

**amnesty international**

# **NEPAL**

**A PATTERN OF HUMAN RIGHTS  
VIOLATIONS**



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- it seeks the *release of prisoners of conscience*. These are people detained for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence;
- it works for *fair and prompt trials* for all *political prisoners* and on behalf of political prisoners detained without charge or trial;
- it opposes the *death penalty* and *torture* or other cruel, inhuman or degrading treatment or punishment of *all prisoners* without reservation.

Amnesty International is impartial. It does not support or oppose any government or political system, nor does it support or oppose the views of the prisoners whose rights it seeks to protect. It is concerned solely with the protection of the human rights involved in each case, regardless of the ideology of the government or the beliefs of the victim.

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Amnesty International acts on the basis of the United Nations Universal Declaration of Human Rights and other international instruments. Through practical work for prisoners within its mandate, Amnesty International participates in the wider promotion and protection of human rights in the civil, political, economic, social and cultural spheres.

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Five prisoners whose cases are described in the report Nepal: A Pattern of Human Rights Violations were reported to have been released in late September or early October 1987. They are Bishnu Bahadur Manandhar, who was arrested under the Public Security Act (PSA) in June 1985; Modnath Prasrit, originally convicted in 1982 under the Treason (Crime and Punishment) Act who was then held under the PSA following the expiry of his sentence, and Radha Krishna Mainali, arrested under the PSA in April 1987. In addition, Aang Dorje Lama and Bhairav Risal, who had been in detention under the Treason (Crime and Punishment) Act since November and December 1986 respectively, were reported to have been released on bail.



## NEPAL: A PATTERN OF HUMAN RIGHTS VIOLATIONS

### **1. INTRODUCTION**

Political imprisonment is a persistent feature of Nepali life. All political party activity is banned. There are usually at least 100 political prisoners in Nepal's jails, and in recent periods of widespread protest such as the first half of 1985, hundreds of non-violent opponents of the government spent weeks or months in prison. Students, journalists and trade unionists have all been jailed for non-violent political activity.

This report documents a pattern of political imprisonment. It also describes torture and ill-treatment in police custody, religious persecution, several "disappearances" and the use of the death penalty in the Himalayan kingdom.

Political activists are not the only people who have been prosecuted for non-violent activities. The practice of the Christian religion in this Hindu nation has also resulted in some people being imprisoned, and the basic right to choose freely one's own religious faith is explicitly restricted in the Nepali Constitution.

Torture in police custody is widespread and routine. Criminal suspects are frequently beaten, especially on the soles of the feet, pins are inserted under their finger-nails, and stinging nettles applied to sensitive areas. Some political prisoners have also been tortured to make them "confess". Convicted prisoners held in jails have been beaten, confined to dark punishment cells for long periods and kept in fetters.

Such reports of torture have increased anxiety about what has happened to several men who "disappeared" after being taken into custody in mid-1985. Their families have not been able to trace them.

Since 1985 changes in the country's legislation have increased the number of offences for which people may be executed.

This report deals with the following issues:

#### Political Imprisonment

In spite of the constitutional ban on political parties, in practice they continue to organize. The repression of opposition groups if they engage in political activities such as holding meetings varies considerably at

different times. The interpretation of the laws by local authorities in different parts of the country also varies widely. Administrators such as zonal commissioners have extensive powers of arrest and detention. The arbitrary use of these powers may be challenged through the courts, but the judiciary's powers of review are restricted. Moreover, in a poor country with a low literacy rate and a legal system introduced only some 30 years ago, many prisoners are unaware of or unable to afford the legal remedies available.

The number of prisoners of conscience and other political prisoners in Nepal cannot be precisely determined. Most political prisoners are prisoners of conscience, although in some instances there is insufficient information to demonstrate this conclusively. It is often difficult to obtain details of individual prisoners, many of whom are not well-known outside their local community. Little information is made available by the Nepali Government about arrests and the government has not replied to Amnesty International's repeated requests for information. The collection of information on prisoners outside the capital, Kathmandu, is particularly difficult in view of the poor communications within the country. Moreover, individuals campaigning for the release of political prisoners have at times themselves been arrested.

