevent administrative abuse by rampant transfers and also will setup independent mechanisms to investigate into complaints against police officers. The directives of the court is only a temporary arrangement until the central and state governments come up with appropriate legislations and permanent mechanisms to settle the issues regarding policing in India.



The findings of the court is based on reports and recommendations of various commissions constituted during the course of thirty years, to look into matters concerning policing and also on specific concerns aired by the National Human Rights Commission of India. The complete control of the bodies to be constituted to overlook the functioning of the state police is left with the respective state governments.

While several state governments are yet to implement the directives of the court, the state government in Kerala went ahead to partially implement the court's order.³⁸ An Ordinance was issued by the government, claiming that the government is implementing the directives of the court's directives. However the Ordinance is a far cry from what the court directed.³⁹

3.6 Conclusion

Torture is not a crime in India. To convict a law enforcement officer for torture, the act has to qualify all the requirements like any other crimes in the Indian Penal Code, 1890. To prove a crime, meeting all standards, to be punished under the Indian Penal Code, is difficult because of the absence of independent investigating agencies in India. The absence of an independent agency to investigate cases of custodial torture is exploited by the offenders since they know that even if a complaint is made regarding torture it would not be properly investigated.

The widespread use of custodial torture has taken its toll upon the law enforcement agencies in India and is reflected in the overall state of rule of law in India. As of today, the ordinary people have isolated themselves from the law enforcement agencies. The people do not trust the law enforcement agencies. The use of torture has also considerably reduced the morale of the law enforcement agencies. For example cases that are brought to a court based exclusively on the evidence gathered by use of torture often results in acquittal. The loss of morale of the law enforcement agencies is exploited by corrupt elements in the society who would like to use the local police as their militia, paid from the state exchequer. This isolation of the law enforcement agencies from the ordinary people has resulted in increasing number of incidents where people take law into their hands.

In the past few years incidents of violence committed in the name of 'justice' are increasingly reported from India, of which the highest number was reported in 2007.⁴⁰ These are acts of violence, is resorted to by either the state agents or the people for executing what they think is justice. Such violence indicates that the public perception of justice in India is rapidly changing - changing for the worse. The people's perception of justice depends upon how the justice dispensation mechanism in a country functions. In theory, India has a reasonably good legislative framework within which laws are drafted, debated and implemented. But in practice the drafting and debating of laws remain mostly outside the scope of any public discourse. The acts of the legislature are often dominated by caste, religious and partisan political sentiments as opposed to welfare and betterment of the people.



In addition to the limited scope of people's participation in the legislative process, the justice dispensation organs of the state is also suffering from ineptitude and fatigue due to mismanagement. The delay in court proceedings and a failing policing system are two classic examples. For an ordinary Indian, the courts in India make a mockery of the term 'justice' by delaying proceedings for years. Long periods of delays are often exploited by those who can manipulate the system.

Law enforcement agencies are also exploited and manipulated by the same group of individuals. Instead of serving the general public, the law enforcement agencies in India often tend to serve those who have power and money. It appears that the law enforcing agencies in fact allow themselves to be manipulated so that these agencies could also exploit the resulting opportunity for their benefit. The result is selective justice, often to the detriment of the ordinary people. This situation also facilitates widespread corruption in the society.

For the ordinary person the presence of justice is evident in the functioning of the local police and the local courts. These are the two important institutions in any state structure that provide protection and guarantee to a person's life and property. Due to the proximity of these two institutions to the people and their life, the functioning of these institutions is under the constant scrutiny of the people. When these institutions fail to perform reasonably well, the people will exploit its weakness and will also disregard them. A failing judiciary, inept law enforcement agencies and widespread corruption is the cocktail for disharmony and violence. The convergence of the failing justice mechanisms is the meltdown of the public perception of the justice by the state. When the state fails to provide security and guarantee to its own people, people take law into their own arms. The result is what India is experiencing today.

In spite of all these, the government of India or its state governments have no declared policy of non-tolerance to custodial violence. Instead of preventing the use of torture the attempt by the government is to provide further impunity to the law enforcement agencies by proposing changes in the procedural law. The legislative changes have not been implemented yet, but the proposal by the government is to implement these changes in the recent future.

To remove possible internal resistance in implementing these proposals the government has roped in several non-government organisations under the banner of the UNDP -- India office, in an allegedly consultative process on this issue in the name 'Strengthened Access to Justice Programme'. Many organisations in India have inadvertently jointed this lopsided programme, currently executed through the Department of Justice.

