

Rehabilitation, Eradication, Both Or None?

**Report of the Pre-investigation Suvey of Torture in
Maharashtra State, India**

(A study conducted for RCT, Copenhagen)

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February, 1998



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CHAPTER 1: **Introduction**

1.1 Preface

Inquiring into torture in India raises all kinds of issues. I found that out as I spent the months of November 1997 and January/February 1998 meeting a wide variety of people and discussing torture – especially, the need for a rehabilitation centre for torture victims – with them. First, what is torture, and what kind of torture are we talking about? Is it enough for a rehabilitation centre to cater solely to victims of police torture, or should it be addressing other forms of torture – and if so, again, what forms of torture? Must we also consider other kinds of violence: in the home against women and children; against street children; in remand homes? Is the police the only Government agency responsible for torture?

And even if it is just police torture under discussion, there are any number of related issues. The police have their compulsions: a demanding public and press; the pressure from corrupt politicians; laws dating from British times, designed to administer a colony rather than a modern, cacophonous democracy; a profound lack of trust from the people; poor conditions of pay and service. These don't excuse or justify so-called third-degree methods by the police, but they give it a context that needs examination when we study torture. Then there are broader issues still: do Indians, as a society, condone or sanction violence? Do our religions approve it? How much do we truly observe civil and democratic rights in practice? How strong are Indian civil liberties and human rights organizations?

In reading reports about torture, I ran into these issues. In my discussions with various doctors, lawyers, retired judges, activists and police officers, these questions and many more came up over and over again. All of this persuaded me that torture is a knot of complex, interwoven issues, all of which need debate and discussion. This may not be a particularly profound insight, but as I begin writing this report, I am convinced it must be recognized and remembered.

1.2 About This Report: Objectives and Scope

Having made these observations about the study, let me set out my brief, as I understood it. The Rehabilitation and Research Center for Torture Victims (RCT), based in Copenhagen, Denmark, would like to cooperate with one or more Indian organisations to set up a rehabilitation centre for torture victims in India, as it has done in various other countries. The Indian partners will administer the centre. Bombay is one possible location for such a centre. This report is a preliminary examination of the need for it in this city, along with an evaluation of the type and extent of torture in Maharashtra. I based it on interviews, getting opinions from a broad cross-section of people; and a fair amount of reading and research.

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This preliminary investigation should offer some idea of the following issues:

- The situation of human rights in India and Maharashtra: how well they are respected, what are the groups working for human rights and how successful they are, attitudes towards human rights and torture and so on.
- How much torture happens; who its victims are; what their needs are as far as rehabilitation goes.
- What resources are available to them: hospitals, legal aid, NGOs, social workers, etc.
- What the opinions on/attitudes towards/obstacles to setting up a new rehabilitation centre are.

1.3 Some Brief Comments About Methodology

At the outset I should admit that I could not collect as much data – figures about the incidence of torture – as I might have liked. Most of my interviewees expressed their inability, for one reason or another, to give me accurate, up-to-date data. Some did not have data available. Others were clearly unwilling (or perhaps unable) to speak freely. While it was not expressed in so many words, I came away from several of my interviews with the distinct impression that the person felt a matter like torture was “controversial” and he did not want to enter into any kind of conflict with the establishment on such an issue.

Reports in the press and publications of human rights groups offered some amount of data concerning torture and violence. I have relied on such information to get some broad indications of the amount of torture that takes place. Those estimates are in the report.

In the end, the weakness in this report is really in the data it contains. I don't doubt its accuracy, but I cannot escape feeling it is somewhat disconnected. This is because of the varying kinds and sources of data I used for the report.

1.4 About RCT/IRCT

The Rehabilitation and Research Center for Torture Victims (RCT) is an independent, humanitarian, non-political organization established in 1982 to help victims of torture and contribute to the prevention of torture. Its main objectives are to rehabilitate persons who have been subjected to torture, to rehabilitate their families, to instruct Danish Health professionals in the examination and treatment of persons who have been subjected to torture and to carry on research into the nature, extent and consequences of torture.

The International Rehabilitation Council for Torture Victims (IRCT) is a private non-profit foundation, established by RCT in 1986. Its objectives are, on an international basis, to support research into all aspects of torture, to support education and training of health professionals and other relevant personnel in the medical, social, legal and ethical aspects of torture, and to serve as an international clearing house for information about torture victims.

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CHAPTER 2: **Human Rights in India**

2.1 Background

On October 14, 1997, India's permanent representative to the United Nations, Kamlesh Sharma, signed the United Nations Convention Against Torture (CAT). Signing the CAT was a part of the United Front's – the coalition of parties that have formed the Government in India – so-called Common Minimum Programme that was spelled out when it came to power. (Of course, the United Front Government is now out of power). Besides, the CAT was adopted by the UN in 1984, and came into force in 1987. To that extent, it was only a matter of time before Mr Sharma formally signed the CAT on behalf of India.

When he did, India had endorsed all six core UN Conventions on Human Rights. Besides the CAT, these are:

- The International Covenant on Civil and Political Rights.
- The International Covenant on Economic, Social and Cultural Rights.
- The Convention on the Elimination of Racial Discrimination.
- The Convention on the Rights of the Child.
- The Convention on the Elimination of Discrimination Against Women.

After signing the CAT, India's Ministry of External Affairs issued a press release. Among other things, it claimed that this was a "reflection of the importance India attaches to the International Instruments on Human Rights and to cooperation with the treaty body system established by these instruments. *This is also in consonance with India's commitment to promote and protect the human rights of its citizens.*" [emphasis added].

That last sentence is the vital one. By signing various agreements and conventions, by pronouncements like this one, the Government of India has committed itself to protect the human rights of Indians. On paper, perhaps, but there is a value to such public commitments. The Government can be held to them, reminded of them, when needed.

Because the truth is that human rights violations happen entirely too often in India. Whether it is rapes by security forces in Kashmir, or abductions by militants in Assam, or beatings by police in Bombay: these events are now routine and not worthy of more than short news items in the press. "One should admit," wrote Dr Bhaskar Ray Chaudhuri, a past president of the Indian Medical Association, in the Association's Journal, "that incidence of violence perpetrated by different law enforcing authorities ... is on the increase in India in spite of all these constitutional guarantees and legal protections."

We have laws to address these violations, international treaties we have signed – which, thereby, become Indian law as well. Unfortunately, there is a tendency in India for laws to remain firmly on paper. They are rarely applied swiftly and impartially to offenders; nor is there substantial public

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pressure to apply them. This is why such horrific tragedies as the massacre of thousands of Sikhs in Delhi in 1984, or the riots in Bombay in 1992-93 which killed thousands more, fade from public memory with none of the really guilty punished for their crimes. India's signature on the CAT, or other human rights agreements, is unlikely to change this situation substantially.

Still, I want to repeat that there is a value to the Government's various commitments to human rights. With our Constitution and laws, they define a framework to protect and nurture the rights of all Indians. As the Supreme Court of India observed once: "It is legitimate for the Court to refer to the comparable provisions of the Universal Declaration [of Human Rights] in construing the items and scope of the relevant text ... of the Constitution."

2.2 Human Rights Organizations

There are a large number of organizations in the country which work for human and democratic rights. Several trace their origins to the Emergency (1975-77), when Indira Gandhi severely curtailed civil liberties and jailed thousands. The resistance to the Emergency from civil liberties groups like the Peoples' Union for Civil Liberties (PUCL) was a significant factor in Mrs Gandhi's defeat in the 1977 elections. In more recent times, PUCL has filed and pursued court cases on issues like child labour, inflammatory rhetoric by politicians to provoke murderous rioting, and the problems of citizens near nuclear power plants.

But no less active than the PUCL are such organizations as the Committee for the Protection of Democratic Rights (CPDR), Peoples' Union for Democratic Rights (PUDR), *Lokshahi Hakk Sanghatana* (LHS: Democratic Rights Organization), and many others. In Bombay, LHS has investigated and reported on events ranging from the 1992-93 riots, to the plight of textile workers in central Bombay, to police firing on peaceful demonstrations. In the early '80s, LHS filed and pursued a petition about 18 specific custody deaths in Bombay, using the post-mortem reports for each of the dead men. CPDR and PUCL are fighting a case about a so-called "encounter" death in Bombay last year. CPDR has also sent fact-finding teams to inquire into police brutality against tribals displaced by dams; one of their teams visited the Enron power plant site, south of Bombay, for an inquiry into police violence there last June. The Indian Peoples' Tribunal on Human Rights and the Environment (IPT) has issued a number of well-received reports on human rights abuses caused by development and displacement. IPT and other groups have reported on slum demolitions in Bombay and the police brutality that invariably accompanies them.

The Indian Peoples' Human Rights Commission (IPHRC) published "*The Peoples' Verdict*", a report on the 1992-93 riots in Bombay by retired Justices Hosbet Suresh and Shiraz Daud. It remains the only comprehensive inquiry into those riots that has seen the light of day (I spoke to both Justice Suresh and Justice Daud in gathering material for this report). Lawyers like Colin Gonsalves, PA Sebastian and MA Rane have established a reputation for taking up human rights cases.

This is only a sampling. Dozens more organizations are actively concerned with human rights on a wide spectrum: ranging from religious harmony to tribal rights to caste issues. While they may not

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systematically investigate every case of torture, especially in Maharashtra, within their limitations they are quick to pick up on and protest human rights abuses. Naturally, some have political ideologies and affiliations. But a number of them remain fiercely independent.

All these organizations, and several others, maintain a presence in Bombay and Maharashtra. Some, like LHS, are based entirely in the city and concern themselves primarily with city, or state, issues. Many of these organizations have investigated and reported specific torture cases. These efforts indicate that human rights organizations will continue to at least demand accountability for cases of torture, or custodial deaths, or other human rights abuses.

2.3 Concerns

The other side of this picture is that many human rights organizations are small and therefore easy for the state to ignore. In Bombay for example, PUCL functions largely through the dedication of three committed individuals. While they are vocal and respected, they are naturally limited in what they can achieve. This is a fairly typical story. No human rights organization in India has been able to build up a large base of committed, energetic members. There are many reasons for this, but that's perhaps beyond the scope of this report. But the fallout has been what I mentioned above: that human rights are violated routinely in India, and there rarely is substantial protest about this. As I also mentioned above, not even India's signature on the CAT is likely to change this situation significantly. After all, how many Indians even know what the CAT is, let alone that we have signed it? As I see it, the only hope for long-term, permanent change in attitudes towards torture – and human rights in general – is that all Indians will get an education; so become aware of their rights; more important, be able to and know how to demand their rights. In some ways, that we have failed to educate so many Indians is the greatest human rights abuse of all.

For just one illustration, consider a recent Amnesty International document (*“Submission to the Human Rights Committee concerning implementation of articles of the International Covenant on Civil and Political Rights”*, July 1997). It listed six “concerns” about India (I have put them in what I consider to be an order of priority for Maharashtra):

1. “The shortcomings of India’s implementation of safeguards to prevent human rights violations – contained in the Indian Constitution, the criminal law and in court orders;
2. “The absence of adequate mechanisms to ensure full redress (including investigation, prosecution and compensation) for all victims of human rights violations;
3. “The particular vulnerabilities of economically and socially disadvantaged groups in India, including women, *dalit* and tribal peoples, to a whole range of human rights violations and the particular problems they have in obtaining redress.”
4. “The continuing state of impunity for the majority of perpetrators of human rights violations – particularly in areas of armed conflict;
5. “The existence of a raft of legislation which provides for preventive detention which has been used to detain people not only in areas of armed conflict but has also been used against those defending the full range of human rights as set out in the Universal Declaration of Human Rights;

6. “The existence of special legislation which grants security forces wide powers to arrest and detain, shoot to kill and escape prosecution for violations, provisions of which suspend safeguards to protect the fundamental rights of citizens in India;

Points 5 and 6 refer to legislation like the Armed Forces (Special Powers) Act, in force in the Northeastern states of the country, or various preventive detention laws that have been promulgated at different times in our history. Neither applies to Maharashtra today; nor is armed conflict seen in the state. But the other points are certainly relevant to Maharashtra. The next chapter will explain some of this. It is vital to keep these points in mind, because any investigation and discussion of torture in India takes place in the context of concerns like these.

In sum, while I don't mean to sound entirely pessimistic about the human rights situation in India, nor understate the impact of the often vocal groups fighting for human rights, it is important to keep in mind that human rights are neither well understood nor strongly protected in India.

