

@MEMORANDUM TO THE GOVERNMENT OF INDIA
arising from an Amnesty International visit to India 5-15 January 1994

INTRODUCTION

In January 1994, Amnesty International carried out its first research visit to an Indian state - Maharashtra - for 14 years. The visit, by Professor Rod Morgan, Dean of the Faculty of Law, Bristol University, and Yvonne Terlingen, of the Asia Department of Amnesty International's International Secretariat, was to Bombay and took place from 8 -15 January 1994. The visit was an important step which substantially furthered the dialogue initiated in November 1992 when an Amnesty International delegation discussed its human rights concerns, for the first time in many years, directly with the Indian Government in Delhi. Having reaffirmed its commitment to protect human rights and repeatedly and publicly condemned custodial violence, which has remained one of Amnesty International's core human rights concerns in India, the government eventually permitted Amnesty International to see the situation on the ground in one Indian state and to talk freely to officials and others.

Before visiting Bombay, the Amnesty International delegation met the Minister for Home Affairs and the Minister of State for Home Affairs, as well as the Home Secretary and other officials in Delhi, from 5 - 8 January 1994 to discuss the organization's continuing human rights concerns. These concerns included: the need to strengthen safeguards for people in custody; the apparent rise, despite the government's official condemnation of such practices, of the numbers of people dying in police custody in Delhi, apparently as a result of torture or ill-treatment; and the fate or whereabouts of hundreds of people reported to have "disappeared" in recent years in the states of Jammu and Kashmir and Punjab (described in an Amnesty International report released in December 1993)¹. The delegation was glad to hear that the Government intends to put several proposals to Parliament in the forthcoming session to enhance safeguards of suspects in custody.

Amnesty International's proposal to visit Jammu and Kashmir was also discussed, but a date for such a visit - which remains Amnesty International's first priority - has, unfortunately, not yet been set.

Discussions with the Secretary General of the newly established Human Rights Commission served to inform Amnesty International about the intended focus of the Commission. The delegation was informed that State Human Rights Commissions are expected to be established in the course of the year. The delegation was also glad to learn that the Commission intends vigorously to pursue such important human rights issues as custodial deaths and custodial rape. The mechanisms which the Commission is seeking to develop to record complaints about human rights violations and to investigate them were also discussed. Amnesty International will follow the Commission's work closely and agreed to send the Commission its published information about human rights in India.

¹ See: 'An Unnatural Fate' 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab, AI Index ASA 20/42/93, 15 December 1993.

AMNESTY INTERNATIONAL'S VISIT TO BOMBAY

Amnesty International's visit to Bombay has been invaluable in deepening its understanding of the manner in which human rights protection mechanisms work in practice in India. First-hand information from those directly involved was collected. The delegation received every co-operation from officials, both in Delhi and Bombay. Discussions with senior officials in both places were marked by a frankness and openness which Amnesty International welcomes and which it publicly acknowledged in a statement issued shortly after its delegation returned to London from Bombay (Appendix A). The delegates were given permission to visit a police station in Bombay. They also talked freely to lawyers, those actively concerned with the protection of civil liberties and alleged victims of human rights violations. They were able to discuss reported violations - and potential preventive mechanisms - immediately with officials on the spot.

Amnesty International originally proposed to visit Bombay in March 1993 after receiving reports of indiscriminate police shootings and indications of police communal partiality during the December 1992 - January 1993 riots which left at least 1500 people dead (the exact number is contested). The government first refused permission for such a visit in April 1993. The proposal was reiterated in June 1993 in a letter to Chief Minister Sharad Pawar. Amnesty International explained that it hoped to meet government officials as well as lawyers and members of civil liberties organisations. It said that it also wished to discuss more recent allegations of arbitrary arrests and ill-treatment of Muslims in detention as well as the action the state government had taken in respect of dozens of people reported to have died in police custody between 1985 and 1993. Permission was then granted for a visit, but subsequently visits were twice postponed at the request of the government.

Amnesty International's decision to visit Bombay was also prompted by the wish to understand police procedures and practices in a state not faced with the special pressures to which the police are subjected by circumstances such as the widespread armed insurrection now prevalent in Jammu and Kashmir and some Northeastern states, and, to a lesser extent, in Punjab. In raising the concerns that follow, therefore, Amnesty International in no way implies that the human rights situation in Maharashtra is exceptional and deserves more attention than that in other Indian states. Indeed, more widespread human rights violations have allegedly taken place in other Indian states. The concerns identified below, however, are, in Amnesty International's view, symptomatic of human rights problems existing throughout India. Amnesty International's recent mission therefore concentrated on the prospect of introducing preventive mechanisms in "normal" policing environments, reasoning that if effective measures to protect human rights are not taken in Bombay, they would stand little chance of being adopted in states where more extreme pressures were being experienced.

This memorandum therefore focuses on recent arrest and detention practices in Bombay and the manner in which, in Amnesty International's view, they are conducive to illegal detention, ill-treatment and torture. It also addresses the rules governing the use of force during civil disturbances and mechanisms to establish the truth about, and accountability for police abuse during the December 1992 and January 1993 rioting in Bombay.

Amnesty International hopes that this memorandum, including the recommendations made to enhance police accountability generally, will contribute to the important national discussion to find better ways and means to safeguard human rights in India.

1. Arrest and detention practices: the problem of unrecorded detentions

All the evidence suggests that large numbers of people are held in police stations in Bombay without there being a proper police record of their having been detained. Several informed commentators, including lawyers, told the Amnesty International delegation that people are routinely picked up, typically at night, that they are taken to police stations without apparent reason, and are usually released within hours or days, often on payment of financial bribes to the police. This corrupt practice is said to be widespread.

Such practices are legally prohibited. Section 347 of the Indian Penal Code makes "wrongful confinement to extort property, or constrain to illegal act" an offence punishable with three years' imprisonment. Yet senior police officials acknowledged that unrecorded police detentions are relatively commonplace. One senior officer told the Amnesty International delegation: "I don't know whether it is 50 percent of detainees [as Amnesty International had been told by one source] or 25 percent". He added that he had visited police stations during routine inspections, had found many unrecorded detainees and had ordered their release. Another senior officer corroborated this picture. He acknowledged that "It is not a good practice and can lead to abuse", but contended that the actual percentage of unrecorded detentions was fewer. Both officials qualified their statements by saying that most unrecorded detentions related to non-cognizable offenses for which the police had no powers to detain but against which the public expected the police to act. In other cases, they said, the police took people to police stations for short periods simply in order to establish their identity. Their suggestion was that such police practices were not corrupt but were in response to public demands.

This may be true. And the percentage of unrecorded detentions may be lower than some commentators suggest. Nevertheless, unrecorded police detentions are both illegal and dangerous, not least because they may facilitate more serious abuse, particularly torture, a practice that Amnesty International has been concerned about throughout India. Lawyers in India have long complained to Amnesty International that suspects are taken into police custody, tortured and then released. But when a complaint is subsequently made the police simply deny that they were ever in custody: there is no record of their detention.

Amnesty International has documented such practices in Punjab and in Jammu and Kashmir², where they are widespread and a feature of many "disappearances" following police and security forces custody. But unrecorded detentions are a regular occurrence also in other states, including Maharashtra, where there is no organized armed opposition to the government. For example, according to former Delhi Police Commissioner Vijay Karan: "Frequently, suspects are held in illegal custody so that they can be given third degree, but without the psychological pressure of having to produce the suspect in court within 24 hours, which is the case when formal arrests are made"³. In Tamil Nadu a special Commission of Inquiry was established to investigate the veracity of widespread allegations submitted to the Madras High Court of illegal detentions by the police. In its 1992 Report, the Commission found substantive evidence of such abuse⁴.

² See: [Human Rights Violations in Punjab: use and abuse of the law](#) (ASA 20/1191) and Amnesty International's 15 December 1993 report on 'Disappearances' in Jammu and Kashmir and Punjab, referred to above.

³ [Seminar](#), May 1993, page 46.

⁴ Justice Khalid, constituting a one-man Commission of Inquiry appointed under the Commission of Inquiry Act, submitted his report to the State Government in May 1992; it was tabled in the State Assembly on 1 April 1993. The Commission awarded compensation to victims of illegal detention in four cases and in one further case to the family

During its visit to Bombay the Amnesty International delegation heard allegations of the more specialised use of illegal detention. Amnesty International's delegates interviewed several people who said they had been taken by the police at night, had been beaten for several days to disclose information, and had been released without a record of their arrest ever being made. They were poor and nearly all of them were too frightened to complain about it, fearing the police might retaliate if they did.

Particularly disturbing were allegations that the police use "hostages" to force the surrender of suspects in the wake of the bombings which took place in Bombay on 12 March 1993, killing more than 300 people and wounding over a thousand. The police resorted to taking away the wives, mothers and other family members of suspects they could not find. The police were under great pressure: the government attributed the blasts to Pakistan's Inter Service Intelligence in cooperation with criminal Muslim elements in Bombay (led by "Tiger Memon"), and police suspicions focused on members of the Muslim community who then became victims of unlawful and abusive action by the police.

Amnesty International's delegates interviewed a 60-year-old Muslim woman who, unusually, made a sworn statement to the High Court complaining about her treatment. She said that six police officers arrived at her house in the early hours of the morning in early April. They asked where her eldest son was, started beating her and, when the police could not find him, took her, together with her three daughters and her younger son to Mahim Police Station. There, she alleges, she was regularly beaten with sticks and rulers on her head and hands until one of her nails came off. She was allegedly beaten by male police officers who wanted to know where her eldest son was. The mother was released with her younger son after six days when her eldest son surrendered to the police station. The police never suggested that she was suspected of a criminal offence. When members of her family tried to see her at the police station, they were refused permission. Although her name was apparently written down in a police diary, no proper record of her detention is known to have been kept. Nor was she ever brought before a magistrate.

A younger woman told the Amnesty International delegates that she was twice taken away by police from Mahim Police Station who wanted her to tell them where a neighbour was. On the first occasion, she was beaten by a female police officer and released within hours. On the second occasion, in April 1993, she was kept for four days in the police station with her brother. Her statement was taken by the police, but never, she said, was her arrest recorded, nor was she brought before a magistrate. On one occasion after her release the police came to ask for her husband. When she replied that he was not in, she was told: "You better get him and bring him to the police station otherwise we'll take you and your children".