Among the prisoners of conscience held in August 1987 were:

- the leader of a communist faction, Bishnu Bahadur Manandhar, who was arrested in June 1985 before a demonstration calling for political reform. He is held without formal charge or trial;
- a journalist, Bhairav Risal, and an editor, Aang Dorje Lama, who have been in jail since late 1986. They were prosecuted for publishing an article criticizing the country's economic policies, which was deemed to have been offensive to the monarchy;
- a student, Radheshyam Siwakoti, who was arrested in September 1986 and prosecuted for possessing pamphlets criticizing the political system and the government's economic policies;
- a leader of a communist faction, Radha Krishna Mainali, and a teacher and trade unionist, Sita Ram Maskey. They were arrested in April and May 1987 and held without formal charge or trial for organizing protests and a boycott of milk powder feared to be contaminated by nuclear radiation.

The legislation most frequently used to hold prisoners of conscience and other political prisoners without formal charge or trial is the Public Security Act (PSA) of 1961. This empowers zonal commissioners to impose nine-month detention orders on individuals on broadly-based grounds such as "disturbing the peace and tranquillity" of Nepal. Detention orders may be extended up to a maximum of three years, although several PSA detainees

have been held for even longer. Under the PSA the courts are excluded from reviewing detention orders. For this and a number of other reasons the provisions of the PSA contravene internationally recognized legal standards.

Under the Treason (Crime and Punishment) Act, known in Nepal as the Raj Kaj Act, prisoners of conscience can be jailed for questioning the political activities of those holding state power or the nature of the political system itself. The maximum punishment under this law if they are ruled to have been derogatory to the king is three years' imprisonment. The zonal commissioner acts as both prosecutor and judge. This denies the accused an impartial hearing and is totally contrary to internationally accepted legal standards. Prisoners arrested under this law generally remain in jail for a year and often longer before their trial takes place.

#### Religious persecution

The fundamental right to freedom of religion is circumscribed under the Constitution, which does not allow people to try to gain converts to their religious faith. The legal code goes even further and prescribes imprisonment for any Hindu who converts to another religion. The ban under the legal code prohibiting seeking converts may be seen as protecting traditional cultural values. However, some members of the small Christian community have been prosecuted in circumstances which suggest that they were not violating the law on seeking converts but merely observing their own religious practices.

#### Torture, deaths in custody and prison conditions

The use of torture to extract confessions from criminal suspects is reported to be commonplace. Amnesty International knows of two cases in recent years in which criminal suspects died in custody, apparently as a result of torture. Some political prisoners are also reported to have been tortured while held incommunicado in police custody. The constitution requires that prisoners should be produced before a judicial authority within 24 hours of their arrest, an important legal safeguard which in practice appears to be widely disregarded. Moreover, despite this provision of the Constitution, special legislation enacted in 1985 permits a prisoner to be held without being brought before a court for up to 90 days. Prisoners held for political reasons have been kept incommunicado for several months under this law. Such detention, in Amnesty International's view, provides a context in which torture is more likely to occur.

Some prisoners held in jails are also reported to have been tortured, in order to punish or intimidate them. Prisoners in jails are often kept in fetters. Although permitted under the country's Prison Act in certain restricted circumstances, fetters are unconditionally prohibited under the United Nations Standard Minimum Rules for the Treatment of Prisoners.

### "Disappeared" prisoners

Several men arrested during mid-1985 are reported to have "disappeared" in police custody. All the efforts by their relatives to use the courts to ascertain their whereabouts have proved unsuccessful. The authorities have consistently denied that these men are in their custody even though there were witnesses to their arrest and other prisoners, since released, have stated that they saw them in detention.

### The death penalty

In 1945 Nepal abolished the death penalty for all ordinary offences but in 1985 it was reintroduced under the legal code for some murders. The Destructive Crimes (Special Control and Punishment) Act also introduced in 1985 provides for the death penalty for causing death by using explosives or weapons in a public place. Under its provisions four people were sentenced to death in their absence in May 1987.

\* \* \* \*

In recent years Amnesty International has submitted to the Nepali Government recommendations based on international legal standards, which it believes would promote and protect basic human rights. These recommendations are detailed at the end of this report. They include releasing all prisoners of conscience, revising the laws to bring them into conformity with international standards, investigating complaints of torture and "Disappearances" and prosecuting those found responsible for such acts.