CHAPTER 3:

About Maharashtra: General

3.1 Some Facts and Figures about the State

Maharashtra is in Western India, about in the middle of the country. At 308,000 sq km, it is the third-largest state in India after Madhya Pradesh and Rajasthan. The 1991 census put its population at 78.9 million, again third in the country after Uttar Pradesh and Bihar. Between the 1981 and 1991 censuses, the state's population grew at 2.31% annually, higher than the country's growth rate in those years of 2.16%; among the larger states in the country, only Madhya Pradesh and Rajasthan grew faster in the '80s.

Literacy in 1991 was 64.9% (among females, 52.3%): only the much smaller states of Kerala, Goa and Delhi had higher rates. It is also the most urbanised state in India apart from Goa and Delhi. There are several large urban centres in Maharashtra: Bombay (10 million), Pune (2.5 million), Nagpur (1.7 million), Kalyan (1 million), Thane (803,000), Nashik (725,000), Solapur (621,000), and Aurangabad (593,000) are the largest. These reflect Maharashtra's relative level of industrialisation, something its politicians never tire of harping on.

There are various indicators of this industrialisation and the prosperity that has come with it. Gross factory output per capita was Rs 6,413 in 1989-90, the best in the country and far above the national average of Rs 2,763. Each of the state's residents consumed 474 kwh of electricity in 1992-93, a level exceeded only by Gujarat, Punjab and Haryana. Bank deposits per capita in March 1992 amounted to Rs 6,539, by far the highest in India. Net domestic product in 1991-92 was Rs 620 billion (about US\$20 billion that year), outstripping every other state. That meant the per capita income was Rs 8,180 that year, third highest after Punjab and Haryana.

While these figures might seem very encouraging, there are also indications that Maharashtra's much-applauded prosperity is somewhat skewed. For example, in 1987-88, 29.2% of its population lived below the poverty line: not substantially below the national average of 29.9%. Compare this to Punjab's 7.2% and Haryana's 11.6%. (Note: the definition of the poverty line has changed since). Take another example: of about 1.6 million small-scale industries that were registered with the Small Industries Development Organisation in 1992, only 68,000 were in Maharashtra. Every other large state except Rajasthan, and most of the smaller states, had a higher number of small-scale industries registered. The state has not paid much attention to promoting the small entrepreneur, to taking prosperity to the masses. (On the other hand, in 1993-94 the state approved 109 foreign investment projects, well above the next best state, Tamil Nadu, which had 78). Even the relatively high literacy rate conceals a skewing: in 103 of the state's 254 *talukas* (smaller administrative units within districts), female literacy is actually lower than the national average of 39.3%. In Akrani *taluka* in Dhule district, only 8 of every 100 women is literate, only 20 of every 100 men.

This disparity in wealth in Maharashtra helps explain why the state is fertile ground for a number of social movements. While this report is not the place to detail them, they are the breeding ground for much of the state's turbulent politics. The state Government is in constant conflict with one uprising or another, ranging from tribals protesting displacement by dams to coastal fishermen protesting the Enron power plant. Naturally, these conflicts produce regular police excesses as well.

3.2 Health Care

Of India's 13,692 hospitals in 1993, 3,115 were in Maharashtra, a figure exceeded only by Uttar Pradesh. (Two-thirds of India's hospitals are private). Maharashtra had nearly 79,000 hospital beds, the highest in India's total of 596,203. These are significant underestimates partly because private hospitals are not required to register themselves with health authorities. Maharashtra also has the highest per capita availability of doctors (about 86 per 100,000 people in 1989, according to the Ministry of Health and Human Welfare, Government of India).

Again, these encouraging figures conceal some not so palatable truths. About half the doctors in the state practice in Bombay city alone, according to the Maharashtra Medical Council. The per capita availability of doctors is 5 times better in the urban areas of Maharashtra than in the rural areas. More distressing, health care expenditure by the state was just Rs 57 per capita in 1993: that was actually below the national average of Rs 58 that year. Punjab, Kerala, West Bengal and several other states all spend more per capita on health than Maharashtra does. One survey showed that the government pays for only about 30% of a person's health care expenses: just 2.63% of its revenue expenditure.

The point is that India's health care is largely privately financed and provided. That might be all right except for what I touched upon above: private providers are not regulated by any laws. This explains abuses, neglect and a distinct lack of ethics in the profession and system. This in turn helps explain doctors' attitudes towards torture and human rights that I will address later in this report.

3.3 Health Care In Bombay

Bombay is not just the largest city in India; it is also the richest city, it runs the most efficient public transport system in the country, it is a huge engine of economic growth, a powerful magnet for people seeking opportunity all over India. Among other things, it also has some of the country's best hospitals and medical services. Herewith, a very brief look at this, particularly in regard to torture victims and other prisoners.

There are over two dozen large hospitals in the city; some are as well-equipped as any in the world. The country's leading cancer hospital, the Tata Memorial Hospital in central Bombay, attracts patients from throughout India; as do more general hospitals like Jaslok, Hinduja and Lilavati. There are also hundreds of smaller hospitals and clinics scattered across the city: a total of 1050 private registered hospitals. The larger hospitals are all run as profit-making enterprises, which works out to be very lucrative for their doctors.

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The state of Maharashtra has 32 degree-granting medical colleges which admit about 3400 students a year. Bombay has five of these, which admit about 700 students annually. One of these (KJ Somaiya) is a private institution; three are run by the Municipal Corporation (GS, Nair and Lokmanya Tilak, also known as Sion Hospital); and one (Grant) is run by the Government.

While health services, and particularly private health services, have grown tremendously over the years in Bombay, they tend to be out of reach of the poorer sections of the population. One 1988 survey (*“Utilisation of health services by the urban poor – A Study of the Deonar Maternity Home Health Post Area”*, CAK Yesudian, Tata Institute of Social Sciences) found that slum dwellers did not use municipal health services. This is because of the need to travel long distances and pay the corresponding transport costs, long waiting hours at the hospital and very brief contact with the doctors. The alternative, private services, are more expensive. Besides, they also concentrate on more lucrative curative care, and nearly every expensive medical technology and technique that is available in the West is also available in Bombay's hospitals for the right price. In fact, the hospitals advertise their use of these techniques. As a result, community health practices, disease prevention and maternal and child health care get very little attention from private health care providers.

Considering that between 55% and 60% of Bombay's population lives in slums, the truth is that health services are, for one reason or another, not easily available to large numbers of the city's residents. This is also important to keep in mind because the majority of people in jails, subjected to torture, come from the poorer sections of society.

Still, as I mentioned above, the city's hospitals, including the municipal and Government hospitals, do attract patients from all over the state and the country.

The police normally take prisoners with injuries and illnesses to the large Government or Municipal hospitals, like JJ or KEM or Sion (Lokmanya Tilak) Hospitals. On any given day in JJ, you can see prisoners making the rounds of the doctors. They are always handcuffed to a police constable; the pair is followed by another constable who carries a gun.

One recent morning in one wing of JJ's Out Patient Department (OPD) building, I counted 13 such prisoners, with their police escorts, who passed me over the course of an hour. Three, all barefoot, were no more than fifteen years old. That sight told me in no uncertain terms about who you can find in police lockups. About who, therefore, you can expect is being beaten up in there.

CHAPTER 4:

About Maharashtra: Violence and Human Rights

4.1 The 1992-93 Riots in Bombay

In the March 1995 Maharashtra Assembly elections, the Congress Party was defeated by an alliance between the Shiv Sena and the Bharatiya Janata Party (BJP), which went on to form the Government in the state. The Congress had been in power in Maharashtra more or less continuously from Independence in 1947, so what happened in 1995 was a stunning, if deserved, reverse for the party. There were several reasons for this emphatic rejection of the Congress; one of the strongest of them was the role Congress politicians played in the riots in Bombay in December 1992 and January 1993.

At the time the riots engulfed Bombay, Sudhakar Naik of the Congress was Chief Minister. The country's Defence Minister, Congressman Sharad Pawar, came to the city ostensibly to help control the riots with the help of the Army. In reality, these two major Maharashtra politicians, bitter political rivals within their party, were trying to upstage each other. The rioting became a pawn in each man's attempts to show the other in a bad light. Partly as a result, the state machinery was utterly ineffective as rioting raged on in two different phases in December and January. By Government estimates alone, close to a thousand people were killed. The *Times of India* (March 5 1993) estimated that property worth Rs 40 billion (about US\$1.25 billion in 1993) was damaged or destroyed. Human Rights Watch (in "*India: Communal violence and the Denial of Justice*", April 1996) reported: "According to official figures, which representatives of nongovernmental organisations again considered understated, 5080 huts, 1711 shops, 90 houses and 67 other structures were destroyed during the violence in January."

For this shameful failure to ensure public security, Naik, Pawar and their party deserved to be punished at the next elections. So they were. The result, of course, was this: while the party that did not care to maintain law and order during the riots was punished, the parties who openly participated in the riots made huge gains at the elections and were able to form a Government. The role of Shiv Sena and BJP politicians during the riots has been documented in various reports. As mentioned above, Justices Suresh and Daud conducted an inquiry whose report is "*The People's Verdict*". LHS and CPDR issued "*The Bombay Riots: The Myths and Realities*". Ekta Samiti produced "*Bombay's Shame: A Report on Bombay Riots*". There were other smaller, more localised inquiries by organizations like the Bharatiya Janwadi Aghadi (Indian People's Front).

In their report, Suresh and Daud comment on the inflammatory speeches and articles by Bal Thackeray, leader of the Shiv Sena, that instigated violence. They note that "in the eyes of a large number of innocent and helpless victims whose suffering cannot be described in adequate words, he is directly responsible for their present plight." During the riots, Pramod Navalkar of the Sena was widely reported as having claimed that the Sena "boys" were out rioting. "There has been an open admission by the Shiv Sena that they were actively involved in the riots", write Suresh and

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Daud. They also write that they have “collected voluminous evidence to show that even BJP workers were involved in several incidents of rioting. For that matter even some of the Congress and RPI workers were involved in the riots.”

All of this is quite apart from the years of propaganda from the BJP and Shiv Sena that served to rouse hatreds leading up to the riots.

Apart from the dead and wounded, the riots caused over 100,000 people, by some estimates, to flee the city. Many of these people lost their homes and belongings or were attacked by rioting mobs; others were simply terrified and chose to get out.

Soon after the riots, the Government announced that riot victims would be given compensation. Families of the dead, for example, were to be given Rs 30,000 in cash and Rs 170,000 in post office savings bonds. While they had to struggle through the state bureaucracy to get this money, most victims' families did get it in the end; though even today, five years later, there are regular reports about some who have still not got their compensation. Asghar Ali Engineer of the Centre for Study of Society and Secularism told the *Afternoon* newspaper about some of these: “There are about 165 Muslims who are still missing since the riots broke out. Since they haven't returned, it is only logical to conclude that they are dead. But the state government is not willing to give compensation to their families because there is proof of their death.”

No other official measures have been taken to help the victims of riots.

I should mention here the official inquiry into the riots, conducted by Justice BN Srikrishna. The Justice submitted his report to the Government on February 16, 1998. It has not yet been made public. Over the five years that Justice Srikrishna has been conducting his inquiry, calls for punishment of riot criminals have been answered by saying nothing can be done until his inquiry is complete. This has no basis in law: nothing under India's Commissions of Inquiry Act prevents a Government from applying the law to those who break it, even if those events are being investigated by a Commission. And on various counts, clearer violations of Indian law than what happened during the riots are hard to imagine.

As a result, the vast majority of the rioters and murderers from those weeks is free and unrepentant, with no particular fear that they will ever face the law. Now that Justice Srikrishna's report is complete, it remains to be seen if the riot criminals will indeed be punished.

One final, and disturbing, point about the riots: there were cases in which the rioting spread into hospitals too. A well-known case was in KEM Hospital, where a man waiting to be operated on was stabbed to death right outside the operation theatre. “*The People's Verdict*” relates that several witnesses testified that victims were stoned, cut into pieces, beheaded and burned, all in hospital premises. Some of this happened while a “crowd was clapping and dancing around the body.”