Amnesty International was told that in some cases all female members of a family had been arrested and that the wife of one key suspect (the Amnesty International delegates were not able to interview the woman herself) was stripped by police in front of her husband, beaten until she

of a man who had died in police custody. It made a number of important recommendations to prevent such practices. These include an obligation to inform a relative of an arrest, whose acknowledgement thereof should be recorded on an information sheet that records the time and place, date and name of the police station whose officers are responsible for arresting the person. Judge Khalid said too that senior police officers should be obliged to visit police stations often to see whether persons held there are kept without a record. Amnesty International does not know what action, if any, the Tamil Nadu state government has taken to implement these recommendations.

developed a haemorrhage and subjected to grossly humiliating treatment. A 38-year-old woman complained to the Bombay High Court in a sworn statement that she had been arrested on 31 March 1993 in the middle of the night, was asked for her eldest son, and that the police, when they could not find him, took her and her whole family, including three daughters, to the Mahim police station. There she was held with a pregnant woman who she said was bleeding due to police beatings because she was the wife of a suspect. She also said: "My three daughters were beaten on the next day [1 April 1994] by one male officer whom they can identify. While beating... they were threatened that they will be made naked by the officer, if they did not give the whereabouts of their brother M.S. They all three were beaten by rods and belts [and] they were slapped and abused. I was also beaten on the same day by a ruler/bamboo on my hands and my hands became black and blue... None of us were produced in any court after detention." Her daughters were released the following day, she was released after ten days but as of 7 May 1993 her husband was kept in detention, according to her statement, "being tortured daily by the police".

Similar accounts of unrecorded arrests and torture have appeared in the Bombay press. The Times of India, 5 June 1983, gave details about some six cases of "Illegal arrest, wrongful confinement and... physical and mental torture", including cases of men repeatedly being arrested and beaten by the police without records being kept and of a woman alleging that the police took her and her one-year-old son away and beat them up when they could not find her husband. Similar reports were also carried in The Independent, Bombay, 14 May 1993, The Indian Express, 11 May 1993, and The Pioneer. Particularly detailed accounts were given in a July 1993 report by a civil liberties group⁵.

There is little doubt that the use of unrecorded detentions is facilitating police abuse such as beatings and other forms of ill-treatment or torture. These are unequivocally violations of Indian law and police procedure.

2. The use of force by police to extract information is common

Nearly all those to whom Amnesty International's delegates spoke asserted that beatings of suspects in police stations are routine. Even a senior police official used phrases like a "good thrashing", while another put the matter more diplomatically: "not all police know how to behave rationally and politely". It appears that the police rely on the use of force to obtain information about crimes and are poorly trained and equipped in the use of more reliable investigative methods.

No senior policeman to whom Amnesty International spoke said they approved of torture, and Bombay's Police Commissioner was unequivocal in condemning it: "Torture is torture, even in situations of terrorism". Some, however, said that the public supported the use of torture. One police official asserted that the police, when making an arrest of a criminal suspect identified by the public, were expected to mete out instant punishment. The example was given of a simple assault: this is a non-cognizable offence, for which the police have no powers to arrest without a warrant, yet the public, it was said, expected the police to attend the incident on the spot and "to slap" the suspect. It was no doubt this contextual expectation which led one senior civil servant to say: "A policeman who does not beat is not a policeman". To the extent that there is a degree of public acceptance for the improper use of force by the police clearly it will be that much more difficult to

⁵ See: 'Salt in the wounds' - Communalism and the State of Bombay, report prepared by the Lokshahi Hakk Sanghatana, July 1993. The reports appearing in The Pioneer, Bombay, in early May 1993 are headed: 'Bombay cops' misdeeds in the open' and 'Mahim cops instill terror and disgust'.

eradicate such practices. This is one factor contributing to the police being able to torture suspects with virtual impunity.

The Amnesty International delegation interviewed several people who had been released after brief periods of police detention. All but one said that they had been beaten by the police after arrest. All those who said they had been beaten were poor and had been released after several days. The one informant who said he had not been beaten was an articulate middle class sales manager who had been arrested on a charge of assault. Several of the accounts of abuse, of Muslim women held "hostage" for example, have been given above. Amnesty International also interviewed a man arrested in April 1993 who had been beaten with sticks and belts at the Worli Police Station apparently simply in order to identify young men from the area where he lives. Held in the interrogation room of the police station, he was tied to a table and beaten on the soles of his feet for an hour by between eight and ten policemen while being shown photographs of suspects. He was never implicated or interrogated about any criminal offence himself.

The Amnesty International delegates were also told of more extreme forms of torture including: beatings of prisoners while suspended; electric shocks; and threats of death to relatives. These methods were said to have been applied to suspects arrested under the provisions of the Terrorism and Disruptive Activities Prevention Act (TADA) after the March 1993 bombings. The methods were said to have been used during interrogation at various police stations, especially at the Crime Branch of the Bombay Police, Crawford Market. All of the victims known to Amnesty International belonged to the Muslim community. In an affidavit before the Special Court established under TADA, one prisoner said:

"From the day of arrest (4 April 1993) till I was produced in the court (12 April 1993)...I was beaten, hanged with several different methods, infused electric shocks on my penis, fingers, tongue and in the nose, inserted the red chilly powder into my anus, and rub my testicles. I was beaten-up and Worli police forced me to eat human shit in a room in front of two accused... They also tied my hand by the street railing at the India Gate in the darkness around 10 p.m. to give me an impression that I shall meet with an accident and die...During the process [of my detention] police threatened me several times to kill me having an encounter."

The Amnesty International delegation was not able to interview this man and other alleged victims of such serious torture. Most of the prisoners said to have been subjected to such practices are now held on remand in Arthur Road Jail awaiting trial under the TADA provisions. But the Amnesty International delegates spoke to the mother of one of the accused, who was apparently suspected of having gone to Pakistan for military training. She claimed that her son had been given electric shocks. Another former prisoner told Amnesty International that his brother, with whom he had been held on suspicion of having played a role in the bomb blasts, was stripped by police, beaten with belts and then suspended with a stick tied behind his arms. The delegates were told that another suspect, Imtiaz Yunus, had been tortured resulting in the fracture of his leg, but that he received private hospital treatment arranged by a Deputy Police Commissioner. The Amnesty International delegates were also told that another torture victim, Rahim, described as a 67-year-old laundry wallah, had his legs burned by police at the Crime Branch at Crawford Road, and died from his wounds in J.J. Hospital shortly before Amnesty International's visit.

From all this evidence, including the acknowledgements of senior police officials, Amnesty International concludes that beatings of suspects are common and that serious forms of torture occur in Bombay from time to time. The practice is tolerated if not encouraged within the police,

and condoned by large sectors of the public and there may well be a high degree of acquiescence on the part of both the public and the authorities. Further, a key factor in its persistence is the virtual impunity and lack of accountability with which police in police stations are able to act. It is to these structural issues that we now turn.

3. What Facilitates Torture?

Amnesty International was offered various explanations as to why the police resort so often to the ill-treatment or torture of suspects.

A senior police officer attributed it to the lack of care at the time of police recruitment. Others referred to the pressure on police to mete out instant punishment because of the inability of the criminal justice system to deliver justice promptly and effectively. Speaking in general about the criminal justice system in India, the Advocate General for Bombay told Amnesty International that it took on average some six years for a case to come to court (others suggested the period was longer). By that time the likelihood of securing a conviction, or a fair trial, is considerably reduced because of the lack of witnesses and the unreliability of their evidence. As of 31 January 1993 there were 178,015 cases pending before the Bombay High Court. The Police Commissioner told Amnesty International that well over 600,000 cases were pending before all the Bombay courts. One retired policeman, in a piece entitled "The Decay of Justice" (Hindustan Times 15 January 1994), put it this way:

"We now have a democracy in which the criminal has almost become unpunishable by law. There is no way you can get at the man who is ruining your country except by asking the police to put an end to his activities, or set him right with a police truncheon."

Police susceptibility to bribery and corruption - allowing themselves to be used for personal or political ends to act illegally against specific individuals in return for financial reward - was said to be another factor. Although this suggestion was denied by a retired Bombay Police Commissioner to whom Amnesty International spoke, its delegates were told by other observers of the criminal justice system that police corruption starts at the time of recruitment and continues when officers seek lucrative transfers or promotion. It was said that payments had often to be made to gain entry to the police force and this put pressure on officers to recover their investment through further bribery. Some lawyers and magistrates were said to cooperate in such corrupt practices. Certainly reports of police corruption continue to be reported in the Indian press, including the Maharashtra press.⁶

Amnesty International has identified the following key factors that facilitate torture.

a. Lack of transparency about what happens in police stations

Virtually all those interviewed by Amnesty International in Bombay suggested that lawyers and relatives are routinely denied access to persons held in police custody. The right to consult and be

⁶ For one recent example, see: 'Large-scale corruption in police recruitment', Indian Express, 24 January 1994, in which the Commissioner of Police, Nagpur, did not deny the practice saying he attempted to counter it. The article also quotes a newly appointed Sub-Inspector in the city as saying: "I have expended over Rs 2 lakh to get in as a PSI (Sub Inspector). My priority would obviously be to recover the deficit as early as possible. And, in our society, there are segments too eager and willing to pay us".

defended by a lawyer is, however, constitutionally guaranteed in Article 22 (1) [although this important guarantee does not apply to detainees held in preventive detention] and in Gopalan v. State of Madras⁷ the Supreme Court held that the provision is mandatory. In another case, Nandini Satpathy v. P.L. Dani⁸ the Supreme Court held that an accused person has the right to insist on the presence of his or her lawyer during interrogation. However, the Bombay High Court has held that in customs and excise cases an accused person has no such right and lawyers told the Amnesty International delegation that police practice in Bombay is not to allow lawyers to be present during interrogation.

In Maharashtra, Section 204 (1) of the Maharashtra Police Manual obliges the police to permit the arrested person to consult a legal practitioner before he is taken to a magistrate for remand, and Section 192 (1) obliges the officer in charge of a police station to provide members of the legal profession access for interviews with accused persons. However, subsection (8) permits interviews to be refused in three circumstances including "when there is reason to believe that the ends of justice might be defeated or might suffer by such access".