The direction towards which India is headed as of now is imminent chaos and lawlessness. The widespread use of violence and the continuing neglect of the government to prevent it have also isolated the ordinary people from the government. In the remote villages of India government means the local police constable. The atrocities committed by these uniformed state agents create a fertile ground for anti-social and anti-state elements to propagate and advocate violence as a means of communication. This has also resulted in the loss of a middle ground for those who do not support violence.



For the central government in Delhi and the mutually opposing state administrations, governance is only an affair of five years. This congenital defect of myopic vision is a shocking feature of all governments in India and is reflected in their policies. A failed policing system and a justice mechanism that depends on such a police is what these governments covet for. Prevention of torture and reformation of law enforcement agencies is the last priority in these circumstances for any government. As of today, various state governments in India and their law enforcement agencies have lost control of law and order within considerable parts of their jurisdictions – a backwash of erratic policies. The spread of anti-state activities covering considerable parts of India must be an alarming wakeup call for the government. This shocking situation of chaos in law and order is certainly the result of the failure of police as an institution in India.



4. Right to food

The Prime Minister of India in his foreword in the *'Report to The People'* dated May 22, 2007, claimed: *"In this 60th year of independence, the country should have the satisfaction of recording for the fifth year in a succession a rate of economic growth of over 8.5%."*⁴¹ What is not sure however is whether the estimated over 200 million Indians who are presently suffering from malnourishment, and the many more million who have done so during past decades, will be satisfied with this growth. The country's overwhelming population is often given as an excuse to justify poverty and starvation in India.⁴²

This theory is applicable only if the State itself is poor and has no means to procure enough food for its people. India is not poor, even though 70% of Indians are. India's projected defense budget for 2007-08 is 24 billion US\$ and it plans to spend further on its weapons upgrade programmed.⁴³ Defense spending of such proportions in a country where a section of the population equivalent to 2/3rds the size of that of the United States is undernourished or suffering from malnourishment, is difficult to stomach. The United Nations Special Rapporteur on the Right to Food has highlighted this contradiction of priorities in his report following his mission to India in 2005.⁴⁴

India is a country of contradictions. A country that has a projected 9% development index performs worse than some Sub-Saharan countries with regard to addressing starvation and malnourishment within its territory. The National Minimum Programme promulgated by the Government of India in 2004 speaks about the Rural Employment Guarantee programme, which is also reflected in India's voluntary pledge to the United Nations Human Rights Council.⁴⁵ However, millions of Indians in rural villages are not benefiting from this programme and remain unemployed. The programme is not properly implemented and in places where there are possibilities of implementation and thus employment, recruitment to the programme is based on caste bias and nepotism.

Poverty and resultant starvation in India is not limited to the lower caste, although they suffer the most. The lower caste forms only about 20% of the Indian population, whereas starvation and malnourishment affect about 53% of its entire population. Starvation and malnourishment are the direct result of the failing administrative system in India. A malfunctioning administrative system has a direct bearing upon the living conditions of the poor. For example, for the distribution of food to targeted population the government has established the Public Food Distribution System (PDS). However, the management of this system suffers from corruption – particularly black marketing, caste prejudices and the utter failure of various local governments.

4.1 Reality vis a vis theory

The case of 18-month-old Alina Sahin the youngest daughter of Mr. Ansar Ahmed is an example. Ansar has two daughters and a son. Ansar's wife died six months before and Alina is taken care of by her paternal grandmother. The AHRC had issued a hunger alert on September 3, 2007 expressing concern over Alina's situation. Yet Alina died from



acute malnourishment on September 14, 2007.⁴⁶ Alina's parents are from the handloom weaving industry of Uttar Pradesh. The handloom weaving industry across India, particularly in states like Uttar Pradesh is now dead for all practical purposes, that the weavers and their families who once led a moderately good life are now forced to take up menial jobs for survival. Alina's death also symbolises the fate of the weaving industry in India.

Apart from the finite nuances of a dying industry and the complexities of import and export policies, in plain and simple language, Alina's death is the result of criminal neglect by the state government to address poverty in various sections of the society. Acute poverty and deaths from starvation are not reported across the spectrum in the Indian society. It is only reported from select minority communities, tribes and the scheduled caste and scheduled tribe.