This pattern had a horrific echo in recent (November 1997) rioting in Coimbatore, Tamil Nadu. A report in “*Communalism Combat*” (February 1998) about the rioting says: “[T]he most ghastly

scenes were enacted at the government hospital where the policemen arrived in a procession along with members of Hindu communal groups... They mercilessly assaulted, torched and stabbed to death, both the injured Muslims brought to the hospital for treatment and their rescuers. Doctors who tried to intervene were themselves threatened.”

In retaliation, Muslim communal groups planted a bomb in the hospital in February 1998.

4.2 Law and Order Under The Alliance Government

The Shiv Sena-BJP alliance came to power in Maharashtra in 1995 with the promise that it would strictly control riots and be tougher on crime in general. In the years since, and especially as elections draw nearer, politicians from the two parties have often claimed there have been no riots in the state under their rule. But while there have indeed been no conflagrations like in 1992-93, there have been smaller riots. For example, in 1996 alone, there were three riots between Hindus and Muslims. In Shrivardhan on June 6, 12 people were injured and two platoons of the State Reserve Police had to be called out to restore order. In Junnar on September 26, about 200 people were rounded up after shops had been looted, vehicles burned and several people injured in stone-throwing. Two days later, in Pen, two people were stabbed to death by rioters, three more were shot in police firing and there was substantial property damage in widespread rioting that spilled over into neighbouring villages as well. A report on the Junnar riots by *Ekta* and the Centre for the Study of Society and Secularism shows how relatively peaceful relations between Hindus and Muslims have been poisoned by steady propaganda over the last few years. So much for controlling riots.

As far as being tougher on crime is concerned, that translated into a series of so-called “encounters”: a euphemistic term for extra-judicial executions by the police of people they term gangsters. These encounters were actively encouraged by the Government. “I support the encounters,” Home Minister and Deputy Chief Minister Gopinath Munde, of the BJP, told the magazine *The Week*. As a result of such wholehearted backing, the police took to encounters with gusto; two particular officers who were responsible for a number of them have become minor celebrities.

In 1996, 56 people were killed in encounters in Bombay; 69 in the first ten months of 1997. (These figures should be compared to 9 in 1995, 29 in 1994, 26 in 1993 and so on. All figures from a report in *The Week*, October 26, 1997, though they have been reported elsewhere as well). On October 9 1997, the newspaper *Mid-Day* carried a list of encounters, police firings and gangland murders in just the three months since July 11. There are 29 incidents, in which 40 people died.

Notably, not one policeman was killed, or even injured, in any of these encounters.

The carnage led to an outcry from human rights and civil liberties groups; that brought a predictable reaction from the Government. “The stand taken by human rights activists is demoralising for the police,” Munde told the *Bombay Times* on October 8. Demoralising or not, the authenticity of at least one of these encounter killings is being investigated in the course of

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hearing three petitions in the High Court (filed by PUCL, CPDR and the Samajwadi Party). This is the shooting of a man the police call Javed Fawda, killed on August 26. The police claim he was a well-known gangster. But they turned his body over to his sister, who has maintained that her brother was called Abu Sayama; he was no gangster, but a peanut vendor at the Bandra railway station. Hearings into this case are continuing.

In July 1997, the National Human Rights Commission officially asked the state Director-General of Police for an explanation for the rise in encounter killings in Maharashtra. More recently, *Sunday Mid-Day* (February 22, 1998) reports that the NHRC has issued a notice to the city's Commissioner of Police asking him to explain the death in a police encounter of a man called Zulfikar Mohammed Mahimkar on July 31, 1997. The complaint to the NHRC that prompted this notice also mentioned the case of a young boy, Parvez Jamir, who had gone to buy cigarettes; he was picked up by the police and beaten at the JJ Marg police station for two hours.

The respected ex-Commissioner of Police Julio Ribeiro, whom I interviewed for this report, is only one of several prominent citizens to point out that encounters, apart from being a human rights disgrace, cannot eliminate crime. "Serious studies will reveal that such killings by the police rise or fall in tandem with gangland activities", Ribeiro wrote in the *Bombay Times* on October 21. He went on: "Extortions and killings by gangsters have increased considerably of late."

If encounters were not bad enough, there are other signs of the Maharashtra Government's contempt for human rights. On February 14 1998, the *Times of India* reported that custodial deaths around the country have shown a disquieting jump over the last year. Quoting sources in The Ministry of Home Affairs in New Delhi and documents from the NHRC, the report says such deaths went up from 444 in 1996 to 888 in 1997: a 100 per cent increase. "[T]he most disturbing trend [is] in Maharashtra," says the report, "where the number of custodial deaths leap-frogged from 33 in 1996 to 200 last year (a little over 500 per cent)." (Appendix A contains a summary of this data).

On July 11 1997, state and city police fired on a crowd of low-caste *Dalits* protesting the desecration of a statue of Dr BR Ambedkar in Ramabai Nagar in North Bombay. Eleven people died. Whether justified or not, this firing was widely seen as indicative of the state Government's attitudes towards the traditionally oppressed lower castes. The impression was strengthened only a day or two later. When a crowd of Shiv Sena activists gathered and assaulted an Opposition politician's home in South Bombay; the same police, faced with this crowd, showed no interest in opening fire. In fact, it was widely reported that the police officer present had begged the crowd to disperse, which they did not. Instead they went ahead, entirely unimpeded, with their vandalisation of the politician's home.

4.3 Human Rights are Unimportant

One of the first things the alliance Government did when it came to power in 1995 was to abolish the state's Minorities Commission. "We don't believe in the word minority", was the common refrain of the Chief Minister and his colleagues at the time. Minorities Commissions around the country are constituted to safeguard and speak for the special rights of minorities.

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Despite repeated demands, neither has the Minorities Commission been reinstated, nor has the state set up a Human Rights Commission in Maharashtra. The demands are met by claiming that the NHRC is the only body needed to protect human rights in the state. This papers over the NHRC's necessarily national outlook and the vast amount of work it undertakes. It also ignores the utility of having one more body, a state-level body, to monitor human rights violations.

The state Government's airy dismissal of concern for minority rights, for human rights, speaks for the value it places on them.

It is important to keep in mind the figures and incidents in this chapter, and the background they paint, for they will help in appreciating the climate in which a torture rehabilitation centre in Maharashtra will have to function.

CHAPTER 5: **Some Perspectives on Torture**

5.1 Definitions

What do we mean by torture? Here is one definition that seems accurate: torture is "*the deliberate systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.*"

This definition was proposed by the World Medical Association (WMA) in its 1975 "Tokyo Declaration." It appears in publications by the Indian Medical Association (IMA): in particular, in the proceedings of the IMA's 1994 Workshop on Medical Ethics & Ethos in Cases of Torture. Given its wide acceptance by medical personnel, who would necessarily be an important part of any rehabilitation centre that is set up in India, I will leave it at that for this report.

Clearly, torture fitting that description occurs in India. Having said that, from all accounts India has been free of the large-scale war-time or political torture that countries like Argentina, Chile, Liberia and Vietnam have experienced. The stomach-turning stories of the videotaped slow torture of a Liberian President by his captors a few years ago, or of the brutal torture of Afghan President Najibullah before he was publicly hanged in Kabul, or even the systematic apartheid-era atrocities that are today being recounted before South Africa's Truth and Reconciliation Commission – these all sound foreign to Indian ears because they are foreign.

5.2 Police Brutality: Custodial Deaths

If political torture as outlined above is rare in India, more mundane torture, if I may call it that, does indeed happen. By that, I mean to say that police torture in India implies beating and little else.

People arrested by the police anywhere in India can normally expect to be beaten up. Suspects and witnesses are beaten to extract information. Besides typical and telltale physical problems such as beating results in, suspicious deaths often happen as a result of this kind of treatment. A few examples will illustrate.

The June 1995 "*PUCL Bulletin*" details what must be a fairly typical case, from Nayakpara village in Assam. At midnight on February 16 of that year, a group of policemen arrested 26 year old Ripunjay Acharjya from his house, telling his family they would keep him for the night. Since he was not brought back in the morning, the family began making inquiries at the police station and hospitals. At the Civil Hospital, they were told about two bodies that had been brought in at about 3 a.m. One was Ripunjay. Witnesses "observed a number of signs of wounds and bullet marks all over the two dead bodies."

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This happens with the police, but other Government agencies also indulge in torture. For example, the PUDR reported on the torture and death of a man called Savinder Singh in March 1992 (*"Death of A Businessman"*, PUDR Delhi). He died in the custody of the Enforcement Directorate, a civilian agency that monitors illegal transactions of foreign exchange. The report says: "According to non-official sources, the victim was beaten. His brothers and co-suspects ... in the next room were reported to have heard a long agonized scream around 1:15pm."

The same report also lists two earlier deaths in the custody of the Directorate of Revenue Intelligence, another civilian agency. PUDR comments: "It is indeed puzzling as to why persons die in unnatural manner at the hands of civilian officers."

Amar Jesani of CEHAT reported to the IMA's Workshop on Torture about a young criminal accused of a petty theft. He was brought to hospital in a serious condition. Hospital records showed that he had, as Dr Jesani points out, "*injuries on his wrists and thighs, bloody vomiting, pain in the region around the kidney, etc.*" (emphasis added). But the doctor gave him some routine treatment and sent him back to his cell, where he later died.

The lawyer Colin Gonsalves is fighting the case of Shekhar Mayawan Harijan, who died in the custody of the Andheri (north Bombay) police on December 21, 1997. Twelve days earlier, Shekhar had left his slum home. His family heard nothing more from or about him until December 19, when newspapers reported that he had been rounded up by the police for questioning in the murder, some months earlier, of Jitendra Dabholkar. Three days after his death, the police changed their stance and claimed that Shekhar had been picked up in connection with a theft case. Shekhar's body carried various marks of torture on it. The petition his wife has filed with the help of Gonsalves reads: "The tips of his fingers were black as if they were burnt by an electric current. The skin had been forcibly removed from his legs just above the ankle. His bottom and hip area had swollen tremendously and was red in colour."

A student at the Karve Institute of Social Work in Pune did a study of deaths in police custody in Maharashtra between 1980 and 1989 based on police records; CEHAT Bombay later reported his findings. There were 155 such deaths in that decade, of which 47 happened in Bombay. According to police records, 45 of the 155 deaths were due to hanging, 21 were "natural" deaths, 15 took place due to police action of some kind or another, and the causes of the others ranged from "jumped in well" (3) to "jaundice" (1) to "fell from bed" (1).

It is instructive to compare these figures with those reported by Amnesty International. Its 1992 document *"India: torture, rape and deaths in police custody"* lists a total of 414 deaths in police custody in India between January 1, 1985 and November 1, 1991. In the period that overlapped with the Pune study, 1985-89, Amnesty reported 13 custody deaths in Maharashtra; the Pune study found 102. It seems safe to assume that Amnesty only hears about a fraction of the custodial deaths police records admit to; those in turn must be some fraction of the number that actually happen.

It is even more instructive to compare all these figures with the Ministry of Home Affairs figures I used in the last chapter: a jump from 444 to 888 custody deaths nationwide; in Maharashtra, an increase from 33 to 200.

Sankar Sen, the Director-General (Investigation) of the National Human Rights Commission, wrote in *The Statesman* on July 24 1997 that the number of deaths in police custody reported to NHRC had increased from 113 in 1995 to 201 in 1996. Once more, clearly the NHRC is being told about only a fraction of the total number of custodial deaths (compare to the Ministry of Home Affairs figures, again).

Finally, Colin Gonsalves told me that the ratio of reported to actual cases of police beating is close to 1:10,000 (one in ten thousand). This is a comment on the respect we should pay to official statistics of state violence. In Bombay alone, Gonsalves estimates that 1,000 people are tortured every day, resulting in at least 10 deaths every day.

5.3 Police Brutality: But Some Live

The cases above are necessarily of actual deaths in police custody. It is only when a prisoner actually dies that it is likely that some kind of record is kept, if at all. It is far more difficult to collect statistics of people who have been tortured by the police without dying as a result.

The people, in fact, who would make use of a rehabilitation centre for torture victims.

Because they are smaller and weaker, and because there are few to speak up for them, street children are favoured targets of torture and abuse. Human Rights Watch (in "*Police Abuse and Killings of Street Children in India*", November 1996) reports many such cases. Fifteen year old Shantanu's is typical and gives us a good idea of what we can expect when the police take people, especially children, into custody. For this reason, I will describe it in some detail.