The latter is an unacceptably broad provision. To the extent that lawyers advise their clients not to incriminate themselves by answering questions - and the right not to be compelled to be a witness against oneself is constitutionally guaranteed and was held by the Supreme Court in Nandini Satpathy specifically to cover the pre-trial stage of police investigation - the police are likely to see such advice as defeating the ends of justice. By so arguing they have a ready made excuse to deny people held in police custody access to lawyers. And this is, in fact, what often happens. Access to relatives and to lawyers is routinely denied. When the Amnesty International delegation visited Dongri Police Station, it was told that no prisoner remanded to police custody would be allowed to see his lawyer because, as the Senior Inspector in charge told Amnesty International, "lawyers have no *locus* with such prisoners. Their business is in the courts". Nor were there rooms at the police station where lawyers could meet their clients.

Amnesty International was also told by several people who had been detained by the police that relatives trying to see them at the police station were refused permission to meet and speak to them. One former detainee said that the police refused to allow him to call his relatives about his arrest and that he had to resort to bribing a servant to get the news of his arrest to his family. The Senior Inspector at Dongri Police Station told Amnesty International that relatives and friends were not allowed to see detainees and furthermore that, unless they were sick, prisoners were not allowed to have food brought by their relatives from outside. This practice contravenes specific obligations in the Maharashtra Police Manual which require the police to permit a prisoner "to maintain himself and purchase or receive from private sources at proper hours food, clothing and bedding and other necessities subject to examination of these articles and availability of space in the lock-ups" (Section 192 (8)).

⁷ (1950) S.C.R. 88

⁸ Nandini Satpathy v. P.L. Dani (1978) SC 1047. The Supreme Court observed: "...if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied... Not that a lawyer's presence is a panacea for all problems of involuntary self-incrimination, for he cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried... He cannot harangue the police but may help his client and complain on his behalf, although his very presence will ordinarily remove the implicit menace of a police station."

In Amnesty International's experience the failure to allow prisoners to inform relatives and lawyers of their detention and the refusal to allow contact with third parties when detention is prolonged (generally beyond 48 hours) inevitably facilitates torture and ill-treatment. This was confirmed by the evidence collected in Bombay.

b. Prolonged remands in police custody

Under normal legal provisions a magistrate may remand a person in police custody for up to 15 days, and thereafter in judicial custody for up to 60 or 90 days (depending on the seriousness of the alleged offence). At the end of this period the suspect has to be charged or released on bail (Section 167 Code of Criminal Procedure). Such remand in police custody is apparently routinely granted by magistrates for minor offenses. Amnesty International was told by a senior inspector that a remand to police custody would, for example, be granted if someone was arrested for shoplifting and the police wanted to carry out investigations to establish whether he had committed other minor thefts. In practice, the 15 day period can be exceeded: when Amnesty International visited Dongri police station, its delegates met a detainee who said that he had been held there for about a month and his assertion was not disputed by accompanying police officers.

Furthermore, lawyers told Amnesty International that in Maharashtra state, police making arrests without warrant to prevent the commission of cognizable offenses can hold people in detention for up to 30 days. Even longer periods of police remand are permitted under the TADA: it permits a remand for 60 days (Section 20 (4)(b)), a period during which bail is hard to obtain (the normal rule under TADA is that bail is refused if the Public Prosecutor opposes it - Section 20 (8)). Instead of a judicial magistrate granting custody, as is normally the case, TADA permits executive magistrates to authorise remand, and prisoners are under executive control. International human rights standards such as Article 9(3) of the International Covenant on Civil and Political Rights require that all persons arrested on a criminal charge shall promptly be brought before a judge or other official authorized to exercise judicial power.

These periods of police custody are dangerously long. Most torture and ill-treatment in India occurs during the first stage of detention in police custody, when access to outsiders is routinely denied. The predicament of suspects held under TADA is particularly serious: they can simply be taken back to police custody even if remanded in judicial custody in prison. This can apparently happen whenever the police wish to interrogate and torture them again, or punish them for complaining to a judge about torture. One prisoner held in connection with the Bombay bombings told the TADA Special Court in an affidavit:

"I was granted judicial custody on 26-4-93 and the police brought me back from Thane jail on 5.5.93 and took me straight to the detention room of Crime Branch where one D.C.P., Sr. Inspector and policemen were present. First of all they condemned the judiciary... for granting me jail custody at the first appearance and asked the name of my advocate. Then they started beating me for some irrelevant thing to accept, which I did not know at all. Due to the heinous beating and torture I stopped breathing and fell unconscious. These officers left the room in panic thinking me dead....

On 6.5.93 when I was produced before Your Lordship [you noticed] my swollen thumb and torn condition. My complaint was recorded against the police and [you] ordered to provide me medical check-ups and treatment regularly. I didn't get the treatment as instructed. I was instead taken to the police detention room where a

D.C.P. was ready to teach me a lesson for complaining against the police... Few policemen started assaulting me... for two hours on my already wounded and torn body. I was given most frightened threatenings and refused food...

After a few days I was summoned by a very Sr Police Chief in the night and asked as to why did I complain against the police in the court. He ordered his force to beat me as much [as] possible.."

Apart from showing that torture is condoned and even encouraged by some senior police officials, this statement illustrates how prolonged police custody without proper legal safeguards can lead to serious violations of human rights, especially in the absence of effective mechanisms to scrutinise police behaviour and of rules governing the interrogation of suspects.

c. Police disregard of legal safeguards regarding police custody

Procedures for arrest by the police are laid down in Sections 46-58 of the Code of Criminal Procedure. These require the police to inform the arrested person promptly of the offence or grounds for his arrest and require a magistrate to order a medical examination at the request of the arrested person. Section 57 requires all arrested persons to be brought before a magistrate within 24 hours of arrest. Yet none of those whom Amnesty International interviewed had been told the legal grounds for their arrest nor had they been brought before a magistrate despite the fact that they had spent several days in police custody. A 27 year old man detained in April 1993 said in a sworn affidavit:

"while I was in CID (Criminal Investigation Department) lock up approximately 150 more persons were in police custody without being produced before the magistrate concerned".

Though Section 160 (1) of the Code prohibits women and children under the age of 15 to be taken to police stations when police carry out investigations, this is precisely what happened to several women interviewed by Amnesty International. The practice continues even though the Supreme Court has specifically condemned it⁹.

d. The absence of adequate legal safeguards regarding the interrogation of suspects

Indian law is virtually silent regarding the questioning of suspects in police custody. There are no provisions about it in the Code of Criminal Procedure, nor could Amnesty International find any in the Bombay Police Manual. Those few rules that do exist in the 30 year old Manual - Section 192 (4), which prohibits the questioning of suspects after 20.00 hours and before 08.00, for example - are clearly impracticable and not adhered to as several interviews with released prisoners showed.

Police recording obligations are sparse and do not provide for comprehensive custody records to be kept containing hour-by-hour accounts of what happens to persons in custody (medical condition on arrival, the length and time when suspects are questioned, the provision of food, the presence of lawyers or other visitors, periods of sleep, and so on). There is therefore no evidence of, or rules to prevent, such abuses as prolonged questioning or deprivation of food or sleep, incommunicado detention, etc. Conversely the absence of detailed records means that there

⁹ Smt. Nandini Satpathy v. P.L. Dani AIR 1978 SC 1025.

is no easy means by which the police are able to rebut allegations by suspects that police tortured or ill-treated them in custody¹⁰.

Current police records contain little information. Amnesty International was shown "case diaries" which contain personal data about the suspect and the case against him. Their names are kept on a list in the lock-up and some further details about them were, according to the police, held in a "Rough Book", which the Amnesty International delegates did not see. None of these records contain the above detailed information which, in Amnesty International's experience, can substantively assist supervising officers in checking and preventing police abuse.

e. Lack of accountability

The police are rarely required to give a public account of their actions. For example, no independent groups or agencies have the authority to visit police stations and to inspect police records and it appears that the judiciary seldom or never undertake this function. Nor is there an independent police complaints mechanism to encourage transparency and accountability in day-to-day policing. Without such mechanisms local residents have sometimes felt compelled to take action, and have been able to do so in a few cases where influential citizens could be found to help them. Amnesty International was told, for example, that residents in Dharavi had complained that the local police took women at night to police stations but denied that they did so. It was not until a local priest had been persuaded to go to the police station that the women were indeed found there and set free. But such action is rare and is only taken on an ad hoc basis: it can be no substitute for a proper system of police accountability.

Senior police officials themselves appear to have insufficient time or determination to find out what happens inside the police stations for which they are responsible. A highly respected retired police officer and former member of the National Police Commission recently wrote: "Senior officers pay visits to Police Stations and reserve lines which are too brief and they make no effort to find out grievances or examine defaulters." Furthermore, as he observed, determined action is rarely taken against offending police officers: "How can discipline be maintained when nobody can be punished for his defaults?" Action against police officers who break the law is extremely rare. During its visit to Bombay, Amnesty International asked the Secretary, Home Department, for details of action taken against police for violating the Bombay Police Manual. The government's response, sent to Amnesty International on 20 April 1994, shows that convictions of policemen (details of which were not provided by the government) are indeed rare, the government saying: "During the last 5 years 42 cases [involving] offenses were registered against 43 policemen in the State of Maharashtra. In the judicial trials as a consequence of registration of cases, 6 policemen have been convicted and 12 were acquitted by the court. Remaining 25 policemen are still facing trial in the courts of law". And although in ten cases policemen were charged in connection with causing people to die in custody in Maharashtra since January 1985, according to Amnesty

¹⁰ Circular No. MUR 0790/OR-158/POL-11 issued on 22nd November 1990 by the Maharashtra Government lays down further procedures to be followed after arrest. These include: "I-(1) When an accused is being lodged in the police custody for the first time, a note may be taken about the injuries about the body of the accused. Such entry may be taken in the Station diary. It is incumbent to take entries in the Station diary every time when the accused is being taken out of police custody for the purpose of investigation as well as the time he is brought back to police custody." Whereas the rule on registration of injuries on arrest is to be welcomed, it is unfortunate that the rule is not obligatory.

International's information no more than two cases resulted in convictions and these were set aside on appeal (see below).

However, there are notable exceptions to this general absence of police accountability. The Amnesty International delegation visited Dharavi, one of the few areas in Bombay where a citizens committee was established last year. Three such committees have been established so far. They consist of independent persons of probity and their meetings are attended by local police inspectors. They discuss the policing needs of the local community and they look at patterns of complaints against the police. In Dharavi local residents observed a decline in police brutality under the administration of a Deputy Commissioner of Police who had successfully encouraged local residents of all communities to bring complaints about police misbehaviour and who had reportedly initiated action against local criminal elements, regardless of their political connection. The State Government's decision in January 1994 to transfer this Deputy Commissioner to the Computer Division was seen by many in the police and outside as undue political interference with police operational policy damaging to the development of police professionalism¹¹.