The targeted PDS was introduced in India in 1997. The shift from a Universal PDS to a targeted PDS was performed with the intention of avoiding the misuse and wastage of subsidised food materials. However, owing to a lack of proper screening methods and transparency in the procedure, the PDS is still a failure in India. For example, the licensing procedure for running a PDS shop is plagued by corruption. Licenses are awarded by the respective state governments and the authority to issue them is delegated to the district administrations, which are notoriously corrupt. To receive subsidised food a family is required to possess a ration card, which also serves the purpose of determining the family's financial status. This process involves obtaining certificates from the village-head and officers at the district administration. While the village-heads often refuse to issue such certificates, district administration officials demand bribes. The AHRC has documented several cases where the refusal of the village-heads to issue certificates to the poor is the part of a larger plan; to prevent the poor, particularly those from the lower castes, from accessing government welfare schemes such as the PDS shop. This is because the longer the people remain poor and near starvation, the easier it is for the village-head to continue subjecting them to bonded labour.

The continuation of caste-based discrimination is yet another factor that perpetuates poverty and deprivation of food, as was briefly mentioned in the Special Rapporteur's report.⁴⁷ 60 years after independence, the prevention of caste-based discrimination remains on paper rather than being enforced in practice. Due to this, caste-based discrimination is widely practiced and discrimination prevents the lower castes from accessing food. Additionally, the lower castes are deprived of landed property and those who have titles to particular pieces of land are frequently prevented from actual possession by local feudal lords.

In addition to this, large-scale land holding still continues in various States, including States that have enacted the land ceiling laws. Holdings of large extents of land (by individuals or families) deprive the poor from having arable lands of their own. However, the poor can still benefit from such large-scale cultivation, by being employed by the landlord, although in reality this tends to be for much less pay than that stipulated in the Minimum Wages Act, 1948. However, when landlords find that agriculture is not



profitable for various reasons and sell off their land to property developers, the most affected are the poor landless communities, as this often results in the starvation of the agricultural labourers who depended upon such large-scale cultivations. Uttar Pradesh state in India is now administered by a government led by Ms. Mayawathi, a Dalit by birth and a Buddhist by practice. The government led by Mayawathi has sworn to prevent caste based discrimination and starvation deaths. But the AHRC in the past one year has documented at least a dozen cases of acute starvation, predominantly from the Dalit communities from the state.

In addition to poverty caused by human interference, large-scale poverty exists in remote regions of the country. One such example is the Murshidabad district of West Bengal. This district shares a border with Bangladesh. Land erosion by the river Padma has rendered large numbers of persons landless. Those who could afford to, left well in advance, but the poor had to stay until their land was taken by the river. This situation is exploited by cross-border smugglers based in the state who employ the poor to smuggle articles across the border to Bangladesh.

The smuggling involves crossing the river at night, which often claims peoples' lives, while others are shot and killed by the Border Security Force stationed along the Indian border. Ironically, a major portion of the smuggling involves food – grains collected from PDS shops are smuggled across the border to be sold on the black market. The West Bengal State Government considers the people living along the international border in Murshidabad as being illegal immigrants from Bangladesh and does nothing for their welfare.

The situation of hundreds of families in the Jalangi block of Murshidabad involves grave cases of exploitation, starvation and malnourishment, many of which have been documented by the AHRC,⁴⁸ and which has also been mentioned by the Special Rapporteur on right to food. The state and central government schemes remain highly ineffective and are totally failing the starving population in Jalangi. However, the government of India has not taken any credible action regarding this issue.

4.2 Conclusion

The government of India has formulated and is executing several welfare programmes intended to prevent starvation and malnourishment in India. While proper planning and implementation of these programmes are necessary, what has been mostly ignored is the poor state of functioning of the PDS. The system itself, as claimed by the government, covers only 16% of the total population.⁴⁹ The actual number of households using the PDS is around 91 million, significantly less than the 160 million being claimed by the government. 78% of these persons are trying to make use of the system - 26% are from urban areas while 52% are rural households.⁵⁰ Of these 91 million households an alarming 61% claim that the PDS is plagued by corruption and 49% claim that corruption has increased in the past year.⁵¹ The PDS is viewed as the most corrupt institution in India.