On January 8, 1993, Shantanu was picked up by two officers of the DN Nagar Police Station in Bombay, suspected of having committed a robbery a week earlier. In a "separate enquiry room" at the police station, Shantanu was asked to put his hands on a table; they were then beaten with a baton for an hour. Later, he was hung from the ceiling and beaten on the shoulder, back and thighs for 45 minutes. Afterwards, he was made to lie on a block of ice and hit each time he tried to move; then he was made to lie in the sun and beaten while being asked where the stolen property was.

Two days later, the police brought in Shantanu's parents and threatened to beat them if he did not confess. He did, but was kept in the police station for another week. In that time, one of the officers would take him to the beach and tell him to escape so he could be shot.

Produced before a magistrate on January 18, Shantanu told the court that he had been tortured so badly he could not stand. Two policemen held him up during the court session. He was sent back to prison for another eight days, where he was beaten again, and then moved to the Bombay Central Prison.

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As he was not an adult, the inspector-general of the prison sent him to an observation home, where the house master would thrash him regularly. When he was finally released, Shantanu spent another 20 days in the hospital being treated for the torture he had been put through.

A visit to nearly any magistrate's court will confirm that Shantanu's case is hardly unique. Some years ago, I had to appear in a railway court in Bombay to argue a fine. As I waited for my turn with the judge, the police brought in streams of children and young adults, all tied together in long lines. Some were clearly in pain as they shuffled awkwardly in. The judge called their names. As each one heard his name, he tried to stand. But before he could speak, the police constable guarding them would rattle off a few words about him; the judge would listen and immediately pronounce a new date for another hearing of whatever case had been filed against him. As each line of children finished its appearance, the children were herded out of the room so another line could take their place. That was the hearing they got; for all I know it was the hearing they got on their next date as well.

Besides beatings, children like Shantanu are tortured in other ways too. Human Rights Watch lists cases of children with cigarette burns on their genitals, sexual abuse, broken teeth and broken limbs. They are roundly abused in filthy language. They are put through various contortions. They are hung upside-down from the ceiling; told to assume the *murga* position (holding their ears with their hands through their legs); manacled to benches with short shackles so they must remain crouched over for long hours. HRW and other human rights organizations, as well as Indian groups, have often reported this kind of violence against children; to that extent, Shantanu's case is representative.

In January 1997, seven undertrials, out on bail, were brought to the GT Sheth Government Eye Hospital in Rajkot, Gujarat. All were complaining of symptoms similar to that of alkali chemical burns. Some could not open their eyes. The Superintendent of the hospital, Dr Rekha Gosalia, said "there was severe watering, redness and burning sensation and the transparency of the cornea had been affected and this had resulted in corneal opacity." At least one of the men, Shankarprasad Guruprasad, "will have defects in both eyes."

In custody, policemen had rubbed balm into these men's eyes. One patient named the constable who had done it to him. Guruprasad told Anil Rana of *The Statesman* that the City's Deputy Commissioner of Police, KLN Rao, had himself applied the balm on three days in January. Rana's report in *The Statesman* on February 16 points out: "... *the use of this torture method was not unknown in police circles.* The Police Commissioner, Mr PL Mani, is reported to have even raised the issue at a meeting. ... [An inquiry by the Criminal Investigation Department] is reported to have indicted the DCP, Dr KLN Rao, and nine Rajkot policemen, including a head constable, for the crime." [emphasis added].

The parallels to the infamous Bhagalpur blindings of 1979-80 are obvious.

Finally, apart from violence, people in police custody are commonly viewed as something less than human. "They are treated like dogs," one prison social worker told me, "and are called by

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numbers rather than by their names.” PA Sebastian of CPDR said nearly the same thing about people he saw in the lockup at the Azad Maidan Police Station in Bombay: they had “ceased to be human beings, they were like beaten dogs.”

What might be the effects of this kind of treatment on these prisoners? Surely this is torture too? I don't intend to make this a catalogue of police torture. Instead, the examples above should offer an idea of how routinely the police resort to torture and what methods they use.

5.4 Other Forms of Torture and Violence

As I have alluded to elsewhere in these pages, my discussions with various people brought up time and again the view that a rehabilitation centre would have to consider victims of other forms of violence as well. In fact, there was a general consensus that a broader definition of torture would include phenomena like wife abuse, child abuse, child labour, violence against street children, eviction of slum-dwellers, ill-treatment of mental patients in state-run homes, etc: in some cases, even if the torture is purely mental in nature.

Psychologists, doctors, police officials, lawyers and others I spoke to all emphasized that it was crucial to consider other forms, other definitions, of torture. They didn't make any significant attempt to distinguish between torture and violence; they saw both as happening widely in India and so deserving of concern. They stressed repeatedly that a rehabilitation centre should also make no distinction between victims based on what form of violence they had suffered. The victims do not make the distinction, so why should we?

Here is a brief account of two other kinds of violence, common in Maharashtra, whose victims might approach a rehabilitation centre.

Slum evictions: Over the years, Bombay has seen repeated attempts to get rid of slum-dwellers, always assumed to be wherever they are “illegally” . The present Government is as enthusiastic about such efforts as any previous ones, if not more. Again, human rights are considered just an obstacle to be pushed out of the way. In April 1997, Ravindra Mane, the state's Urban Development Minister, told the state Assembly that his Government was “willing to tackle” the issue of “illegal” slum-dwellers, “provided human rights organisations do not set up obstacles in its path. Do not let human rights or Amnesty hinder us!”

Fueled by such attitudes, as well as by a tacit middle-class approval of slum evictions, the Government has gone after several different slums. Typical was what happened in Bhabrekar Nagar in north Bombay. Between June 13 and June 19, 1997, houses belonging to 12,842 families – about 65,000 people – were demolished. Those thousands of suddenly homeless people were left without a roof in the middle of heavy monsoon rains. When some tried to protest, they were assaulted by the police: several suffered injuries as a result. A Habitat International Coalition fact-finding mission, headed by the eminent ex-Supreme Court Judge VK Krishna Iyer, investigated what happened in Bhabrekar Nagar and issued a report (*InQuest of Bhabrekar Nagar*, July 1997). It recommends an inquiry to:

- “Look into the act of hostility against the poor, Dalits, women, children and minorities, and to

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- “Establish motives and responsibility for violation of human, shelter and livelihood rights of children, women and men.”

What happened in Bhabrekar Nagar is entirely typical of the Government approach to slums.

Children's homes: Krist Perreira, a social worker who has spent a substantial amount of time in various childrens' homes, described for me the horrifying conditions in these homes. In a Government run “observation home” in Bhiwandi, just north of Bombay, about 150 children from a few months old to 16 years old live in one large dormitory-style room. At night, they are locked into this room; there is no toilet and no drinking water, only a sort of large sink for both purposes. The staff at these institutions are minimally trained and have no sympathy for the children. As a result, beatings are common. Perreira has filed a court case about three boys, including a three year old, who died between January 1995 and August 1996 as a result of these beatings. He expects the court to order various inquiries and reforms when the case is decided; the judge has already visited the homes and observed that 90% of the children appear to be malnourished. Perreira made a sobering point to me. The purpose of homes like these is supposed to be rehabilitation: of delinquent or neglected children. Instead, the poor quality of the staff, their indifference, the neglect and the abuse ensure that the children in these institutions never get much of a chance to return to society.

5.5 Who is Tortured?

It should come as no surprise that victims of torture and violence are largely poor, unaware of their rights and unable to defend themselves. “Victims mostly belong to poor and marginalised sections of the people,” wrote Sankar Sen of the NHRC in *The Statesman*. Many victims are also young: children are always easy game.

There is a wide variety of “poor and marginalised” people in India. Consider an example: tribals. Invariably, large development projects – like dams – displace thousands of tribals from their homes. Resettlement and rehabilitation of these people (a whole issue by itself that is beyond the scope of this report) is never pursued with the vigour that marks the dam-building itself. The result is that the displaced people are reduced to a miserable state; many of them inevitably drift into cities like Bombay in search of work and a living.

In Bombay, these people are forced to live on the streets and in slums. There, they are the target of a hostile middle-class and Government machinery intent on demolishing slums (as in the Bhabrekar Nagar demolitions mentioned above). They are also an easy target of police officers looking to make arrests to show they are containing crime. In fact, dating back to British times, whole tribes have been designated as “criminal”, and this designation often dictates their fortunes. After a burglary and murder in a Bombay suburb in November 1997, the police rounded up several members of one such tribe, the Farse Pardhis, and beat them to extract confessions. The justification the police offered for this outrage was that the *modus operandi* of the murder fitted that of the Farse Pardhis.

Apart from the beating, the very branding of an entire tribe as criminal is surely a form of social, or cultural torture. I discussed this very point with Justice Daud. While he agreed with it, he also emphasized that many Farse Pardhis, in his experience, are indeed criminals: Government policies that displace them make sure they are left with no choice but crime.

Street children, like Shantanu above, are perennial sufferers of police brutality. Theirs is a particularly tragic situation, because they often have no redress but to complain to the police themselves: few others in society are willing to take up the cause of street children. As the 1998 Human Rights Watch *World Report* says, “[P]olice violence against street children was pervasive in 1997 [in India]... The failure of law enforcement bodies promptly and effectively to investigate and prosecute cases of abuses against street children allowed the violence to continue.” In Bombay, several NGOs that work with street children report having to regularly intercede with the police to rescue children who have been rounded up. A common strategy seems to be to give the children an ID card that says they are attached to the NGO, though this does not always work. Ten years ago, Shashi Mishra, Secretary of the Social Welfare Department, Government of Maharashtra, wrote a small booklet on strategies to improve the condition of street children. She ended it with these words: “[Street children] have to be dealt with with a curious mixture of affection, since they are still children deep down inside them, and with respect for their acquired adulthood.” Such concern seems very far from the kind of treatment street children ordinarily receive at the hands of authorities.

Girls and women are also easy targets for abuses: from the police, in the home and in state institutions. They are rarely able to press for justice.

The Forum Against Child Sexual Exploitation (FACSE) investigated a sexual assault on a deaf-mute 15 year old girl in a Bombay “observation home”. She was assaulted by the cook at the institution on September 21 1997, and had been similarly assaulted by him twice before. While this is bad enough, the authorities at the home, perhaps afraid of the publicity, did not make a police complaint till October 10. That was after an anonymous call to a Government officer who then had to resort to threats to get the management to go to the police. While the cook was suspended from his duties, he remained at the home for those three weeks, as did the victim. He was arrested only after the police complaint was made.

That is, the victim had to suffer the presence of her attacker until three weeks had passed after the third time he had assaulted her. No particular consideration was given to the need to attend to her trauma: the FACSE report says: “As far as we know... no referral has been made to a clinical psychologist.” Besides, “The institution also failed to provide legal aid to the child. According to the Maharashtra State Project Rules, 1993... Counsels should be available for the purpose of providing legal assistance to the children.” Remember the point that Krist Perreira made: that these homes are really like rehabilitation centres.

Whether it is police torture or attacks on slum dwellers or other kinds of violence: the victims are almost certain to be those who cannot defend themselves for one reason or another.

5.6 Where Does Torture Happen?

People I interviewed, ranging from retired police officials to lawyers to activists, all referred to the existence of particular rooms in every police station where victims are beaten. Often, these rooms are just curtained off from the rest of the station. Colin Gonsalves spoke about how some police officers go in there nearly every day for a session of beating undertrials ("The police force is structured on beating," he told me). Typically a prisoner is brought to this room from his lockup or jail cell.

As I have touched on above, torture and violence also happen in institutions like childrens' institutions, mental health institutes and so on. Homes are the scene for much insidiously hidden torture: wives are beaten and abused mentally, children are abused, servants are ill-treated. Some forms of torture also happen without any attempt to hide them, in the open. For example, on most nights in the more crowded parts of Bombay, you can find police constables hitting street dwellers with their sticks, rounding them up and displacing them.

5.7 Symptoms of police torture

What happens to a person tortured by the police? The answer to this will have considerable bearing on the functioning of a rehabilitation centre. I will briefly mention some symptoms that can be expected.

There are, of course, the "routine" bruises, wounds and broken limbs from the beatings. But more than one doctor told me of one common complaint that's hardly seen except in torture victims: a "dropped foot." The prisoner is unable to lift his foot to the normal horizontal position: it is somewhat reminiscent of a duck's foot, flopping as he walks with difficulty. The police regularly bring prisoners to JJ Hospital, one of the city's largest, in this condition.