¹¹ Indian Express 12 and 13 January 1994. Within days of the announcement of the Deputy Commissioner's transfer, 40,000 residents signed a petition in protest. Later that month the government reportedly declared in court that it had no intention to shift the DCP from his post.

f. Lack of support for police professionalism

The government appears to do little to encourage professionalism in the police and to allow senior police officers to develop and implement an independent and efficient approach to police management. Reports persist that local politicians interfere in police operational policy for party political and personal purposes¹². It is generally accepted that senior State Government officials have wide powers to appoint and transfer senior police officers. Amnesty International was told, for example, that in the last 15 years there had been ten Police Commissioners in Bombay, and that five of them were removed without having completed a year's service. Officers were reportedly removed either for no reason or because, allegedly, they pursued operational policies not to the liking of particular government ministers.

The police must, like any public service, be accountable to democratic authority. However, if they are to develop a professional ethic consistent with their obligation impartially to enforce the law, then they must also enjoy sufficient operational autonomy and discretion to ensure that they are not subject to improper political interference in day-to-day decision making. The Amnesty International delegation to Bombay was told by several informants whose past responsibilities meant that they were in a position to know, that Commissioners of Police were expected to take instructions from ministers and their senior advisors about aspects of day-to-day police operational policy and decision-making. It was said to be widely understood that any Commissioner who failed positively to respond to this regime would not last. He would be transferred to other duties. The consequence was that there was little continuity in senior police offices and an absence of leadership in the police to resist political interference. It followed that firm police management practice was little developed. It also meant that the police and policing policies were not seen by the public to be insulated from the interests of dominant party political interests. The police were not perceived to be impartial.

No system for the political and legal accountability of the police is likely to be effective unless it is underpinned by an effective infrastructure for management accountability. The development of the latter requires the inculcation of a professional police ethic which in turn depends on the firm support of police independence from the executive and reasonable continuity of service in senior police command offices. These ingredients seem largely to be lacking in Bombay, and possibly elsewhere in India.

¹² The effects of such practices were first described by India's authoritative National Police Commission: "In fact the police became specially vulnerable to interference from politicians because of the immense political advantage that could be readily reaped by misuse of police powers. The quality of police performance was and continues to be adversely affected by such interference... What started as a normal interaction between the politicians and the services for the avowed objective of better administration... soon degenerated into different forms of intercession, intervention and interference with malafide objectives unconnected with public interest... Pressure on the police takes a variety of forms ranging from a promise of career advancement and preferential treatment in service matters if the demand is yielded to, and a threat of drastic penal action and disfavoured treatment in service matters if pressure is resisted." Second Report of the National Police Commission, paragraphs 15.2, 15.4 and 15.14, Government of India, August 1979.

4. Issues arising from the December 1992/January 1993 Bombay Riots

Following the destruction of the Babri Masjid Mosque in Ayodhya, violence broke out in Bombay on 7 December 1992 between Hindus and Muslims. During their efforts to halt the rioting the police were accused of indiscriminately firing at protesters and targeting members of the Muslim community. In some cases the police were said to have shot unarmed people at point blank range in their houses, in mosques, or simply after establishing that they were Muslims¹³. This was said to have been done without provocation or claims of acting in self defence, though some members of the police were attacked by rioting mobs and killed. There were also reports that the police participated in the rioting themselves.

These accusations and counter-accusations occurred again as a result of a renewed wave of communal rioting which started in the first week of January 1993, the immediate causes of which remain controversial¹⁴. The police were accused of standing by and failing to protect members of the Muslim community especially.

The riots in December and January left 1,718 people dead according to the Shrikrishna Inquiry (see below). Police in the lower ranks were accused of sympathising with and aiding the Shiv Sena (Hindu communalist) party, whose leaders themselves acknowledged their members' involvement: "Our boys were involved in the rioting" (Pramod Navalkar leader of the opposition in the legislative council) and "Hindus should be taught a lesson" (Bal Thackeray - leader of the Shiv Sena)¹⁵. Transcripts of police tapes published in the Indian press show clear anti-Muslim bias on the part of a number of low-ranking policemen during the rioting¹⁶. However, several outstanding police officers reportedly acted courageously and impartially throughout this period protecting members of both communities.

¹³ "...many of the killings [by police] took place, not when the deceased were in the mob, but within their own homes.... the police are also guilty of being partisan in the riots. Many witnesses have stated before us that they were attacked in the presence of the police and the police did nothing. In many cases, the police openly supported the rioters and accompanied them in the attack. When the victims went to the police station they were driven away without recording their complaints". The People's Verdict, the Indian Peoples's Human Rights Commission, July 1993 (pp. 104 -105).

¹⁴ Some political parties as well as senior policemen have attributed the resurgence of communal violence in January to several incidents in which Hindus were killed between 6 and 8 January 1993, notably the killing of at least four Hindus who were burnt alive in a room in Jogeshwari. Civil liberties and other reports, however, have provided details that the January riots were pre-planned primarily by large scale "maha arti" rituals organized by the Shiv Sena and other Hindu communal parties throughout December and January, which became starting points for Hindu crowds to direct violence against the Muslim community. (See: Bombay Riots: Second Phase, Economic and Political Weekly, 20 - 27 March 1993, Frontline 12 February 1993 and The Bombay Riots, The Myths and Realities pp 63-64 and 89-90). India Today wrote: "What was equally worrying was the way information was selectively used by the police to give the impression that Muslims in central Bombay had turned violent, knifing several Hindus on January 6 and 7. The Sena fury was then justified by the people. But a state CID investigation revealed that the violence actually began after a maha arti ended at Gol Deval in the sensitive Null Bazar area on January 6. A section of the congregation turned violent... but the police did not reveal the full picture."

¹⁵ Saamna (the Shiv Sena paper) 9 January 1993 and Time Magazine 25 January 1993.

¹⁶ Business India, 21 January 1993, The Times of India, 23 January 1993 and Sunday, 31 January 1993.

The state government was accused of failing to intervene decisively to stop the riots, or act effectively against those participating in and instigating them and to permit Shiv Sena's paper Saamna to publish highly provocative editorials against the Muslim community. [This continues. While Amnesty International's delegation was in Bombay the paper, in its 7 January 1994 issue, carried the headline: "New Muslim Conspiracy. Six Hindu girls to be raped every month".] The police reportedly brought six cases against the Shiv Sena leader - but that only after private citizens had petitioned the High Court to direct that he be prosecuted - without, however, filing formal charges to date.

What concerns Amnesty International is the grave charge that the state government failed to act decisively to stop the rioting and ensure that police committing human rights violations during this period are brought to justice. Had it done so, the January excesses could, arguably, have been prevented. Moreover, the government would have given a clear message that no such police excesses will ever be tolerated again.

In the single week that the Amnesty International delegates were in Bombay, one year after the event, it was not appropriate or feasible to investigate the numerous charges of police abuse made concerning this period. Extremely detailed investigations into these charges have been carried out by various civil liberties groups and others, some of them after prompt visits to the areas involved to collect first hand evidence. These groups have spent much time and effort in documenting specific incidents of communal rioting, including charges of police excesses. One of the reports contains a list of 81 police personnel named by witnesses to have participated in illegal activities¹⁷. Furthermore, these allegations are now being investigated by a Commission of Inquiry, constituted in early 1993 by the Government of Maharashtra - on a directive of the Prime Minister of India. It is being carried out by Justice J.B. Shrikrishna. Despite these measures, Amnesty International is deeply concerned that the steps taken by the government have so far largely failed to ensure that victims have an adequate machinery for redress and that the judicial inquiry itself - however commendable an initiative - is, ironically, being used by officials to evade police accountability for excesses that have been committed.

a. The Shrikrishna Inquiry

Justice B.N. Shrikrishna was appointed on 25 January 1993. His mandate was published in the Bombay press on 17 February 1993. It includes: reporting on the circumstances, events and immediate causes of the December/January riots; identifying which group or person was responsible; reporting on the adequacy of preventive measures taken by the police; whether adequate steps were taken to control the riots and whether police firings were justified; and recommending measures needed to avoid the recurrence of the incidents. The inquiry is being conducted under the provisions of the 1952 Commission of Inquiry Act. Although empowered with most powers of a civil court with regard to the production of evidence, the Commission is not a court of law and its findings and recommendations are not binding on the government.

¹⁷ See: The People's Verdict - An inquiry by the Indian People's Human Rights Tribunal conducted by Justice S.M. Daud and Justice H. Suresh for the Indian People's Human Rights Commission [the list of police personnel appearing on pages 137 -138]; The Bombay Riots - The Myths and Realities, a report by Lokshahi Hakk Sangathana and Committee for the Protection of Democratic Rights, Bombay, March 1993; Bombay's Shame - A report on Bombay Riots, Ekta Samiti, Committee for Communal Harmony, Bombay April 1993; and When Bombay burned - Reportage and Comments on the riots and blasts from the Times of India, edited by Dileep Padgaonkar, UBSPD New Delhi, Bombay, Bangalore, Madras, Calcutta, Patna, Kanpur, London, 1993.

Justice Shrikrishna is investigating 50 out of Bombay's 68 police stations that were seriously affected by the riots. The Commission has been hearing evidence about police failure to investigate complaints against their own personnel for alleged acts and omissions during the riots. In one case this caused Justice Shrikrishna, on 5 January 1994, to make the critical comment: "We will become the laughing stock in every civilised nation if no action is taken against a police constable who participated in looting a shop on D.B. Marg in January 1993". (This followed an admission by the Senior Police Inspector of Nagpada police station to the Commission that no effort had been made either to locate or arrest the police officer concerned.) The Commissioner heard complaints that police failed to file reports, as they are required to do, about incidents in which they fired on crowds in which people were killed. He has heard evidence that six police officers at Agripada police station had given unreliable testimonies, prompting the judge on 9 January 1994 to comment: "unless we prosecute one or two officers and send them to jail, nothing is going to improve". He has also heard evidence of police interference with official records (in Nagpada police station fresh pages had reportedly been inserted in official documents such as the crime register).