Such corruption exists in the PDS due to the failed criminal justice system in India. Illegal dealing with rationed articles is a crime in India.⁵² A crime registered under the relevant domestic law must be tried in a special court constituted in each state. However several states are yet to establish such a court, meaning that cases registered under the law in those states will have to wait for years to be decided through the regular courts. Additionally, states most frequently withdraws from prosecutions related to cases registered under the Essential Commodities Act as compared with other prosecutions. This shows not only the tolerance that various state governments exhibit towards corruption within the PDS, but also the influence of the licensees upon the government. Even though the Rapporteur expresses his concerns about corruption in the PDS, there are no concrete proposals suggested by the Rapporteur in his report to address this issue. To achieve any improvement in addressing the food security in India, there must be a multifaceted approach to the issue focusing on: the implementation of welfare schemes; increasing the existing network of the PDS within the country; and taking effective steps to prevent corruption within the PDS.

The prevention of corruption within the PDS cannot happen in a vacuum. It will require equipping the criminal justice mechanism in India to specifically address this problem. In addition to an increase in the number of special courts to try offenses related to the distribution of rationed food articles, a separate and independent mechanism must be constituted to investigate such cases. This must be independent from the local police since the latter is itself corrupt and will therefore fail to effectively investigate crimes related to food distribution. There is also a need to change domestic law, in particular the Essential Commodities Act, 1955.

As a country that has a surplus of food, it is a pity that in India, food that is distributed to the poor does not reach them, but is either spoiled and lost or sold on the black market. To change this, there are no quick-fixes. However, the prevention of corruption within the PDS is a critical starting point. This however requires a consolidated attempt from the state and central government in India which as of today is given the last priority for which there is no excuse.



5. Low intensity armed conflicts

In April 2007 the Chhattisgarh State Police ambushed a 12-member strong brigade of armed Naxalites (a group similar to the Maoists in Nepal) operating near Dhanora village. In the operation, the police arrested two girls, respectively aged 14 and 15 years old, who were wearing school uniforms and were armed with old 303 bore rifles. When questioned, the girls confessed that they had been picked up from school by the Naxalites, and given a few days' training on armed combat, before being sent out in the company of older members to fight against the State Police and the Salwa Judum, a State-sponsored private militia.

5.1 Children in armed conflict

Elsewhere, in Chhattisgarh State's capital Raipur, five-year-old Saurabh reports for duty every day at the local police station and works as a boy police constable. Saurabh was employed by the State Police after his father was killed in an ambush by the Naxalites. Saurabh is not the only boy in the State Police. In nearby Korba Police Station, Manish Khoonte, a ten-year-old boy is employed as a police officer. Saurabh and Manish are paid US\$ 57 per month by the State Government.

Local human rights organisations, including the National Commission for Women, have expressed concern about the employment of child soldiers in Chhattisgarh by the State and the Naxalites.⁵³ The Naxalite child soldiers wing is called the Bal Mandal (Child Forum).⁵⁴ The members of Salwa Judum are known as 'Special Police Officers' or SPOs.

India ratified the Convention on the Rights of the Child on December 11, 1992. However, protection of the rights of children, particularly for preventing them from being made to fight in armed conflicts, is an area where the country has thus far failed. Children are often forced to take up arms in India after losing a close relative in the conflict.

In Manipur State in the northeast of India, hundreds of children have lost their relatives, including their parents, in the intense armed conflict that has been waged over the past decade.⁵⁵ Many children have witnessed atrocities committed against family-members by the members of underground movements as well as by State-agents, including rape, torture and dismemberment and mutilation of bodies. The situation in Manipur and Chhattisgarh is not unique. Child soldiers are used in several parts of the country, in the states of Jammu and Kashmir, Assam, Nagaland, Meghalaya, Tripura, Sikkim, Karnataka and Andhra Pradesh.⁵⁶

Children are often recruited from tribal communities, as these communities are frequently caught up in armed conflicts. A common strategy used by both sides to these conflicts is to recruit children aged around 14, as their age can easily be covered up. The extent to which children are exploited by State-sponsored militias and anti-State militias does not differ much. However, in anti-State militias, girls are reportedly used for the sexual gratification of older cadres. The presence of girls in camps also assists in camouflaging them as being ordinary villages.