A dropped foot is an unmistakable sign of torture, and a particular form of torture in which a stick is tied around the victim's knees and his legs are beaten. The resulting compression and paralysis of a nerve produces the telltale dropped foot. Some prisoners complain of a dropped wrist, which is due to similar torture of the arm and elbow.

In March 1997, the NHRC recommended that prisoners be thoroughly examined for specific kinds of torture like:

- beating;
- suspension (by the wrists, arms, neck, ankles or head from a horizontal pole placed under the knees with the wrists bound to jacks);
- near-suffocation (two methods: *wet submarine*, where the head is immersed in contaminated water; and *dry submarine*, where a plastic bag is tied over the head);
- sexual abuse (positions like the *saw horse* – a prolonged straddling of a bar);
- electric shocks (with a cattle prod, a heated metal skewer inserted in the anus);
- dehydration, animal bites and so on.

From all accounts, the NHRC recommendations are certainly not being implemented anywhere, let alone in Maharashtra. According to Colin Gonsalves, the state Government is “not bothered about the NHRC in Maharashtra.”

Despite these horrific methods, physical wounds generally heal. Dr Dayal Mirchandani, a psychiatrist, explained that some victims of beatings even come to expect them as no more than “an occupational hazard”, to be endured and then forgotten. It is the wounds to the psyche that are usually the deepest.

Dr Anand Nadkarni, a well-known psychiatrist in Thane, says that victims suffer from depression, anxiety and have feelings of vengeance and retaliation, “either overtly or covertly expressed.” They can become hysterical and their body language tells of their strong hatred for the abuser. A neurosurgeon attached to the JJ Hospital told me there have even been cases of schizophrenia as a result of torture. Some victims have panic attacks; some even become suicidal.

The July 1996 issue of the *Journal of the Indian Medical Association (JIMA)* concentrated on torture and the medical profession. It contained an article by PK Choudhuri, a past president of the Association, titled “*Medical Profession and Torture*”. According to Dr Choudhuri, torture victims suffer from “anxiety, fear, nightmares involving the traumatic situation ... sleep disturbances, survival guilt, etc.” He went on to observe: “The tortured person thus becomes something of a psychological homeless person.”

A major problem victims face, especially after their release from a prison term, is rejection. According to Arthur Prem, head of an organization that works to rehabilitate prisoners, they have a stigma attached to them which makes it very difficult for them to get jobs. In 60% of the cases, says Prem, the prisoner’s family does not accept him back in the home. “That leaves him with two options: join more criminals or commit suicide.”

The psychological symptoms and effects of torture are to be expected: torture is primarily meant, as a doctor at Sion Hospital told me, “to harm the psyche, to attack the mind” of the prisoner.

5.8 Punishment is Rare

The Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC) clearly guard against torture by the police. If a police officer tortures a person and causes hurt to extract information or a confession, he is guilty of an offence under Sections 330 and 331 of the IPC. The language in those Sections is unambiguous.

Of course, such offences are rarely prosecuted, if at all. One reason is the natural disinclination of the administration to punish the offending policemen. Demands to prosecute them are usually waved off with a now-standard explanation: that such punishment will “lower the morale” of the police force.

But the Government is also able to hide behind the letter of the law in its attempts to protect police officers. Under Section 197 of the CrPC, the Government must “sanction” the prosecution

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of a police officer who is accused of any offence whatsoever while carrying out his official duties. That is, the Government itself must decide whether one of its servants can be punished. Section 197 is used as a favourite loophole by the authorities: processing a demand for sanction for prosecution takes months and is then frequently denied anyway.

The special laws that are put in force from time to time make it even more difficult to prosecute offenders, partly because the sanction they specify must come all the way from the Central Government. This effectively gives security forces in those areas immunity from punishment and results in widespread abuses by them. For example, the Armed Forces (Special Powers) Act has been in force in the Northeastern states off and on since 1958. The Act ends with this clause: "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act."

It is no surprise that the Northeast has seen a large number of human rights violations over the past 40 years.

5.9 The IMA Survey

To end this chapter, I will set out a few highlights from a survey among IMA members. These will give some perspective to rehabilitation issues, discussed in the next chapter.

In the second half of 1995, the IMA conducted a postal survey among its members (*"Report on Knowledge, Attitude and Practice of Physicians in India concerning medical aspects on Torture"*, IMA New Delhi). The IMA sent out a questionnaire to 4000 of its members, scattered all over the country. 743 responded. While I don't know how many of them were from Bombay and Maharashtra, Dr Desai of the IMA's Maharashtra branch told me there were several respondents from the state. He also said that in his opinion, the general findings of the survey broadly matched doctor's attitudes in Bombay and Maharashtra.

To the question: "Have you ever as a doctor come across a case of torture/suspected torture?", 533 of the 743, or 72%, replied "Yes." Of the 13 doctors I spoke to, only 4 (31%) said they had seen cases of torture. This contrast is surprising. Of course, one reason for it is that 13 is clearly not a reliable sample. But I also suspect that doctors are more willing to acknowledge having seen torture cases via a confidential postal questionnaire than across the table to an interviewer.

Other data from the survey are revealing. Here are some:

- 57.5% of the respondents agreed that "coercive techniques may be justified to elicit information from uncooperative suspects."
- 58.3% felt that "manhandling a suspect during interrogation is unfortunate but unavoidable."
- 57.7% did not "receive formal education on ethics at undergraduate or post-graduate levels."
- 67.8% would react to a case of torture in police custody by "reporting it to legal authorities." (In some cases, this might mean reporting it to the very authorities responsible for the torture, which would surely be futile).

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While these figures, and others like them in the survey report, present a discouraging picture of doctors' attitudes and training, there are other results that are more positive:

- 85.7% disagreed with the statement that “torture has no lasting harmful effects.”
- 85.5% felt that torture victims were entitled to the same level of health care as everyone else.
- 75.5% thought that medical examinations should not be held in “the presence of military, police or police personnel.” (The doctors who told me they had seen torture cases in hospitals said policemen had remained present throughout the examinations).
- 89.4% agreed with “physicians have an ethical duty to be active in efforts to prevent the practice of torture.”
- 71.9% would be willing to treat a victim of torture who was brought to them.
- 69.3% felt that IMA should set up counselling centres for torture victims; substantial majorities thought IMA must be involved in other such activities and programmes to help victims of torture.

“It is encouraging,” the survey report concludes, “that most of the responding physicians are willing to take up training ... to be able to provide treatment, counselling and rehabilitation [of torture victims].”

CHAPTER 6: **Rehabilitation Issues**

6.1 Two Experiences with Rehabilitation

At least two people I spoke to had direct experience in rehabilitation: prisoners rather than known torture victims. Still, I write about them here to give some flavour of rehabilitation in practice, to indicate some of the goals a rehabilitation centre should have.

Arthur Prem's Crossroads Prison Ministry has permission to work with prisoners in all 213 prisons in Maharashtra. Through sustained work, Crossroads aims to reform criminals "so they don't come out like hardened thugs"; help the families of inmates who are deprived of their sole earner; and especially, "to build a home for child convicts from the remand homes and ex-prisoners, where they would be trained in a trade and taught moral values so as to finally become good citizens of the nation."

In Prem's view, the idea of a rehabilitation centre "should be extended to the time when prisoners are released." That is the time, he says, when they are most in need of help. Crossroads already has a community home in Nalasopara, run by a husband and wife team. Four released prisoners live with them and work there. Over a period of a year or so, Crossroads manages to place them in jobs: one joined a small electronics industry and another an airconditioning repair shop. (The man in the electronics business has been somewhat erratic in his behaviour, needing a lot of attention from his "house parents", the husband and wife team running the home. He will benefit from psychiatric help, Prem told me).

Crossroads has acquired 1.75 acres of land in Badlapur, where they are building and would like to shift the home to. Prem wants to hire at least three more such couples, each responsible for six released prisoners.

During his career, AG Patwardhan, who retired in 1986 as a Deputy Commissioner of Police, helped about 15 different habitual criminals find a place in society. Patwardhan made something of a name for himself in the underworld for his efforts. Typically, criminals in prison would approach him saying they wanted to get out of crime. Most people, including members of their family, were reluctant to help, or even meet, these prisoners.

One such prisoner whom Patwardhan helped was Ashok Vyas. Patwardhan first ran across him after he had done a 2 year term in prison in Goa for housebreaking. He gave Vyas a loan and told him not to stay in Bombay, to return home to Jodhpur and find some kind of work. There, Vyas started a small tea shop. At one time, he returned to Bombay and was arrested as a suspect in a crime. Released after Patwardhan intervened, he returned to Jodhpur again, stayed there and persisted with his work. Now he runs a successful handicrafts centre in Jodhpur.

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While what happened to Vyas is something of a success story, Patwardhan pointed out that an effort at rehabilitation must accept that there will be some failures. And failures are picked up by the public, who will then ask why these efforts are being made at all. This should not be a deterrent, given the magnitude of the task. "Nobody gets into crime willingly," Patwardhan told me. "Are we doing enough to help these people get back into society?"

6.2 Services at a Rehabilitation Centre

Given the various complaints and symptoms that torture victims suffer from, what do we mean when we speak of rehabilitating them? The answer to this question will determine the shape of any rehabilitation centre that is established. From my discussions, there seem to be four broad areas rehabilitation will need to cover, though some people had reservations about one or more of these.

Naturally, victims will need treatment of the physical problems brought on by torture: the broken bones and "dropped foot" conditions from beatings. A rehabilitation centre need not be a hospital, but it will need to provide basic *medical facilities*; more serious cases can be referred to other city hospitals or doctors. Most people I spoke to who agreed that there is a need for such a centre spoke of medical facilities first: as a basic necessity.

Within medicine, clearly orthopaedic and surgical services are a must, considering the prevalence of beating as a form of torture. But it would also be important to have paediatricians and gynaecologists available. There seems to be a broad consensus that these four specialties are a minimum. (Of course, there will be periodic victims of such outrages as in Rajkot or Bhagalpur, where prisoners were blinded). In addition, there will be a need for occupational therapists who can help victims regain the use of their limbs. (A senior doctor at JJ Hospital told me that conditions like the dropped foot can be slowly reversed with therapy).

The centre will need to have psychiatrists and counsellors on the staff. While medical services are important, many of the doctors and policemen I met emphasized such *psychiatric services*. Because the most permanent effect on torture victims is mental, counselling is critical. Dr Yusuf Matcheswalla is a psychiatrist who has a number of the accused in the March 1993 bomb blasts case as his clients. He told me that in his experience, victims of violence must be treated by examining their history, evaluating them psychologically, giving them a sympathetic hearing, counselling and medication. A rehabilitation centre must be a place that offers all this, from qualified people, as an essential part of rehabilitation.

Legal services are necessary. Many victims want redressal for the suffering they have had to bear. Often, they do not know how to go about getting legal help, or may not be able to afford it. Legal aid to get justice must be a part of the process of rehabilitation. Besides, torture happens because there are policemen who feel a certain impunity, that they can get away with anything. Pursuing punishment for these people will restore a measure of accountability to the police. In a very real sense, making sure the perpetrators of torture are punished is one way to ensure torture eventually gets stamped out. MA Rane, a senior advocate at the Bombay High Court, feels that even more than rehabilitation, there needs to be a public focus on torture. Towards that aim, he

thinks this rehabilitation centre must take up specific cases and pursue them in the courts. The costs of rehabilitation, he told me, “must be recovered from the officers responsible.”

Let me say here that Dr Dayal Mirchandani struck a discordant note about legal services. “Where lawyers are involved,” he told me, “things get worse. In general, lawyers mess up the cases for doctors too.” He explained that part of the process of healing from torture and violence is to forget and move on with our lives. Long legal cases are a constant reminder of the trauma that we would rather forget. This applies especially because the perpetrators of torture rarely are actually punished; and speaking out against them also brings the threat of intimidation and retaliation.

The fourth important aspect of rehabilitation is *social services*. The centre must be staffed with “experienced and wise social workers”, according to Dr Sunil Pandya of KEM Hospital. Such workers will help in the overall aim of a rehabilitation centre: getting victims to return to being productive members of society once more. They will have to monitor victims in their homes, meet with family and friends, perhaps help them find employment. They will act as liaisons with hospitals, women’s and social organizations, NGOs, perhaps even with the state machinery. Also part of their job will be active advocacy and outreach for the centre in the community it serves; it cannot hope to be a success without being known widely as a place that can and will help torture victims find their feet in society once more.