As of 4 January 1994, - just before the Amnesty International delegation arrived in Bombay - 2,000 witnesses had reportedly filed affidavits before the Commission, but only 128 had been examined. The method adopted by Justice Shrikrishna is the traditional one for such inquiries in India. Evidence is taken in the form of affidavits, though it appears that these were not sought and taken by legal officers acting on behalf of the Inquiry thereby ensuring their comprehensiveness and quality, and several parties - in this case about half a dozen of them - are each given opportunities to examine witnesses at length. The Commission rarely appears to interfere in lengthy cross-examinations, even when they concern what appear to be irrelevant points or matters already covered in affidavits (an impression confirmed when Amnesty International's delegates attended the hearing). The Commissioner sits alone, generally only for half of each day, and has no experts to assist him in his daunting task. Nor has he employed special investigative teams to collect evidence on the spot. As a result, the Commission's progress is exceedingly slow: many observers do not expect the Commissioner to conclude his findings until three or even four years after the events which are the subject of his investigation occurred. By that time the Commission will have lost much of its value as a mechanism to establish the truth about what happened, and to identify and initiate successful prosecutions against those responsible. Valuable evidence will inevitably have been lost.

Amnesty International believes that that should not be so. The existence of the Commission is being used by police and state officials as an excuse not to proceed against individual policemen against whom there is evidence that they committed excesses. In fact, Amnesty International was told by the Director General of Police, Maharashtra, that no action would be taken against the police until Justice Shrikrishna had concluded his inquiry. All that seems to have happened so far is that a few police officers have been transferred and that disciplinary proceedings have been instituted in a few cases. But no police officers have been brought to justice and no criminal charges are known to have been filed against any of them, nor, for that matter, against those persons, such as the Shiv Sena leaders who acknowledged playing a leading part in the rioting. (The Secretary, Home Department, promised Amnesty International details about actions which had been taken against individual policemen, but, the government's response of 20 April 1994 confirmed that no such action had been taken: Amnesty International was merely informed that: "The Government of Maharashtra have appointed judicial commission headed by Justice Shrikrishna to inquire into the causes, circumstances of the communal riots that took place in Bombay during December 1992 and January 1993... The commission would pinpoint the excesses, if any, while handling the Communal riots and action would be taken in the matter on receipt of

the report of the Justice Shrikrishna Commission". Amnesty International is concerned that the Shrikrishna Commission may meet the same fate as many other laudable Commissions which have carried out painstaking investigations into allegations of police and security force abuse but on whose findings and recommendations successive governments have failed to act¹⁸.

Amnesty International wishes to underline the fact that there is nothing to prevent the government from initiating prosecutions against individual policemen against whom there is credible evidence that they committed violations of human rights during the December 1992/January 1993 riots in Bombay. The existence of the Shrikrishna Inquiry is not an impediment. Indeed, the Bombay Police Commissioner assured Amnesty International that if it provided specific information about instances in which the police had arbitrarily and indiscriminately killed people, the police would immediately act on such reports. Amnesty International has therefore collected information about several incidents in which there is prima facie evidence that the police committed human rights violations: the victims were not part of a rioting mob, but were allegedly shot by police in or outside their homes or while praying in mosques. The information - about alleged extrajudicial killings of five men in the Hilal Masjid in Wadala and the "disappearance" of another by police from R.A. Kidwai police station, an attempted extrajudicial killing by police at Govandi, a reported extrajudicial killing by police at Shantinagar and the reported "disappearance" of a man after arrest by police in Govandi - is attached in Appendix B.

Furthermore, to facilitate criminal prosecutions and disciplinary proceedings in appropriate cases, Amnesty International hopes that the Commission will be publishing interim reports at regular intervals on the investigations it has carried out so far, identifying specific instances which appear to reveal illegal acts on the part of the police and others requiring prompt prosecutions.

Police powers to use force and kill

¹⁸ For example, the Shah Commission of Inquiry, carrying out an incisive investigation from 1977 - 1979 into the numerous excesses committed by officials during the 1975 - 1977 period of emergency, was never acted upon. According to The Hindu, 21 February 1992, 40 Commissions of Inquiry had conducted investigations into allegations of police excesses in Andhra Pradesh, most into cases of custodial deaths, but not a single police officer had been found guilty in a court of law for offenses of which the commissions had identified them to be responsible. The same happened with a judicial investigation into the killings of Muslim villagers by members of the Provincial Armed Constabulary in Maliana, Meerut, Uttar Pradesh, in May 1987.

It is nearly ten years since 2,733 Sikhs were, according to official figures, killed in and around Delhi in November 1984 following the assassination of the late Prime Minister Indira Gandhi by her Sikh bodyguard: the victims' families are still waiting for justice. No less than six official inquiries were instituted to investigate the killings, including the allegations of complicity of influential political figures of the ruling Congress party and of police cover-up: the 1985 Ranganath Mishra Commission, the 1987 Jain-Banerjee Commission, the 1987 Kapur-Mittal Commission (indicting 72 police officials), the 1990 Poti - Rosha Commission, the 1990 Jain-Aggarwal Commission (which in 1993 recommended the prosecution of 298 police officers and 29 "erring persons" and which, like the Jain - Banerjee Commission and the Poti - Rosha Commission, included the recommendation to bring charges against two leading Delhi politicians of the Congress Party), and, finally, the R.S. Narula Committee established in December 1993 by the Chief Minister of Delhi (calling for action against 72 police officials and 21 cases against others including the above Congress leaders). So far, all that has happened is that 15 persons have reportedly been convicted in connection with 20 out of the 2,733 deaths. Over 1,000 affidavits have been filed by victims. Yet none of the recommendations of these six official committees have been implemented nor have any of the accused policemen and politicians been brought to justice: in May 1994 the Director of Prosecutions of the Delhi Administration reportedly argued that the cases against the indicted policemen be dropped.

Powers to disperse assemblies while resorting to force are provided in Sections 129-131 of the Code of Criminal Procedure and rest with an Executive Magistrate, the officer-in-charge of a police station or, in his absence, a police officer at least of the rank of Sub-Inspector. On 9 January 1993 the Home Ministry issued Order No. 434 appointing all police officers up to the level of Inspector as Executive Magistrates, and giving them powers to act under these provisions. These enabled them to require a crowd to disperse and, if failing to do so, to disperse the crowd by force (Section 129 (2)).

The Director General of Police explained to Amnesty International that in cases where demonstrators or mobs resort to arson, looting, plunder or stabbing, the procedure is for the police first to issue a warning, then to carry out a lathi charge (using long bamboo sticks), then to employ tear gas, and if a threatening situation continued, finally to give a warning before firing. Fire has to be aimed below the belt. The police have to file a report with the police station concerned, specifying what type of force had been used. These provisions are laid down in the Model Rules regarding the Use of Force by the Police against Unlawful Assemblies, 1973 (referred to as the Model Rules). The Model Rules specify that firearms should be employed "only in extreme circumstances when there is imminent and serious danger to life or property", that the senior officer "shall, unless circumstances make such action impossible, warn the crowd that if they do not disperse within the specified period, fire with live ammunition will be opened on them" and that he should ensure "that no firing contrary to or without orders takes place... whatever volume of fire is ordered, it shall be applied with the maximum effect. The aim should be kept low and directed at the most threatening parts of the crowd."

There are additional provisions for situations of communal rioting in the Guidelines for dealing with communal disturbances, Maharashtra State Government Ministry, 1986 (hereafter referred to as the Communal Riot Scheme). The text of these guidelines were, according to the press, originally withheld from the Shrikrishna Commission, but have now been given to the Commissioner although not to lawyers appearing before him. Nor has the general public access to them. Amnesty International was allowed to see them in the Maharashtra Home Ministry. The Guidelines require the police to take strong action at the first sign of communal violence breaking out. Section 4B(xi) provides:

"If in spite of all the preventive measures, communal riot does break out, determined and strong action should be taken to put down the violence with firm hand. Any procrastination in taking firm action in the initial stage will only lead to escalation of violence. A clear distinction needs to be made between communal violence and other types of law and order problems. In dealing with communal violence, the police must be firm and deterrent from the beginning so as to create a psychological impact on the mob and prevent the spread of violence. As such, effective force should be used at the first sight of communal violence breaking out. If firing has to be done, it should be done after giving proper warning and it should be properly controlled. Firing in the air should be avoided."

Circular No. 5B, VI/FIR 1271/2577, 7 July 1971, requires a secret report to be submitted about any incident, to include details about, inter alia:

"date of firing, place of firing, number of rounds fired, number of casualties and death among police and civilians, the strength of the crowd, whether warning was given before firing, whether tearsmoke or lathi charge was employed before opening fire."

Amnesty International is concerned about this guidance on three counts.

First, in encouraging the police to resort at an early stage to lethal methods of crowd control for purposes of deterrence, the broad terms of the 1986 Communal Riot Scheme facilitate arbitrary and indiscriminate killing of people in crowds or innocent bystanders. That such killings, said to be in accordance with the Scheme's broad terms, have taken place appears to be borne out by statements of police officers before the Shrikrishna Commission. They said that they acted in accordance with the Scheme's guidelines when firing to strike fear into the crowd and thereby persuade them to stop rioting. Police officer Salunke from the Tardeo Police Station, for example, told Justice Shrikrishna that he had ordered firing on five occasions and that there was no complaint against his action from senior officers. The wording of the Communal Riot Scheme permitting early resort to lethal force may also have subverted the requirement in the Model Rules to fire below the belt, thereby increasing the likelihood of indiscriminate killings. Various civil liberties and press reports have found that victims were nearly always shot in the upper parts of the body, and not the legs¹⁹.

Second, a number of police officers responsible for ordering fire appear not to have complied with basic requirements such as submitting a report on the incident, the methods used, whether a warning was given and stating the number of people wounded and killed. For example Police Inspector Jagdale told the Shrikrishna Commission in July that, using his powers as an Executive Magistrate, he ordered a 1400 strong crowd to be fired at (different press reports offered conflicting evidence as to whether the crowd presented a provocation or a threat to violence). But it emerged that he had not made a report on the incident, and that no superior officer had asked for one.