Anti-State militias typically falsely claim that children volunteer to justify their recruitment. State-sponsored units recruit children by manipulating their personal and nationalist sentiments. Once recruited, they are trained to use weapons and to manufacture explosives. Those who are not good at using weapons are used for espionage or for passing messages between groups. Children are also used for gathering extortion money for the militia. This practice is more prevalent in the northeastern States.⁵⁷

State-sponsored militias usually recruit children based on the promise of future jobs at the State police department. Forcibly displaced tribal communities in conflict zones are another source of recruits. As the State agencies move in to counter anti-State militia activities, villagers are evacuated and relocated to government schools, forcing the schools to cease functioning normally. Such schools then become military targets for anti-state groups, as these schools will normally be guarded by members of the government-sponsored militias. During this period children, particularly boys, are recruited on the basis of the need for them to protect their parents and sisters from the anti-State groups.

The members of village defense forces are often trained by the Rashtriya Swayam Sevak Sangh (RSS). The RSS is a militant support group of India's Baharatiya Janatha Party (BJP). Indoctrination through exploitation and manipulation of inflated nationalism, peppered by the BJP's and RSS's interpretation of Hindu Rastra (Hindu state)⁵⁸ is a major force in recruitment to the State-sponsored militia.

Possession of arms in India is regulated by law.⁵⁹ While restrictions are employed for possession of arms and ammunition in India for ordinary persons, the members of State-sponsored private militia groups are given more than one weapon, of which some are provided for use by the child soldiers.

Whenever State-sponsored child soldiers are killed in encounters, the government's claims the child was a member of an anti-State armed group, and the anti-State militia do the same and disown the child. In several cases, child soldiers' bodies have been mutilated in order to hide the possibility of their age and identities being found. Deaths of such children are frequently blamed on having resulted from being caught in the crossfire of an armed encounter.

Child soldiers' living conditions are invariably very poor, regardless of which faction they belong to. They are often denied adequate food. Food is often used as a reward for work. Children are used as scouts and to test the land for anti-personnel mines and other forms of explosives.⁶⁰ Using children for these purposes makes troop movement easier for both sides. Even if a child dies or is injured, the loss is considered to be minimal, as a child is considered to be far more expendable than a trained cadre.⁶¹

5.2 Spreading its wings across the nation



India's Naxalite movement and the anti-state sentiments in the north-eastern states are both spreading out, increasing the areas affected by armed conflicts in the country. Child soldiers are considered as being highly expendable pawns in these conflicts.

In Andhra Pradesh, the children's faction of the Naxalite movement is named the Bala Sangam (Children's Group). There were reportedly 75 Bala Sangams groups in the state, including an estimated 800 children in their ranks in 2003. This number has likely increased by 2007, as the Naxalite movement in the State has steadily increased since 2003.

Child soldiers are also used in the mainly Hindu versus Muslim religious conflicts throughout India. Both factions have created their own self-styled armed brigades. The Hindu 'self-defence' groups operate under various banners, such as the RSS, the Bajranj Dal and the Shiv Sena. Similar Muslim factions are known to be operating under the banner of the Jamaat-i-Islami-Hind and the Islamist Sevak Sangh.⁶² All these groups have child soldier units. For example the Viswa Hindu Parisad (VHP) is also reportedly recruiting girls to a group called the Durga Vahini.⁶³

Once a child soldier is taken into custody by the State agencies, they are often falsely identified as being adults. Their ages are exaggerated in official records, so that they can be tried in regular courts, instead of juvenile courts. This is possible because in such cases, charges are typically framed without producing the accused in court. Once the charge has been framed, the child will have to wait in custody for a minimum of three to four years for the case to come to trial, by which time the child have often become adults. Prolonged detention also reduces the prospects of the future rehabilitation of the child, if acquitted. Owing to the non-functioning of the public legal aid service, most cases will be decided without a proper legal defence being provided to the accused resulting in an unfair trial.

5.3 Armed conflict and human rights defenders

There are no existing mechanisms in India to prevent such rights violations from being committed against children, even if the child is fortunate enough to survive a battle and to be produced before a court. Those who dare to complain are targeted by the State police and administration. The case of Dr. Binayak Sen, who is currently being detained in Raipur Central prison on charges of association with the Naxalite movement in the State, is a typical example.

Such attacks on the integrity, personal freedoms of human rights activists and their ability to work, have a direct impact not only upon the children themselves, but also upon the communities that are caught up in such armed conflicts. Another concern is the absence of proper medical care in these conflict areas. The threat to end the operations of Medecins Sans Frontiers [MSF] in August 2007 in Chhattisgarh has compounded this problem here.