Dr Pandya also emphasized that a crucial function of a centre would be record-keeping. Patient data must be maintained and analysed.

While a centre might be able to provide all these services, it will eventually only be as good as the quality of the people it has providing the services. This may seem a rather trivial thing to say, but it cannot be emphasized enough. Rehabilitation cannot work with a mediocre staff. Several of my interviewees touched on this point. Dr Pandya stressed that the centre’s staff must be “exceptional, motivated” people. They should have a near-missionary spirit about their work; their attitude to it, to torture, to human rights, is crucial to the success of the centre. Dr Pritam Phatnani, a medico-legal consultant who has worked at the Coroner’s Court in Bombay, told me that as part of the staff selection procedure, rather than the usual aptitude tests, they must be given an “attitude test.” They need to work with a great deal of compassion, he said. At the same time, the staff must be paid well for their work: they cannot be expected to do their jobs fueled solely by their public spiritedness.

Dr Amar Jesani mentioned that the centre will need to be closely linked with genuine human rights organisations. “Besides, the individuals running the centre must have the courage not to [bow to] police and government diktats on sharing or giving them records of the people taking treatment [at the centre], as that might put patients in danger and jeopardise [its] credibility.”

Dr Mirchandani made another point about a rehabilitation centre: that it must function in a “client-centred way, not according to the needs of administrators or bureaucrats.” For example, that means it should not operate on a strict 8am to 8pm schedule. It should be approachable by victims at any time of day. Connected with this, the centre should operate an outreach programme, because often victims will not approach a rehabilitation centre on their own. He also

pointed out that the centre should be prepared to offer its clients some amount of money as compensation for the loss of a day's wages, considering that many torture victims are poor.

6.3 Rehabilitation and the IMA

6.3.1 Some thoughts on the IMA

In 1992, there were close to a million qualified and registered doctors in India (but curiously, only 500,000 nurses). Somewhere between 85% and 90% of the doctors are entirely in private practice: this has the unfortunate consequences I have mentioned earlier in this report. What is interesting about this population of doctors in India is that they are trained in various different systems of medicine, like allopathy, homeopathy, unani, ayurvedic. (The last two, in particular, have a long tradition and history in India; practitioners of these systems of medicine can be found in most parts of the country).

Only about 43% of the registered doctors are allopaths. I mention this because the Indian Medical Association offers membership only to allopaths. That is, the body systematically ignores well over half the doctors who are providing some level of health care in the country. This is not by oversight; it is very deliberately done. In fact, the IMA refers to the other systems of medicine as "quackery". The presidential address of Dr FS Desai, President of the Maharashtra branch of the IMA, to the Maharashtra Medical Conference in November 1997 contains several paragraphs on quackery: he implies that students use qualifications in these alternative systems "for a backdoor entry to practice allopathy." The IMA has cultivated this view of alternative systems precisely to increase the prestige and power of allopaths, and so of the IMA.

The IMA is a powerful body, but it only has about 125,000 members (15,000 in Maharashtra). Thus, even among allopaths, the IMA represents about 30%. The point is that the IMA actually represents only about 12% of all the practicing doctors in the country, and only about 30% of the ones it actually recognizes anyway. This means two things: one, that any surveys based on IMA members must be seen in this light. Two, that the IMA must be encouraged to reach out to the vast majority of doctors it simply overlooks today.

Any kind of reform in the health profession, and specifically any kind of greater awareness of human rights, will run into the obstacles these figures imply.

6.3.2 Views on Torture and Rehabilitation

While the issues about rehabilitation I have touched on above were based on reactions from the few doctors I met, the IMA, as a body, has shown some official concern about torture and the rehabilitation of its victims. In fact, as an editorial in the *Times of India* (December 26, 1997) remarks, the IMA has recently called upon doctors to "turn down any administrative order, verbal or written, calling for any kind of assistance in the torture of prisoners." Besides, the IMA has emphasised that it will support doctors who are victimised for such a stand against torture. And, most significantly, the IMA has "entered into discussions with the NHRC with a view to opening a rehabilitation centre for torture victims."

This stand was echoed by the IMA members and office-holders I spoke to. Dr Arshad Mohammed, a past office-holder of one of the Bombay units of the IMA, told me that the IMA was “fearlessly fighting the menace of torture.” He says the Association has wanted to “start centres at local levels, and will stand behind the rehabilitation centres” that might be set up to aid torture victims. Dr Bakulesh Patel, president of a Bombay unit, spoke on similar lines. The IMA, he said, “would be interested in chalking out a programme” for the rehabilitation centre.

I spoke to Dr FS Desai, the president of the Maharashtra branch. With about 15,000 members, this branch is the largest in India. According to Dr Desai, the IMA condemns all forms of torture, and has shown concern with the issue at several different meetings and workshops. He says the discussion within the Association has been centred mainly in Delhi to date, with less going on at the state level. But he said: “we are trying to establish [a centre] here, for we know torture is going on.”

In addition, Dr Desai said the IMA would “definitely take steps” against doctors who have participated in torture. What kind of action, I asked him. “We can expel him from membership, bring his actions to public notice, etc.” he replied. Conversely, the IMA will also support doctors who are being pressurized to participate in or approve torture.

During his Presidency, Dr Desai says he wants to create public opinion in the medical fraternity about torture and about those who participate in it. But according to him, running human rights training sessions for doctors will have many difficulties. He cites the example of training sessions for CME (Continuing Medical Education) programmes, which take up no more than 30 hours a year. They have drawn a limited response from doctors, even though “there are some who take it seriously.” Besides, he thinks it will be difficult to run such training sessions in rural areas, again judging from the experience of CME programmes. Still, Dr Desai intends to discuss these issues in the IMA meeting scheduled for March 21st and 22nd, 1998.

Dr Hosi Kapadia, President of the Bombay branch, had similar views on the role of the IMA in torture cases. He did emphasize that the IMA is a “voluntary body” with no real punitive powers. The highest form of punishment available to them is to expel a member. But he repeated that the IMA will certainly take such a step if a doctor participates in torture.

With all these encouraging words from members of the IMA, there is also much scepticism that I heard about the body. Dr Mirchandani alluded to this when he told me that “the IMA is not interested in issues, though it is interested in educating doctors.” He also pointed out one barrier that the IMA may have to tackle at some point: “there is not much of a culture of volunteerism among doctors. Doctors think they do enough charity just through their work.” The point is that doctors are not always receptive to public causes like working to rehabilitate torture victims, or promoting human rights.

6.4 Doctors' Attitudes and Reactions

In the *JIMA* article I cited above, Dr Chaudhuri writes that rehabilitation “should be carried out by a team with experience as well as social and human understanding ... of the victim’s situation. The team should include doctors, nurses, psychologists, psychiatrists, social workers, etc.”

He also lists the “fundamental principles of treatment”:

- “Procedures which may remind the patient of the torture... should be avoided as far as possible.
- “Treatment shall be both physical and mental with physiotherapy as an important element of physical treatment.
- “The physical and psychiatric treatment shall run in parallel with each other.
- “Treatment shall include not only the individual victim of torture, but also his or her entire family.
- “The social condition shall be included as a factor and personal social service shall form part of the treatment.”

“Rehabilitation can be surprisingly successful,” writes Dr Choudhuri, “not only in the case of physical damage which may or may not prove long-lasting, but of psychological damage as well.” Another paper in the same issue (“*Torture and Medical Profession – An Overview*” by Dr MS Umesh) concludes by saying: “[Efforts] should be made to set up treatment and rehabilitation centres for torture victims all over India.”

I read Dr Chaudhuri’s article while I was interviewing doctors for this study. Curiously, several of them (9 of 13) said they had not seen any cases of police torture in their practices. “What I’m telling you,” said one doctor in a large Government hospital, while spelling out services a rehabilitation centre should provide, “is entirely theoretical speculation. I have no practical experience in such matters. I have never seen a clear cut case of police torture.” This was a very typical reaction. (In some cases it might have been their particular area of specialization, in which seeing victims of police torture would be rare).

Yet, most of these doctors also told me that there was a definite need for a rehabilitation centre for torture victims, and that they would be willing to offer their time to such a centre. They were quite clear about the symptoms a torture victim would exhibit. They listed the services a rehabilitation centre should provide.

This struck me as curious because these doctors were aware of the prevalence of torture, yet they had never seen any victims of it in careers stretching, in some cases, over decades. How do doctors know, then, that torture is happening? (“We know torture is going on”, Dr Desai told me).

It’s hard to know whether to accept this at face value or to put it down to a natural reluctance to enter into “controversial issues.” (As I have mentioned elsewhere, the fear of controversy is a real one; I ran up against it all through my work on this report. Undoubtedly, it is a real methodological weakness in the report).

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There is a hint of all this in the prevalent attitudes towards torture from the survey described in the previous chapter.

6.5 Victims of Other Forms of Violence

As I have mentioned multiple times in this report, I kept running up against the question: “What about other forms of violence?” People are certainly tortured in places other than police stations. Child and wife abuse in the home; violence against domestic servants; beatings in remand homes: these and many other forms of violence are common enough that doctors see cases regularly. Concern for the victims of these other kinds of violence was raised by doctors, police officers and lawyers I interviewed.

The point here is not to downplay police torture, but to ask if a centre for torture victim rehabilitation will also offer services to these victims. Some services are available to such victims: for example, women’s organizations offer battered women shelter and legal aid. But the general concern is that a new rehabilitation centre would have too narrow a focus if it concentrated only on police torture. Since this report is primarily concerned with police torture, I will not examine this aspect in greater detail. Still, it is important to remember that nearly everyone I spoke to brought up this issue. Clearly there is a feeling that a centre like this must be open to victims of other kinds of violence.

6.6 Other Miscellaneous Concerns

In my conversations while gathering material for this report, various people raised other concerns and issues about a rehabilitation centre. I will list them here as points to keep in mind:

- KF Rustamji, ex-Inspector General of Madhya Pradesh and a member of the National Police Commission, said the centre might “find it difficult to get recognition and acceptance.” If so, this could seriously limit its effectiveness. This argues for a strong programme of outreach and publicity in the community. However, this must be balanced against the need to be discreet so that victims can approach the centre in privacy and confidence.
- Dr Phatnani pointed out that centres and shelters often become a source of criminal activity. A rehabilitation centre should guard against this tendency.
- Jane Cox, an experienced union activist, stressed that to maintain its credibility and independence, the centre should not accept foreign funding. I see a validity to this argument; I am not sure what RCT will make of it.
- Sending victims of torture to such a centre, PA Sebastian of CPDR told me, must be made a legal requirement.
- The very presence of an effective centre may act as a deterrent against torture, felt MA Rane, well-known lawyer and human rights activist. That is a reason in itself to establish one.

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CHAPTER 7: Is Rehabilitation The Priority?

7.1 An Emphasis on Prevention

Prevention, the old adage tells us, is better than cure. I believe that holds true as far as torture is concerned, too. It is vital that we recognize that victims of torture need special help to return to society: certainly rehabilitation services must be provided to them. But finding ways to eradicate the evil of torture altogether is probably even more vital. It seems to me that rehabilitation by itself is not enough. In fact, it may even serve, by omission, to perpetuate the practice of torture. International declarations against torture all emphasize its prevention. Here's a sampling:

- “No State may permit or tolerate torture or other inhuman or degrading treatment, and *each State is requested to take effective measures to prevent such treatment from being practised within its jurisdiction.*” (UN Declaration Against Torture, 1975; emphasis added).

- “The World Conference on Human Rights ... urges all States to put an immediate end to the practice of torture and eradicate this evil forever. ... [It] reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention.” (World Conference on Human Rights, *Vienna Declaration and Programme of Action: Freedom from Torture*, 1993; emphasis added).

- “The World Medical Association again calls upon its member associations ... to protest alleged human rights violations through communications that urge the humane treatment of prisoners.” (World Medical Association *Resolution on Human Rights*, WMA General Assembly, Stockholm, 1994).

In a recent article in the journal *Torture* (Vol 7, No 3, 1997), Chinua Akukwe writes: “The major challenge for human rights and anti-torture organizations is to develop strategies and policies that *prevent* torture.” (emphasis in original).