Third, existing rules and practices fall far short of international standards as set out in the UN Basic Principles on the Use of Force or Firearms by Law Enforcement Officials (see Appendix C). The UN Principles apply to all circumstances, specifying that: "Exceptional circumstances such as internal instability or any other public emergency may not be invoked to justify any departure from these basic principles" (Article 8). The principle underlying them is the employment of the absolute minimum use of force and of full accountability for any action taken resulting in the loss of life. The key provision, Article 9, strictly prohibits the use of firearms:

"... except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life..... and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

¹⁹ See: The Bombay Riots, Lokshahi Hakk Sangathana and CPDR. Pages 3 and 62 refer to hospital figures revealing that the large majority of the victims were Muslim, were killed or injured in police firing, and that most bullet injuries were in the upper region. Asghar Ali Engineer found: "... the post-mortem reports showed that out of about 250 deaths [in December 1992], 192 persons died in police firing and out of those more than 95 percent [of] people had sustained injuries above abdomen which shows that the police fired to kill and not to maim or injure" (Economic and Political Weekly, 9 April 1994). The Times of India's 11 December 1992 report quoted M.S. Lokhandwala, Municipal Corporator for Dongri, as saying "When the police fired, they shot straight at the abdomen and not the feet" and a doctor at J.J. hospital that very few of the victims he attended to had leg injuries.

The 1973 Model Rules, however, permit firearms to be used in considerably broader circumstances, not only when there is an imminent and serious threat to life, but also, simply, to property. The terms of the 1986 Communal Riot Scheme are broader still. They do not require any test of strict unavoidability to protect life; the fact that a communal riot has broken out during which violence occurs is in itself sufficient ground to authorise resort to lethal force. Moreover, whereas Article 4 of the UN Principles requires law enforcement officials first to apply non-violent measures before resorting to force and firearms and then only "if other means remain ineffective or without any promise of achieving the intended result", the Communal Riot Scheme contains a disincentive to do so by failing to state that principle and in fact specifying that firing in the air - i.e. to warn rather than kill - should be avoided.

Furthermore, Article 2 of the UN Principles provides that:

"Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons that would allow a differentiated use of force and firearms... with a view to increasingly restraining the application of means capable of causing death or injury to persons... law enforcement officials [are] to be equipped with self-defensive equipment such as shields, helmets, bullet proof vests and bullet proof means of transportation, in order to decrease the need to use weapons of any kind."

Numerous reports suggest that the police, in December 1992 and January 1993, were ill-equipped to meet the violent crowds. The Times of India, 3 August 1993, for example, reports that A C Changlani of Tardeo Division told the Shrikrishna Commission that he lacked protective equipment for his officers: there were only two bullet proof vests and ten shields for his district. Many of those to whom Amnesty International spoke said that a major cause for the large number of killings by the police in December 1992 was that police had not been trained in acting to cause minimum damage and loss of life during riots, that they were hopelessly under equipped, and that many police stations lacked tear gas and other non-lethal methods of crowd control. Similar reports appeared in the press²⁰.

Furthermore, Article 11 (f) of the UN Basic Principles requires that rules and regulations for the use of firearms should provide for a system of reporting whenever law enforcement officials use firearms. It is not clear whether current rules require a detailed report to be filed by police. If they do, press and other reports referred to above suggest that, in practice, this basic requirement was often not met.

Finally, Article 22 of the UN Principles requires:

"... Governments and law enforcement agencies shall ensure ...that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death or serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."

²⁰ Frontline, 12 February 1993 reports: "In the first phase [December]... the police did not use teargas, water cannons or rubber bullets, and they did not shoot at protestors' feet: in many places, they shot to kill".

To the extent that any such detailed reports have been filed, they are not known to have resulted in any prosecutions of those police officers who have, Amnesty International believes, clearly resorted to arbitrary and illegal use of firearms. The government should order a prompt review of laws and standing orders relating to the use of force and firearms by the police, and bring them in line with the UN Principles.

4. The misuse of TADA in Bombay

In the 1980s, against the background of a series of bombings in Delhi, the Indian government rushed through parliament a special law "to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities...". The Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) allows for dangerously long police remands in custody (see above), detention without charge or trial for six months and makes bail hard to obtain (only if a detainee satisfies a magistrate that he is innocent of the offence alleged). Trial *in camera* by a special court is mandatory, the identity of witnesses can be kept secret and the normal rules of evidence have been changed in favour of the prosecution: there is a change in the burden of proof in some cases and statements made to the police, not normally admissible in Indian courts, can be used as evidence in trials held under TADA provisions.

The Bombay press has reported that after the Bombay bombings in March 1993, and which to date have led to the arrest of over 150 people under TADA, the Act has been misused to detain people for whom it was never intended: suspected ordinary criminals. The Times of India, 9 August 1993, for example, reported that prior to 15 July 1993, 121 people described as "gangsters" had been booked under TADA. The report gave the example of four young men accused of gang raping a housewife in Chembur being detained in July. The same article quoted the then Bombay Police Commissioner as saying that he had personally scrutinised every application made by the city police to detain people under TADA.

Amnesty International's delegates spoke to the former Police Commissioner and he confirmed that he had indeed authorised the detention under TADA of suspects in the gang rape case. He explained that he considered it to be a test case. In his view it was the only way to secure the custody in prison of people against whom there was substantive evidence that they had committed serious criminal offenses. He said that police experience was that even in cases of such a serious nature as gang rape, the courts would normally grant bail, that as a result no witnesses would dare to come forward, and that the police would therefore be unable to secure a conviction. He therefore authorised TADA to be applied. He agreed, however, that it would be far better to ensure that the bail system was not abused by lawyers and accused persons with political connections - as was said to be the case with some criminal gangs in Bombay - to secure releases even in cases where there was strong evidence that serious crimes had been committed. The Hindustan Times, 15 January 1994, carried a report by a former senior police official, similarly observing: "The police say that they are compelled to use wrong methods and repressive laws like TADA because there is no such thing as judicial appraisal or punishment in the land".

However understandable the pressures that lead the police to act in this illegal way, the answers to law enforcement problems must lie in overhauling the criminal justice system to make it more effective. There can be no justification for misuse of the law, especially a law like TADA which - as the Human Rights Committee examining India's obligations under the International

Covenant on Civil and Political Rights found²¹ - falls far short of international standards. Its provisions for prolonged police detention without charge or trial encourage police abuse and torture to extract confessions, and provisions for trials *in camera* under changed rules of evidence which shift the burden of proof onto the defendant can never be accepted as open, fair and as meeting international standards.

Amnesty International was told that 189 people were awaiting trial under TADA for their alleged involvement in the Bombay bombings, but that 44 of them, including the alleged ringleaders and planners, were not in custody²². The case against the 145 men is being heard by a Special Court established under TADA, which is to sit in a courtroom set up in Bombay's Central Prison in Arthur Road. Some defence lawyers have maintained before the Bombay High Court that this is too small to fit in all the accused, their lawyers, public prosecutors, policemen and journalists.

The bombings resulted in appalling loss of life. However, Amnesty International is concerned that the accused should all receive a fair trial, in accordance with international standards. Whether they will do so is far from certain. Lawyers appear to have been denied access to their clients for prolonged periods after their arrest when statements to be used in evidence were recorded. They are said, for example, to have confessed to having gone to Islamabad or a camp in Maharashtra for training, to importing explosives and to transporting the bombs or placing them. Many defendants are said subsequently to have retracted confessions allegedly extracted under torture. Such statements made to the police cannot normally be used in evidence (Section 26, Evidence Act). However, Section 15 of TADA makes them admissible. Consequently, the court will admit unreliable evidence which, in many cases, allegedly consists of confessions extracted under torture or ill-treatment as described above.

Further, Amnesty International spoke to several relatives who said that some of the defendants had been unable to pay for a lawyer and none had been provided by the state. Relatives also alleged that a number of the accused had been subjected to grave threats by the police not to contact lawyers. One was said to have been told: "if you contact a lawyer or complain about your treatment, we will take your relatives in custody, or we will arrange a confrontation with one of your relatives and they will be killed". On 7 May 1993, Justice J.N. Patel, of the Designated Court sitting under TADA, ordered the medical examination of Shaikh Aziz Ahmed, son of Mohamed Ahmed, after he had told the judge "that he was hit by a belt in the night and has been warned not to disclose it to the Court otherwise he will be shot and that he should also say that he does not want to engage any Advocate"²³.

International standards require that all evidence which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings. They also require that accused persons have prompt, adequate, and regular access to legal counsel of their choice, and

²¹ See: India: Examination of the second periodic report by the Human Rights Committee, Amnesty International, March 1993 (AI Index ASA 20/05/93) pages 10 -12.

²² According to The Indian Express, 12 March 1994, there were 189 accused, 45 of them absconding, 121 were in custody and 23 were out on bail.

²³ Letter No.17222 of 1993 from the Registrar, City Sessions Court, Gr. Bombay, to the Sr. Inspector of Police, Worli Police Station, Bombay, informing the latter of the order passed on 7 May 1993 by the Judge, Designated Court, Gr Bombay.

that, if they have no lawyer, they are entitled to have legal counsel assigned to them "in all cases where the interests of justice so require"²⁴. These provisions should certainly apply to the men now on trial for their alleged involvement in the March 1993 bombings.

5. Custodial deaths

Since the preparation of the Amnesty International report, India: Torture, Rape and Deaths in Custody, published in March 1992, as far as Amnesty International is aware, two more people are alleged to have died in the custody of the Maharashtra police as a result of torture. Akash Agle, a dalit, died in the custody of the Vikrohli police on 23 February 1992, according to his family from police beatings. The state government refused to order a judicial inquiry despite being urged to do so by members of the Legislative Assembly. On 1 December 1992 Pundalik Sutar from Khamaletti village also died, reportedly from beatings in police custody at Gadhinglaj in Kolhapur district. This prompted the then Chief Minister to inform the Legislative Assembly that the state government was considering establishing a separate machinery to investigate custodial deaths. The Amnesty International delegation learned from the Maharashtra Home Department that this has not happened. Since then, Amnesty International was informed by the government that, according to Circular No. MUR 0790/OR-158/POL-11 of 22 November 1990, all investigations into deaths occurring in police custody are to be carried out by the State's Criminal Investigation Department (C.I.D.) or the Bombay C.I.D. Crime Branch, normally within three months of the death. The circular lays down some further rules to be observed after an accused person has been taken into police custody. These include: "There should be absolutely no incident of accused in the police custody being beaten up."

No more people are reported to have died as a result of torture in police custody in Maharashtra since December 1992 as far as Amnesty International is aware: if true, the rate of reported custodial deaths in Maharashtra compares well to many other Indian states and territories in which many custodial deaths continue to be reported. In some areas, Delhi and Tamil Nadu for example, Amnesty International has even noted a recent rise in custodial deaths. Nevertheless, Amnesty International remains deeply concerned about the lack of determination on the part of the Maharashtra State Government over many years to order independent and impartial inquiries into reports of such deaths in custody from torture and ill-treatment, to bring to justice those responsible for causing them and grant relief to the victims' families so many years after the deaths took place.