There are currently at least 170 of India's 607 districts facing armed anti-state activities.⁶⁴ In all of these conflict zones, children are employed by both parties to the conflict. The UN Committee on the Rights of the Child, in its report dated February 26, 2004, urged the Indian government to ensure that thorough and impartial investigations are conducted into allegations of the use of child soldiers in India.⁶⁵ However, the reference to child soldiers in the report was limited to the State of Jammu and Kashmir and India's north-eastern states; however the problem of the use of child soldiers is far more widespread than this in the country.

5.4 Conclusion

In 2007 more than 2000 violent incidents involving Naxalites were reported from India. About 712 people died in these incidents. There have been spectacular attacks across India in the past two years: a train hold-up in July 2006 involving 250 armed fighters, a jailbreak freeing 350 prisoners, a near-miss assassination attempt in 2004 against a leading politician. 'Naxalism' now affects some 170 of India's 607 districts - a "red corridor" down a swathe of central India from the border with Nepal in the north to Karnataka in the south and covering more than a quarter of India's land mass.

Early Naxalite leaders in India were students and middle-class intellectuals. But the tribal peoples among whom they find most of their new recruits are among India's poorest: "the most exploited, the bottom rung", according to Mr. Ajit Jogi, a tribal leader and former chief minister of Chhattisgarh state. Typically, they live in forests and have no rights to their land.

To bring development to these neglected reaches, the government needs to assert control. Private militias like Salwa Judum are the wrong way to go about it. A larger, better-trained police force might help. Eradicating Naxalism, however, is more than a local policing problem. One difficulty has been that, under India's constitution, security is a matter for state governments rather than the centre. So a national policy for dealing with the Naxalites has been inconsistent. In 2004, the government of Andhra Pradesh held abortive peace talks with local Naxalites, while other states continued to fight them.

The spread of Naxalism is causing justifiable alarm. For all their geographical reach, the Maoists' or Naxalite power base remains on the margins of Indian society. They are far from sparking a general insurrection. But, in places such as Chhattisgarh, almost a hole in the map of the Indian polity, it is easy to see how a crude, violent ideology, promising land and liberation, might take root.

Other terrorists attack the Indian state at its strong points—its secularism, its inclusiveness, its democracy. Naxalism attacks where it is weakest: in delivering basic government services to those who need them most. The Naxalites do not threaten the government in Delhi, but they do have the power to deter investment and development in some of India's poorest regions, which also happen to be among the richest in some vital resources – notably iron and coal. So their movement itself has the effect of sharpening



inequity, which many see as the biggest danger facing India in the next few years, and which is the Naxalites' recruiting sergeant.



6. Parting note

On Aug. 15, 1947, India embarked on a journey toward its independent destiny. Sixty years later, the fate of India as a country is still uncertain. Will it become a democratic, socialist republic or a lawless state? Unfortunately, India in 2007 does not give any indication of becoming a state where all citizens can enjoy their fundamental freedoms and liberties.

Skeptics who would counter the above argument use terms like "democracy" and "rule of law" as hallmarks to portray India as a stable nation, but that conclusion depends upon one's definition of democracy and rule of law. If democracy is a means by which criminals retain their authority through elections marred by violence and corruption, this definition is only applicable to a few countries, including India. Today more than 70 percent of India's politicians have a tainted image. Their names are synonymous with crime, corruption and ineptitude.

As for the rule of law and human rights, it is known in India today more by its absence. Institutions that should protect and preserve the rule of law in the country have a reputation for being its most conspicuous violators. Take, for example, the courts and the prosecution and policing systems. Like their counterparts in the alleged democratic process, those who serve in these institutions have a tainted reputation for corrupt, nepotistic and inefficient practices.

What is left are the people of this huge country. Out of an estimated population of 1.2 billion people, almost 70 percent still live in conditions that belie a life worth living. The remaining 30 percent have established their domain over the majority of the population through corrupt and shoddy practices. Moreover, they work to keep India in the same rut which they have created for the country to tread in year after year.

While isolation and silence is enforced upon communities in some states by their own governments, it is the central government that is responsible for isolating communities in states like Jammu and Kashmir and the northeastern states. In the Northeast, for example, local communities are ruled by fear. To grant impunity to law enforcement officers deployed in this region, the government has sanctioned the unwarranted use of force. It is difficult for any community to feel part of a larger country when the armed forces of the country are deployed to silence them. This region has lost more people to acts committed by and against the state than they lost prior to 1947 when India gained its independence from Britain.