Members of the Indian Medical Association are also concerned with the prevention of torture. In a 1986 issue of *JIMA*, Gouri Pada Dutta wrote: “It is time that the medical profession of India, as a whole, raises its voice against such atrocities [torture] in any country. They should not only stand united against such atrocities, but also [restrain] their professional colleagues from being associated directly or indirectly with such travesty of human values. It is the urgent task of our professional organisations to investigate if such tortures are being committed in our own country and to stand by the side of the courageous colleagues who dare protest such inhuman onslaughts on the people.”

Girish Srinivasan, an activist with the LHS in Bombay, addressed much the same points in conversation with me. There is a need, he said, for “organizations that will raise their voices against torture, take up specific cases.” He would like to see civil liberties organizations

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strengthened, in fact in preference to establishing a rehabilitation centre. Students must involve themselves in civil liberties issues, as they used to during the Emergency (1975-77). There is a value to exposing and publicizing cases of torture, because such exposure is the most effective deterrent to more violence.

Finally, Fali Nariman, an eminent lawyer and jurist, said this as far back as 1981 at the International Colloquium on How To Combat Torture: "I do believe that the best way to combat and ultimately reverse all forms of excess (torture and the like) is by exposing them and publicising them, nationally and internationally. *But one must carry the public. To do that they must be convinced that the established system will work, that law and order can be enforced and maintained without torture. There must be an awareness, an awakening to the psychological imperative that violence begets more violence; that systematic brutality debases a people. It is important that people know – and knowing, feel – what is happening around them.*" (emphasis in original).

I have no doubt that eradicating torture is an Indian – a worldwide – human rights priority. While it is true that treating its symptoms is an important part of that effort, eradication is best accomplished by fighting to prevent torture from happening at all. This means a renewed and sustained emphasis on ethics and human rights: these must be part of college curricula; rights organizations must expand their influence and activities; people must be made aware of their rights. Again, education, and perhaps especially education of women, is a priority that can wait no longer.

Chinua Akukwe listed some of what he called the "primary prevention issues" in his article in *Torture*. They are: "assuring economic security; improving social conditions; access to education opportunities; independent judiciary; environmental justice; and treating torture as a public health problem."

7.2 Efforts to Promote Human Rights

There are some interesting efforts in some of these directions in Bombay today. For example, police officers attend seminars and workshops on different aspects of human rights. For some years, Asghar Ali Engineer of the Centre for Study of Society and Secularism has held regular day-long workshops on communal issues for police officers and constables. This is a particularly urgent issue, because there was much evidence during the riots in Bombay in 1992-93 that the police were significantly biased against Muslims and harboured all kinds of stereotypes about them. These biases coloured their actions at the time of the riots. Engineer's workshops are usually well-received.

The Department of Civics and Politics at the University of Bombay now runs a one year post-graduate diploma course in human rights. With classes being held on weekends, it is aimed at professionals who want an exposure to human rights. The course examines the theory and history of human rights; human rights in India, covering laws and the rights of minorities; it also discusses human rights in a global context. Civil liberties and their abuses, as well as rights against torture, find mention in the prospectus for the course. Lectures are by retired judges and police officers,

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activists, doctors, lawyers and so on. One student who is taking the course this year, Arvind Pednekar, told me that the course is particularly useful for people with little or no prior exposure to human rights.

Similarly, at the St Xaviers' Institute of Communication, journalism and public relations students take courses that explore human rights issues as part of their curriculum. These are students who would not ordinarily be concerned with or exposed to human rights issues. Anjan Ray, who teaches one of these courses, says he begins the term with a "consideration of poverty and illiteracy as a denial of basic human rights, as an abrogation of the Government's civic responsibilities." He will go on to address civil liberties violations, political oppression and so on, focusing on how his students can research these issues and write about them.

Human rights groups organize regular events that are open to the public. These have been a presence in the city's calendar for, in some cases, years. The Human Rights Law Network has a monthly lecture series in association with the YMCA that has addressed such topics as police encounters, labour laws, women's issues and more. The Indian Radical Humanist Association also arranges monthly lectures on various rights issues (in March 1998, KF Rustamji is scheduled to speak on "The Rule of Law"). On a broader canvas, the Foundation For Humanization (FFH) has been setting up Humanist Centres in different parts of the city, getting citizens to take up local issues. For the February Parliamentary elections, FFH mounted a large and visible voter-awareness campaign, urging voters to question their candidates on health education, law and order and other public issues.

I touch upon these, even if they are still small efforts, because I believe it is through these kinds of efforts that a greater understanding for human rights will eventually come about.

I fully believe that rehabilitating torture victims must go together with working to end torture. That is why these various attempts to spread an understanding of human rights must be encouraged; that is why civil liberties groups must be supported and strengthened.

7.3 More Can Be Done

Through 1998, the *Times of India* has carried a "Human Rights Campaign" on its pages. While this was clearly motivated by cases against one of the owners of the newspaper who was intensively questioned by the Enforcement Directorate, the very reach of the *Times* has caused its campaign to be noticed. The campaign has reported the Enforcement Directorate's excesses and the alarming rise in custodial deaths around the country. Perhaps this campaign by the *Times*, even if it is motivated, will be the beginning of a closer look by the press at how human rights are routinely abused in India.

There is ample room for human rights campaigns by various other sections of society as well. There are dozens of NGOs, large and small, that concern themselves with human rights. While most of them are vocal and able to get some attention, there is a case for a collective voice, a kind of umbrella forum, or federation, for human rights to which all these NGOs and other groups will subscribe. Colin Gonsalves has been thinking along these lines and has plans to use the Human

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Rights Law Network as a base for something like this. If more lawyers can associate themselves with these efforts, if they can make themselves more easily available for public interest cases, that would work to making the judiciary more aware of and interested in human rights issues.

Even with the scepticism I mentioned, and the IMA's limitations, it was gratifying to hear various representatives of the IMA express their determination to begin training programmes for doctors in torture rehabilitation. Potentially, the IMA is a powerful body, a loud voice for ethics and justice. It must be encouraged, or pushed, to use that voice. In addition, as Dr Jesani has pointed out, "training in and adherence to medical ethics are the most neglected areas of medical education and practice in India." As something of a corrective, several doctors and other professionals formed the Forum for Medical Ethics Society in 1992. A year later, the Forum began publishing *Issues in Medical Ethics*, the only journal on medical ethics in India. The Forum has also held training sessions, various seminars and workshops on medical ethics and human rights, and has established a relationship with the IMA as well.

In the end, perhaps, a true awareness of human rights will come only via a generational change. That places the highest responsibility on families, who will have to teach their children that the man who tortures, the man who abuses human rights, is evil and must be shunned. We must nurture and encourage that kind of public revulsion.

CHAPTER 8:

Why Does Torture Happen?

At the beginning of this report, I mentioned briefly that torture happens in a context. There are reasons the police act the way they do with suspects they take into custody, reasons that came up with nearly everyone I spoke to for this report. I want to address some of these reasons here, because torture cannot be discussed without some idea of this context.

8.1 Results In A Hurry

Many observers have pointed out that police brutality has its roots in the pressure policemen feel to produce results in a hurry. “Police excesses and violence often spawn from the erroneous notion of policemen to adopt short-cut, extra-legal methods to achieve results,” write the NHRC’s Sankar Sen in *The Statesman* on July 24 1997. “[V]ery often there is relentless pressure on the police.”

Especially at turbulent times, both the public and politicians demand quick action from the police to put down crime, without much thought given to the methods used. Officers find it hard to resist this kind of pressure and fail to keep their subordinates in check; torture then happens routinely. Retired DCP AG Patwardhan told me that some superior officers, far from controlling their subordinates – their primary job – regularly encourage torture. Even upright police officers often find it easy to overlook crimes by subordinates; after all, they reason, “you need a crook to catch a crook.”

But while this is an explanation, we must not assume that policing cannot be done without the use of torture. Many people remember the tenure of Vijay Karan as New Delhi’s Commissioner of Police some years ago. Karan announced that he would not tolerate any torture in any police station. For the two years he was Commissioner, there were no complaints about custodial violence; crime was kept under check as well. Karan showed it is possible to do police work without torture. He proved torture was a mere short-cut.

8.2 Poor Conditions

Policemen live and work in appalling conditions. Housing is a major problem. In 1981, the National Police Commission pointed out that “provision of free housing to non-gazetted police personnel has been recognized as the responsibility of the State” since 1861. Yet, in 1981, over 50% of the country’s non-gazetted (meaning those who are not officers) police personnel did not have any Government-provided housing. Worse, most of those who had been given Government housing were in barracks, not in “family accommodation.” In Bihar, only 4% of about 49,000 constables and head constables had been given family accommodation. Across the country, 89% of those policemen who had been given no housing at all were constables and head constables: the lowest ranks.

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“The deficiency in housing and increasing hardship in paying high rents for private accommodation secured with great difficulty,” commented the NPC, “operate as the largest single factor responsible for grievous loss of morale in police ranks, particularly the constabulary.”

The NPC highlighted other aspects of police working conditions. They are paid pitifully poor salaries and routinely asked to put in long hours of duty. The NPC wrote: “A survey has shown that the normal working time put in every day by an average subordinate police officer employed on public order or crime investigational duties is 13 hours.”

No other workers are called upon to perform like this. These conditions serve to brutalize policemen; “the constables are the most brutalized,” said Anil Singh, a journalist at *The Times of India*.

8.3 Public Attitude Towards Police

The public holds policemen in very poor esteem. Constables and lower-ranked officers, in particular, are commonly viewed as thugs and extortionists. Naturally, this image persists largely because there is an element of truth in it. Still, the abysmal image reduces a policeman’s self-esteem, making him feel something of an outcast from society. Policemen feel that their achievements are never adequately recognized, while their failures and violations of the law get endless publicity. Whatever the validity of this, these factors make a policeman more likely to resort to brutality with prisoners. That in turn pushes the image even lower. It is hard to know how this circle can be broken, but it must be.

A related aspect of this is the deep lack of public trust in the police. Not only is this a fact of life, it has even been coded into our laws.

8.4 Outdated Laws

Section 25 of the Indian Evidence Act, 1872, reads, in full, like this: “No confession made to a police shall be proved as against a person accused of any offence.” That is, confessions made to a policeman are not admissible as evidence to prosecute an accused person. This is precisely because of the fear that the confession might have been made after coercion, after torture. The exception comes from Section 27, under which, if the accused leads the police to the place where he has hidden a weapon, or to the stolen goods, etc, and that is part of his confession, it is admissible as evidence.

These sections of the IEA have their roots in the British colonial administration, reflecting a distrust of the Indian sections of the police staff, that they would abuse their powers. The Committee examining the draft of the IEA in 1871, deciding to retain the inadmissibility of confessions made to the police, commented: “This appears to us to be a special matter relating rather to the discipline of the police than to principles of evidence.”

Today, police officers routinely point to these sections of the IEA as being one reason for torture in police stations. A typical scenario might be: police beat a confession out of a suspect; they plant

a weapon somewhere; they take the suspect there and have him dig it up. That weapon allows them to win their case against the suspect, whose confession by itself is inadmissible.

Thus the very distrust of policemen in the law, the distrust that was supposed to safeguard against torture, allows policemen to get away with brutal methods. PR Parthasarathy, a retired Director General of Police I spoke to, wrote in *The Hindu* on September 19, 1995: “[T]he same legal provision bristling with distrust has also enabled the police to evade accountability... this distrust is exploited by unscrupulous elements in the police.”

Parthasarathy asks: “Why not for a change repose trust in the policemen and see what happens? After all, trust begets trust.”

8.5 Political Interference

“The quality of police performance,” the NPC wrote in 1981, “was and continues to be adversely affected by [political] interference.” Politicians retain control over appointments, transfers, suspensions and promotions of police officers (and bureaucrats, for that matter). With the increasingly venal nature of Indian politics, this control has become a powerful tool in the hands of politicians to get the police to do favours. It works both ways: there is a promise of career advancement if demands are adhered to; there is the threat of transfers if not. As the NPC commented: “The threat of transfer/suspension is the most potent weapon in the hands of the politician to bend down the police to his will.”

This kind of pressure allows politicians to ask for all kinds of things. Political friends can be let off the hook; foes arrested and prosecuted. Evidence can be suppressed. Opposing political figures are charged with false criminal cases, or even taken into preventive custody. Besides, proximity to powerful political figures allows policemen to escape accountability.

All these factors, to one extent or another, serve to encourage the use of torture.