So far, since January 1985, no police officer accused of torturing a prisoner to death in Maharashtra is known to have been sent to prison. Of the 21 custodial deaths reported to have occurred in Maharashtra between January 1985 and January 1992, only ten resulted in decisions to prosecute. In two cases in which policemen were initially convicted, they were acquitted on appeal by the State Government. (The two policemen sentenced to life imprisonment for murdering Balu Rambhau Kanhayye and Murli Rambhau Kanhayye in custody in 1986 were acquitted on appeal). In two other cases, prosecutions resulted in acquittal, despite strong evidence of torture: seven policemen charged in connection with the torture and murder in police custody of Namdeo Atak, on whose body 40 marks of external injury were found, have all been acquitted. Policemen accused of killing Nandala Rughawani in custody were also said to have been acquitted (Amnesty

²⁴ See: Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 17 and 18 of the UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment.

International asked the state government for copies of the judgements concerned, but to date, they have not been received.) Of the remaining six cases, the position of one (Netaji Bahu Lohar) could not be clarified by the government, whereas in the other five cases (of Raju Mohite, Siddharth Taku Nage, Sodarraaj Thangraj, Prakash Ramchander Kamble, and Ram Aba Bhandirge) the cases were still pending after many years (five years in the case of Siddharth Taku Nage for example).

In other cases, investigations ordered by the Criminal Investigation Department (CID) are painfully slow. Jagdish Laxman Chavan died in March 1989 allegedly of multiple injuries inflicted on him during police torture. Amnesty International was told that the State CID had still not finalized its investigations. When urging that they be speeded up and requesting to be sent a copy, Amnesty International was told that the report would only be internally available. Amnesty International was promised various other reports by the State Government concerning the outcome of investigations in these and other cases of alleged custodial deaths in Maharashtra. By mid May 1994, however, none of them had been received.

CONCLUSIONS AND RECOMMENDATIONS

The practice of unrecorded arrests and detentions in police stations is widespread and acknowledged at the highest police level. It is a dangerous practice that facilitates ill-treatment, torture and even "disappearances". The practice, in which the Bombay police engage from time to time, of arresting relatives of suspects as "hostages" is equally dangerous and objectionable. There is an almost total lack of transparency about what happens in police stations. To remedy this situation Amnesty International recommends that:

1. **Police and state officials should unequivocally condemn the practice of unrecorded detention and proceed promptly against any police official responsible for failing to record arrests and detentions. Senior police officials should regularly visit police stations without advance notice to carry out spot checks and to probe whether the practice persists and ensure that it is eradicated. Where unrecorded detentions have been proven, those responsible should be disciplined and prosecuted for false imprisonment.**
2. **The government should introduce a system of comprehensive police custody records (covering all aspects of the treatment of detainees including time of arrest, when offered food, when brought before a magistrate, period of interrogation, signs of injury and in particular the use of safeguards such as information to third parties, access to legal advice and independent medical inspection) to which outsider monitoring groups and lawyers should have access. This obligation should be given the force of statute.**
3. **Officials should also condemn the illegal police practice of arresting or detaining innocent relatives to force suspects to surrender or provide information about wanted people. Reports of such practices, including those listed in this memorandum, should promptly be investigated and action taken against those responsible.**

The clear condemnation of ill-treatment and torture in all circumstances by the most senior police officials in Bombay, which Amnesty International welcomes, is clearly not enough to halt what is a common practice of custodial violence. There is a yawning gap between the "law in the books" and the "law in practice". Malpractice is facilitated by a system which denies outsiders, including relatives and even lawyers, access to people held in police custody. Further, there are few regulations about the conduct of police interrogation, there is no independent police complaints mechanism and there are no other authorised independent agencies whose function it is to monitor police practices on behalf of the community. The absence of such structural safeguards serve, in Amnesty International's experience, to facilitate ill-treatment, torture, and other human rights violations²⁵. What happens inside India's police stations should become more visible. The police

²⁵ In drawing these conclusions, Amnesty International wishes to underline the important observations made by the National Police Commission in its First Report (paragraph 10.1) :

"One of the fundamental requisites of good government in a democracy is an institutionalised arrangement for effectively guarding against excesses or omissions by the executive in the exercise of their powers or discharge of their mandatory duties which cause injury, harm, annoyance or undue hardship to any individual citizen. This arrangement has not only to include internal checks and

should forthwith implement the assurances which the most senior police official in the state gave to Amnesty International when he said: "the police should be open" and "let arrested people know their rights". Amnesty International recommends that:

4. **The government should ensure that there is in place an independent inspection mechanism to scrutinize police behaviour in all Maharashtra police stations. This should consist of persons of integrity respected in the local community for their independence of judgement and political impartiality. They could consist of groups of lay visitors modelled on or, where they exist, drawn from the peace committees already established in some parts of Bombay. Alternatively, the task could be performed by judicial but not executive magistrates.**
5. **The government should create an independent police complaints body to which all citizens can have prompt and easy access to complain about any police practice or decision. The complaints body should consist of persons of acknowledged independence and probity and should have at its disposal its own corps of investigators to look into complaints of the most serious kind (including, among other things, custodial rape and other forms of torture, deaths in custody allegedly the result of torture, and "disappearances", etc).**
6. **The right of access to a lawyer promptly after arrest - including, as the Supreme Court has directed, during interrogation - should be specifically included in the Code of Criminal Procedure; the Constitution should be amended to extend that right to detainees held under preventive detention legislation and the Maharashtra Police Manual should be updated and amended to ensure that provisions like Section 192(8) - that effectively permit the police to deny with impunity lawyers access to people in custody - are removed. Further, the government should ensure that family members are permitted to see arrested relatives remanded in police stations at an early stage and thereafter regularly, and that facilities for such visits are provided. These rights should be incorporated in relevant statutory law (Code of Criminal Procedure).**
7. **The government should take measures to ensure that an arrested person's unconditional right (unless there is specific evidence that exercise of the right will be used to defeat the collection or preservation of evidence) to have a third party promptly informed about their detention in police custody is implemented.**
8. **The government should introduce clear and detailed procedures, preferably in statutory law, to regulate the treatment and conditions of those in police custody, particularly regarding the duration of their interrogation, access to medical assistance and treatment in detention. Arrested persons should have a right in law**

balances to minimize the scope for such misconduct but also to ensure an effective inquiry into any specific complaint of an alleged excess or omission and expose it promptly for corrective as well as penal action. This is especially necessary in the police who have vast scope for exercise of powers by a large number of personnel affecting the rights and liberty of individual citizens in daily life. Powers of arrest, search, seizure, institution of a criminal case in court.... mark several stages in executive police action which afford vast scope for misconduct by police personnel in different ranks, particularly at the operational level, causing harm and harassment to the citizens".

to be informed about their rights in police custody, and the government should publicly display these rights in all police stations in the relevant languages.

9. The government should institute a training program for police to ensure that they are made aware and will invariably respect these procedures; the right of lawyers and relatives to have access to detainees in police custody; their obligation to inform arrested persons of the legal grounds for their arrest and to bring them before a magistrate within 24 hours. Failure to do so should attract prompt sanction.
10. The state government should order a review of the use and alleged abuse of TADA in Bombay. It should immediately investigate allegations that statements made by persons arrested under TADA for their alleged involvement in the March 1993 bombings were extracted by torture, threats and intimidation. The courts should ensure that all evidence given under duress is excluded from subsequent trials and the accused have access to adequate legal representation. The government should order a prompt review of those provisions of the Act that permit prolonged remands in police custody without charge or trial, that change the rules of evidence and oblige trials to be held *in camera* in contravention of international human rights standards. The Act should be amended so that it complies with the requirements of the International Covenant on Civil and Political Rights, to which India is a party.

The unprecedented rioting in Bombay in December 1992/January 1993 has given rise to detailed allegations of serious human rights violations by the police - now before the Justice Shrikrishna Commission of Inquiry - and of officials' inability or unwillingness to halt the rioting and bring the perpetrators to justice.

11. The government should take immediate action against police officers against whom there is *prima facie* evidence that they killed people deliberately and illegally (see examples in [Appendix B](#)), that they themselves participated in the rioting and looting, that they gave unreliable testimonies or falsified police records when questioned before the Shrikrishna Commission, or failed to submit detailed reports, as required in standing police regulations, on any incidents in which they authorized or exercised their powers to use lethal force.
12. The Justice Shrikrishna Commission should publish interim reports to facilitate prompt criminal prosecutions and appropriate disciplinary proceedings of those responsible, identifying specific instances and individuals wherever possible.
13. Existing rules that facilitate unjustified or unlawful killing of persons involved in or physically present during major disturbances - notably the broad terms of the 1986 Communal Riot Scheme and the 1973 Model Rules - should be promptly reviewed and amended to bring them into full compliance with the UN Basic Principles on the Use of Force or Firearms by Law Enforcement Officials. Specifically, the government should ensure that any such rules and regulations permit no more than the minimum use of force and require full accountability for any action taken resulting in loss of life, by obliging anyone resorting to lethal force to file detailed reports on the incident. Failure to do so should attract prompt sanction.

14. The government should institute a public order training programme for all police aiming to ensure that no more than the minimum damage and loss of life occurs during control of disturbances. Further, the police should be adequately equipped to employ non-lethal methods of crowd control.

Although Amnesty International has not received allegations that people have died in police custody from torture in Maharashtra during 1993, it remains concerned at the lack of determination of the State Government to eradicate the practice and to ensure that the victims receive prompt and adequate compensation and redress. Amnesty International requests that:

15. The government should take immediate steps to speed up investigations into all allegations that people have died or been killed in police custody as a result of torture or ill-treatment, and to make all relevant documents promptly available to the relatives of the victims and their lawyers. It should ensure that legal proceedings against any police officers allegedly involved be promptly instituted and that police officials are instructed to cooperate fully with any such legal proceedings. The government should demonstrate its commitment to eradicate custodial deaths and killings by making judicial inquiries mandatory into all cases of deaths in custody, as the National Police Commission has recommended, and by ordering that interim compensation is promptly paid in all cases where there is evidence that people have been tortured or killed in police custody.