In a functioning democracy the justice system is of great importance. The courts are supposed to be the place where disputes can be decided impartially. In India, however, based on people's experience, the courts are unreliable.

The chief justice of India admitted in a recent statement that there are 25.9 million cases awaiting a decision in the country. Among these, various high courts have 9.8 million cases, and the Supreme Court itself has about 43,000 cases pending. Assuming that not a



single new case is filed for the next few years, the Supreme Court itself will take several years to clear this huge backlog. A person thus cannot expect speedy justice.

With the administration and law enforcement agencies not functioning properly, it is no wonder that people are increasingly taking up arms, having found that communicating with the government by any other means is meaningless. Thus society is polarised between those who oppose and those who fight back; the only other option is to leave the country.

This is the India of today. Sixty years ago Indians asked the British to quit India. Now they are doing so themselves. To live with dignity and enjoy relative freedom, one has to quit India! With this massive exodus, what will be left behind a few years from now will be a violently charged and polarized society.

What could prevent this violent polarization from occurring? The intention of this report is not to suggest answers for issues that have deep-rooted causes, but to at least provoke a discussion and to document concerns so that it can eventually lead to answers. The resolution of any issue begins with a discussion, and that is precisely what is lacking in India today.

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¹ India's Demography: Essays on the Contemporary Population: Tim Dyson, Nigel Crook



- ² China, India Superpower? Not so Fast! : Pranab Bardhan, Yale Global <
<http://yaleglobal.yale.edu/display.article?id=6407>>
- ³ From hereon wherever the AHRC or the ALRC is mentioned it means the group together
- ⁴ Purusha Sukta (Rig Veda 10:90)
- ⁵ European Parliament Resolution on the human rights situation of the Dalits in India P6_TA-
PROV(2007)0016
- ⁶ House of Commons Hansard Debates for 8 May 2007
- ⁷ UA-269-2007: INDIA: Untouchability practiced in government school in Uttar Pradesh
- ⁸ Caste Conflict, Poverty and Human Development in India : Sukhadeo Thorat and S. Venkatesan; Draft
Paper to the WIDER Conference on Making Peace Work June 4-5, 2004, Helsinki, Finland
- ⁹ Caste Discrimination in the Indian Urban Labor Market: Evidence from the National Sample Survey of
India : S. Madheswaran and Paul Attewell [*Madheswaran is a Professor of Economics, Institute for
Social and Economic Change, Bangalore, India and Attewell is a Professor of Sociology, Graduate
Center of the City University of New York, USA*]
- ¹⁰ For further information regarding caste based discrimination in schools in Uttar Pradesh please see
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<<http://www.indiatogether.org/2007/aug/edu-caste.htm>>
- ¹¹ A report by the Mumbai-based NGO KHOJ found that even progressive curricula either exclude any
mention of caste discrimination or discuss the caste system in a way that suggests that caste inequities
and discrimination no longer exist. School textbooks may similarly fail to mention caste discrimination,
may attempt to justify the origins of caste discrimination or may attribute the unequal situation of Dalits
to their "ignorance, illiteracy and blind faith...because they still fail to realise [the] importance of
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York University School of Law <<http://www.hrw.org/reports/2007/india0207/>>
- ¹² The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
- ¹³ 10th Five Year Plan (2002-2007) As Approved by National Development Council, Government
of India
- ¹⁴ National Action Plan for Total Eradication of Manual Scavenging by 2007, Planning Commission
(Housing & Urban Development Division)
- ¹⁵ Please see Article 14 of the Indian Constitution that guarantees equality before law and equal protection
of law
- ¹⁶ A study by Action Aid (Shah et al., 2006) carried out in 565 villages in 11 states, reveals that
untouchability continues to be widely prevalent and is practiced in one form or another in almost 80
percent of villages
- ¹⁷ A supplementary document concerning caste based discrimination in India submitted by the Asian Legal
Resource Centre <<http://www.ohchr.org/english/bodies/cerd/docs/ngos/ALRC-report.pdf>>
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- ¹⁹ Rs.500 crores of Orissa's funds for rural employment guarantees for 2006-7 appears to have been
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