The NPC addressed this very issue of political interference, urging that “the power of superintendence of the State Government over the police should be limited for the purpose of ensuring that police performance is in strict accordance with law.” It went on to recommend setting up Security Commissions in every state which would hold superintending responsibility over the police, thus largely taking away the powers of unscrupulous politicians.

Unfortunately, this, like many other NPC recommendations, has remained on the paper it was written on in 1981.

8.6 Does Society Condone Violence?

Most commuters in Bombay’s crowded suburban trains have had their pockets picked at least once or twice. Every now and then, one of these pickpockets is caught in the act. What happens then is not a pretty sight. He is hammered mercilessly, with everyone in the compartment getting in a blow or two. Beaten to a pulp, the hapless man is finally handed over the police, where he

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probably will be subjected to even more beating. Few among those who assaulted him think twice about this. On the contrary, smiles are exchanged all around, in the general conviction that something greatly beneficial to society has been accomplished.

In such an atmosphere, concern for victims of police torture seems almost farcical. It is hard to deny that there is a definite social sanction for violence against suspected criminals. The IMA survey on doctors' attitudes towards torture indicates that doctors probably also share similar attitudes towards violence, torture and coercive police techniques. Torture happens for many reasons, but perhaps for this one above all: in the end, the police knows that the majority of the public approves. MA Rane told me: "Our culture allows third-degree methods; the middle class wants them used."

This is not a new phenomenon. After the 1979-80 blindings in Bhagalpur, 15 police officers were suspended. At least 12 were subsequently reinstated. Some police and other officials were even promoted. As even Amnesty International reported at the time, the Chief Minister of Bihar pronounced that the blindings had "social sanction." He was right: people held demonstrations to protest even the hint of punishment against police officers, arguing that the blinded men deserved what they got.

Retired High Court Justice Shiraz Daud pointed out that in some ways, torture is a "legacy of our religions themselves – they sanction torture methods for punishment." This is not hard to believe when you consider what the religions prescribe. As implemented in Islamic countries, Islam asks for thieves' hands to be cut off. In "*Social Movements and Social Transformation*", MSA Rao tells us about this injunction from the Hindu scriptures: "If a *shudra* mentions the name and class of the twice-born with contumely, an iron nail, ten fingers long, shall be thrust red-hot into his mouth."

Particularly since people rounded up by the police tend to be largely from the lower classes and castes, it is easy to ignore their rights and subject them to torture. Not only does this have some amount of social sanction; it can also happen because these people have no voice and nobody to speak for their rights.

This state of affairs argues, once more, for what I have written of elsewhere in this report: that human rights and organizations struggling for them in India must be strengthened. As Justice Daud told me: "Reforms in society are required."

8.7 Torture Is Still Unpardonable

With all these reasons that torture happens, we cannot forget the basic truth about it: it is still illegal and unconscionable. The police resort to it because, as Justice Hosbet Suresh said: "75% of the police don't know about investigation."

The police must be forced to act within the law; but in addition, they must also learn to use their judgement while acting. AG Patwardhan alluded to this when he told me: "The police have

been given great powers, but those powers are to be used with discretion. They do not understand this.”

MN Buch wrote in *The Statesman* on June 19 1997, “The law does not allow a policeman to beat any one, not even a criminal. ... Nothing will change till the police realise that use of force is not permitted except under clearly defined circumstances.”

CHAPTER 9: **Conclusions**

9.1 Findings

As I worked on this report, several points came up over and over again. All have relevance to the issue of rehabilitation of torture victims. Here they are:

- Torture by the police is widespread and routine. Even senior police officials admit that it happens.
- Specific methods of torture are used: these often leave very typical, well-known signs. They cause well-known psychological problems.
- The weakest sections of society – children, women, the poor – are the most frequent targets of torture.
- Rehabilitation of torture victims – some would say all prisoners – is certainly a societal imperative. A centre to take up this task is needed, providing the services detailed earlier in this report.
- A rehabilitation centre for police torture victims should welcome victims of other kinds of torture and violence.
- But as I worked on this report, I also kept arguing with myself about the need for a torture rehabilitation centre. There were two main questions I tossed back and forth repeatedly in my mind. They are:
 - Will a centre catering purely to victims of police torture be viable in Bombay, or in India?
 - As vital as it is to rehabilitate torture victims, is it not a greater long-term priority to prevent torture in the first place? That is, by training programmes, by human rights curricula, by strengthening human rights groups?

I tried to keep these issues in mind as I wrote this report.

9.2 Recommendations

Within my brief for this report, I have one simple recommendation: RCT must work with its Indian partners to establish a rehabilitation centre for torture victims. I have described earlier the shape it must take, the services it must provide.

But as I have also indicated earlier in the report, while rehabilitation is an imperative, there is also an constant need to spread the message of human rights in a number of ways. If our goal is to bring an end to torture – as it surely must be – human rights need to be much more widely known and respected in India. In particular, human rights must be part of professional training programmes for doctors and police/military personnel.

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More generally, human rights – perhaps defined as a greater respect for all human life – must become a part of society itself in ways it is not today. It should be integrated into school and college curricula across the country. Human rights groups like PUCL and CPDR must find ways to expand their activities. In the long run, there has to be an end to the kind of social sanction violence has, sanction that makes torture acceptable, accepted and not worth making a fuss over. There is a case here, I am positive, for a near-radical makeover of society.

Of course, this kind of social reform has a number of dimensions which this report cannot examine. But I hope the point is clear. Torture cannot be viewed simply as an evil whose victims need help.

It is a disease, no less, that must be eradicated. This overarching view of torture, this overall goal, must guide any work RCT begins in India.

Appendix A: **How Much Torture?**

As I mentioned at the start of this report, it was hard to get data on just how much torture happens. Among other things, torture is a subject that is usually hushed up. It is usually when some external agent sees it happening (or some symptoms of it) and makes some noise about it that cases get publicity. For example, the death of three boys in a home in Bhiwandi came to light only when a social worker who visited the home regularly decided to file a petition in the courts. While there was little comprehensive data, I got various indications of the amount of torture during my interviews and research. I will list them here. Taken together, and read with the rest of this report, I think they will offer some idea of the amount of torture that is prevalent.

- JJ and KEM Hospitals are two large municipal hospitals to which the police regularly bring patients for treatment. Since they are run by the municipality, they attract a large number of poorer patients as well, for whom these two (and other municipal hospitals in the city) are the only places available for tertiary health care. At my request, a senior doctor at JJ Hospital went through the case papers in the Out Patient Department (OPD) in just one particular area of medicine. In the previous six months, six cases of police torture were found. I was told this was a fairly typical rate for this medical specialty. Other specialties will see comparable numbers of cases.

- Dr Sanjay Nagral, surgeon and an Associate Professor at KEM Hospital, told me the police bring somebody from the lockup to KEM every two or three days. Some percentage of those have been beaten. He estimates that KEM sees 1-2 cases of torture every week.

- Justice Daud estimates that over his 28 year career, he saw about 20 cases of police torture. Consider that this is one Judge, in one court in the country. Consider also that many victims are too poor to file court cases, or are intimidated, or don't know their rights, or all three. This makes it likely that those 20 cases really represent many times more than that number.

- The National Human Rights Commission received reports about 92 cases of "police excess" (not custodial deaths) in 1996.

- CEHAT did an analysis of the causes of police custodial deaths in Maharashtra in the 1980s. According to police records, there were 155 such deaths between 1980 and 1989. Here is the breakup CEHAT reported.

<u>Cause</u>	<u>No.</u>	<u>Cause</u>	<u>No.</u>
Hanging	45	Strangled	1
Natural	21	Kidney Disease	1
Police Action	15	Disease of Abdomen	1
Alcohol Consumption	9	Car Accident	1
Heart Attack	9	Snake Bite	1
Beaten by people	9	Giddiness	1
Jumped in well	3	Bullet	1

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Self immolation	3	Fell from the bed	1
Jumped under autorickshaw	3	Fits	1
Poison	3	Self-inflicted injury	1
Tuberculosis	3	Wound	1
Jumped under train	2	Jumped from window	1
Jumped under bus	2	Unconsciousness	1
Neck wound	2	Fell on others	1
Burns	1	Cause not known	8
Skin disease	1	No record available	1
Jaundice	1		

The *Times of India* reported (February 14, 1998) that custodial deaths in the country had risen alarmingly between 1996 and 1997. The data was from the Ministry of Home Affairs and, I was told by the *Times* journalists who wrote the report, from “internal documents” of the NHRC. The table below has the figures the report quoted. Note the substantial increases in all but two states; note also the frightening increase in Maharashtra. The reporters were unable to tell me whether these increases were due to better reporting (and so perhaps the deaths were under-reported earlier), or represented a freer hand given to the police.

<u>State</u>	<u>1995-96</u>	<u>1996-97</u>	<u>% change</u>
Andhra Pradesh	55	98	78.2
Bihar	75	92	22.7
Gujarat	20	50	150
Karnataka	12	37	208
<i>Maharashtra</i>	33	200	506
Rajasthan	18	30	66.7
Uttar Pradesh	38	170	347
West Bengal	50	49	-2
Delhi	40	25	-37.5

Encounter deaths in Bombay (*The Week*, October 26, 1997):

1983	2	1994	29
1991	15	1995	9
1992	21	1996	56
1993	26	1997 (through October)	69

I went through newspaper clippings for 1997, looking for cases of torture and beatings by the police. I specifically excluded deaths. Here is a summary of what I found.

<u>Name</u>	<u>Place</u>	<u>What happened</u>	<u>Paper</u>	<u>Date</u>
7 undertrials	Rajkot	Beaten, balm in eyes	Statesman	Feb 16
N Ningayya	Juhu, Bombay	Beaten, lost eye	Indian Express	Mar 5
Several	Golibar, Bombay	Beaten	Times of India	May 6

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Martin Massey	Delhi	Beaten	Times of India	May 13
SC Khanna, U Shanker	Delhi	Beaten	Times of India	May 16
20 villagers	Gujarat	Beaten	The Hindu	May 24
20 journalists	Kashmir	Beaten	The Hindu	Jun 28
Gurdial Singh	Punjab	Stripped, beaten	Times of India	Jul 1
5 Latvians	Calcutta	Beaten	Sunday	Aug 10
Vinay K Sharma	Delhi	Baton in rectum	Pioneer	Aug 18
Anjubai Pujari	Solapur	Beaten	Indian Express	Sep 24
Sayed Nazir	Oshiwara, Bombay	Beaten	Indian Express	Oct 3

APPENDIX B: **Selected Indicators (Bombay/Maharashtra/India)**

The text of the report contains various figures of interest. Here are a few more, to paint a fuller picture of the country, its largest city and its most industrialised state.

<u>Indicator</u>	<u>Bombay</u>	<u>Maharashtra</u>	<u>India</u>
Population (Millions), '91	9.9	79	846
Females/1000 Males, '91	818	934	927
Infant Mortality Rate/1000, '92	47.2	59	79
Female literacy rate (%), '91	75.8	52.3	39.3
Female worker participation (%), '91	14.5 ('93)	33.1	22.3
Number unemployed (1000s), '94	747.7	3363.8	36,040
Hospitals, '93	1050	3115	15,067

APPENDIX C: **Abbreviations Used In This Report**

BJP	Bharatiya Janata Party
CAT	Convention Against Torture (United Nations)
CEHAT	Centre for Enquiry into Health and Allied Themes
CME	Continuing Medical Education
CPDR	Committee for the Protection of Democratic Rights
CrPC	Criminal Procedure Code
DCP	Deputy Commissioner of Police
FACSE	Forum Against Child Sexual Exploitation
FFH	Foundation for Humanisation
HRW	Human Rights Watch
IEA	Indian Evidence Act
IMA	Indian Medical Association
IPC	Indian Penal Code
IPHRC	Indian People's Human Rights Commission
IPT	Indian People's Tribunal on Human Rights and the Environment
JIMA	Journal of the Indian Medical Association
LHS	Lokshahi Hakk Sanghatana (Democratic Rights Organisation)
NHRC	National Human Rights Commission
NPC	National Police Commission
OPD	Out Patient Department
PUCL	People's Union for Civil Liberties
PUDR	People's Union for Democratic Rights
RCT	Rehabilitation and Research Center for Torture Victims
WMA	World Medical Association
YMCA	Young Men's Christian Association

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