APPENDIX B

Reports showing *prima facie* evidence of human rights violations by police during the December 1992 / January 1993 riots in Bombay

This Appendix includes information²⁶ about:

I. Alleged extrajudicial killings of five men in a mosque in Wadala and "disappearance" of another by police from R.A. Kidwai police station

- Letter dated 3 February 1993 (relevant parts) from the Member of R.A. Kidwai Road Relief Committee describing how a police Sub-Inspector on 10 January 1993 entered the Hilal Masjid, started firing at people inside the Masjid, killing Nathu alias Ayub Khan of Shahid Nagar, Shahid Talib Hussain of Shahid Nagar and Mr Shamshu of Pratap Nagar, allegedly shot at point blank range. A 70-year-old man was beaten with rifles and injured, as was Mohammed Ismail, who died from his wounds on the way to the police station. Mr X (name withheld) was allegedly shot in the hip by the same Sub Inspector when he tried to assist Asfaq Khatri, lying down wounded. Adam Sayyad Hussain, who was ordered to lift the bodies of the dead in the police van, has reportedly "disappeared" after he was taken away by the same police Sub-Inspector.

- Letter from the Managing Trustee of the Hilal Masjid Tameer Committee to the Chief Minister, dated 12 March 1993, copied to the Commissioner of Police, Bombay, and the Senior Inspector, R.A.Kidwai Marg Police Station, about the Hilal Masjid incident. According to the letter, the Sub-Inspector entered the masjid with several constables and started firing at the people who had gathered there for the afternoon prayer. The letter identifies a fifth victim: Khalil Ahmed Israr Ahmed who was also shot apart from the four named above. It names a sixth person (here identified as Mohamed Adam Shaikh, but mentioned above as Adam Sayyad Hussain) whose whereabouts, after being taken away by police, remain unknown.

- Sworn statement from S (name withheld), an eye witness, before the Shrikrishna Commission of Inquiry describing that, after doing ablutions in the mosque, he:

"stood up and suddenly the police entered the masjid and started firing. I saw that four people were shot they were dead. I saw that among those shot dead was Ayub Khan husband of Zarina."

- Sworn statement from T (name withheld) before the Shrikrishna Commission, (supported by medical records) who is himself a victim of the police firing at the mosque but who survived, saying that:

"... on the 10th January it was a Sunday I had gone to pray at the Hari Hilal Masjid. The police entered the mosque from the Rafiq Ahmed Kidwai Marg police station and started firing at the people. I say that I got a bullet injury on my right hand and I fell down. The police after firing and beating people went out. I got up and looked at my hand. My hand was fractured and I was not able to move.

²⁶ The identity of some witnesses has been withheld on request of informants expressing fear of repercussions. Details of witnesses are with the official and unofficial inquiry commissions listed in this Appendix.

... some people had closed the Hijra room namely the room where the Imam prays. I went there and asked them to open the door. The people opened the door. I laid down in that room. The police again came there. They broke the glass of the two doors of the room and fired from the top. The police forcibly opened the door. I was lying down.... the police took the injured including myself to Sakhar Nagar...

... I was discharged from the hospital and arrested by R.A. Kidwai Nagar police and under arrest for 24 hours after which I was released on bail. I did not know for what as till today no chargesheet has [not] been given to me... I was fired [on] even in the mosque even though I was a muslim... I have received Rs. 5000/- as compensation. I still have difficulty in using my right hand...."

- Sworn statement by an old man, Q, an eyewitness, confirming details of the above account:

"..it was Sunday... the 10th of January, I had gone to pray at 12.30 p.m. I was inside the mosque. The police came and started firing inside the mosque, and came right into the mosque with their shoes on. I immediately lay down when firing started and I was saved though firing took place in my direction three times. I saw four people dead in front of me... thereafter they broke the doors of the mosque and they beat people with lathis. thereafter they took away a lot of people to the police station. However they left me... one of my brothers who is blind was also hurt by the police in front of me and was bleeding when the police were breaking doors in the mosque."

- Letter from Y (name withheld) dated 11 March 1993, who was himself shot at by police when saying his prayers, but survived. He described how he left home at around noon on 10 January 1993 to go for Namaz to the Hilal Masjid, how after preparing for Namaz the police arrived, entered the masjid and:

"started firing at random, people were aweful and due to the fear of being victim to this firing they closed the doors. In the frontside a window was left open inadvertently through which the police opened fire. No sooner [were] their bullets consumed, they asked the police to come forward and stand in a row with hands held up. Subsequently Inspector... loaded his gun again. In the meanwhile a person named Shamshu stepped ahead and the said Inspector shot him and he died on the spot". "Out of the police staff one constable said 'go to the wireless van and tell them that police opened fire on the Muslims in the Masjid.' It seemed that they were about to shoot all of us, but in the meanwhile a Sikh Jawan of S. E.P. said to the police that it is enough now so put an end to all the acts ...

We were all taken to Kidwai Nagar Police station... Then I was taken to the K.E.M. hospital and also to the Sion hospital where the doctor opined that there is no bullet shot in this person's back. But after a period of 17 days, when I was released on bail, i.e. on 27.1.1993, I approached a private doctor... In the x-ray it was visible that a bullet is in my back. After a period of 17 days the bullet was taken out by a private doctor..."

He requested assistance and punishment of the guilty police officers.

- Letter from Z (name withheld) to the Chief Minister of Maharashtra, dated 11 March 1993, describing how he was sitting in a factory next to the Hilal Masjid at 12.30 a.m. on 10 January 1993, heard shots being fired, saw an injured boy entering the factory to whom his friend, Mr X [see above and letter below], attended. Shortly afterwards three police including the same Sub-Inspector "fired at X without any cause and also hit him with rifle butts". Mr Z said he was beaten, arrested and detained for three days on protesting against the police action.

- Letter from Mr X himself, dated 12 March 1993, to the Chief Minister of Maharashtra, describing how he heard the sound of firing in the masjid, saw a wounded man entering the factory and describing how:

"On seeing his state I took pity on him and asked him to lie down on a cot. A short while later, the police officer, accompanied by the S.R.P. and other Constables entered the factory premises. I then explained to the Police Officer ... that this man was injured and should be hospitalised. Instead of helping me and taking the injured to hospital, the police officer fired a shot at me at point blank range over my hip. I fell[t] down on the cot. The S.R.P. started assaulting me with their lathis and Rifle butts, on my hand and chest. My left hand was fractured in the process, at two places. I felt a faint sensation in my head due to the heavy blow [l]e]dged on my head. Thereafter, they proceeded to assault my friend Z who is the factory ... I was bleeding very profusely and was taken to the hospital after 3 hours... the Doctor who attended me explained to me that if the bullet is removed, I may suffer serious complications. So the bullet is still existing [has not been removed]".

He said he was refused any compensation because he is a government employee.

- Sworn statement (supported by medical reports) from the wounded man (R) to whom Mr X attended. He said that:

"... on the 10th January 93, I had gone to Hilal Masjid to pray at about 1 p.m. I was standing and praying when suddenly I heard the noise of bullet firing and was hit by a bullet in the abdomen... I started bleeding, just then two constables came and hit me with lathis ... I saw several constables beating people in the masjid brutally. I fell down... I struggled, got up and crossed over a very small wall which separates the Masjid from the ... factory and sought shelter in the factory until at about 4 p.m. The factory people arrived and seeing me in that condition advised me to go to hospital... I was taken to the Sion hospital, where I was admitted for two months and I was operated on twice.

... I have received compensation of Rs. 5000 however this is wholly inadequate for my medical treatment and the xx relief Committee has been assisting me."

- Letter from a mother to the then Commissioner of Police for Greater Bombay, dated 2 February 1993, asking him to trace her son, Mohamed Adam Hassansab Sayed [named above as Mohamed Adam Shaikh / Adam Sayyad Hussain] who has not been seen and has not returned home since the same police Sub-Inspector took him away at about 12.45 p.m. on 10 January 1993 in front of their house at the Shahid Nagar Hutments, Wadala. The mother describes how the same police Sub-Inspector gave her a note telling her to go and see her son at Bhoiwada police station. Not finding him there, she returned to the R.A. Kidwai police station, was told to return the

next day, was then taken to the K.E.M. hospital's morgue, but failed to find a trace of her son, and was then told to lodge a missing complaint. She wrote:

"Even this surprised me because my son had been taken away by PSI.. right in front of my eyes and how could he be dead or missing?"

II Attempted extrajudicial killing by police in December 1992 at Govandi

- Statement dated 19 March 1993 before the Indian People's Human Rights Tribunal by Himmat Ali, a vegetable vendor, describing how, on 8 December 1992 at 4.30 pm.:

"I was standing with my handcart. The police had come and because I was still on the road they caught hold of me and beaten me with the butt end of their guns and sticks. They brought me to Shivaji Nagar Colony #4, made me stand up and put my hands up. They fired at me about 4 times. I received injuries on the stomach and the back. I was placed in a police van and taken to the Deonar Police outpost... I was placed in another van in which there were dead persons. I was taken to the hospital. I told the doctor that I had bullet injuries. The doctor signalled me to stop talking as otherwise I could die... I was not participating in any riot when the police fired at me." (Further details of this incident are given on page 20 of The Bombay Riots The Myths and Realities by the Lokshahi Hakk Sanghatana and the Committee for the Protection of Democratic Rights, Bombay, March 1993.)

III Reported extrajudicial killing by police in December 1992 at Shantinagar

- Letter from Tahir Ashrafi, General Secretary Bombay Janata Dal, to the Governor and Chief Minister of Maharashtra and the Commissioner of Police, Bombay, alleging that on the 7th December 1992 at 1 pm. a police party from Deonar Police Station came to Shantinagar and:

"broke open the door of one of the houses. Inside was a young man Majeed alias Gadra eating food. He was dragged out by the police, made to stand near a pole and shot dead by Sr. P.I....."

That on the same day i.e. 07.12.92 at 10 p.m. in the night when I reached the spot I put the dead body of Gadra on a cart and tried to move it to Shatabadi Hospital, but the police hostilities continuing unabated prevented me from doing so..."

IV Reported "disappearance" of a man on 7 December 1992 after arrest by police in Govandi

- Letter by Tahir Ashrafi, General Secretary Bombay Janata Dal, to the Governor and Chief Minister of Maharashtra and the Commissioner of Police, Bombay, alleging that on the night of 7 December 1992 a party of police, accompanied by members of the Shiv Sena, went in a police van to Baiganwadi and:

"broke open the door of Abdul Qayyum's house... at about 2.30 am. and looted the house and ransacked it completely. One Niyaz Ahmed sleeping in the house was brutally beaten by the police and taken away. His whereabouts after being arrested are not still known".