Amnesty International is publishing its information on political imprisonment and other human rights violations in Nepal to alert the international community. It is also calling on the Nepali Government to implement its recommendations, both to protect Nepal's citizens and to demonstrate its commitment to upholding universal human rights.

## 2. BACKGROUND

### 2.1 Nepal in outline

The kingdom of Nepal, landlocked between China to the north and India to the south, covers an area of 147,181 square kilometres. Much of the land is mountainous, and it contains a large part of the Himalaya range including the world's highest peak, Mount Everest. Bordering India lies the terai region, a belt of low-lying plain. The country is dissected by a number of rivers, flowing north to south. The combination of mountain ranges and river systems has made east-west communication by land extremely difficult.

Distribution of the country's 16 million population is dictated by these physical features. Most people live in the valleys and the terai region, with smaller settlements in the upper hills and vast uninhabited areas at high altitude.

The great majority of the population are Hindus and the King of Nepal is not only the head of state but also considered by many as the incarnation of the Hindu god Vishnu. The next largest religious group is Buddhists, followed by Muslims and then a small community of Christians.

Some 90 per cent of the labour force is employed in agriculture. Economic development has been hampered by poor communications within the country and its landlocked position - more than 70 per cent of foreign trade is with India. According to the World Bank, Nepal is among the world's least developed and poorest nations. Earnings from tourism - over 180,000 tourists visited Nepal in 1985 - make an important contribution to its budget. Foreign aid has played a large part in financing development, with substantial individual contributions from both India and China. The consortium of aid-donor nations includes Canada, Finland, France, the Federal Republic of Germany, Japan, Switzerland, the United Kingdom, and the United States of America.

Nepal is encircled by large and powerful neighbours. It has adopted a policy of neutrality in foreign affairs. Since the early 1970s, in international forums the king and government have sought to have Nepal recognized as a "zone of peace". Nepal is a member of the South Asian Association for Regional Cooperation (SAARC, which also includes Pakistan, India, Sri Lanka, Bangladesh, the Maldives and Bhutan) and of the Non-Aligned Movement. Nepal was admitted to the United Nations in 1955. It is not a party to either the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, although it has acceded to United Nations conventions against

apartheid, racial discrimination and genocide.

Nepal is divided into 14 administrative zones, each headed by a commissioner appointed by the king. Each zone is further subdivided into districts, of which there are 75 countrywide, each headed by a Chief District Officer (CDO). The zonal commissioners and CDOs exercise considerable authority within their areas. Zonal commissioners, who are not required to have a legal background, act as judges in some political trials and may also authorize detention without trial for up to nine months. CDOs are also vested with judicial powers under some laws.

Traditionally, administrative and judicial powers were intermixed. The first moves to separate structurally the judiciary and the executive began in 1940, but, as noted above, there is still a degree of overlap. The judicial system is now headed by a Supreme Court in Kathmandu and the Chief Justice and other Supreme Court judges are appointed by the king. Supreme Court judges do not enjoy full security of tenure. They are appointed for a 10-year period, following which they may be reappointed. The Supreme Court has jurisdiction over appeals and cases including hearing writs of habeas corpus (the process by which the legality of a detention may be challenged). Although under the constitution decisions of the Supreme Court are binding on all lower courts, the king has the power to refer them back for further consideration. Amnesty International understands that this power is exercised, for example, when individuals petition the king complaining of the court's decision in a case. As a result of this royal prerogative, the Supreme Court may apparently be required to hear a case several times over. Beneath the Supreme Court are five regional courts and 15 zonal courts, both of which function as appeals courts, and 75 district courts where criminal and civil cases are initiated.

## 2.2 The political context of imprisonment

Unlike some of its larger neighbours, Nepal was not subject to colonial rule but pursued a policy of cooperation with the British administration in India. From the mid-nineteenth century until 1951, it was ruled in effect by a family of hereditary prime ministers, the Ranas, while the monarchy retained a titular position without real power. Throughout this period the Ranas sought to isolate Nepal from external influences and developments.

With the British withdrawal from India in 1947 and the success of the independence movement there, pressure for a more representative form of government in Nepal was exerted by the newly-established Nepali Congress Party (known as Congress). The king left Nepal and took temporary asylum in India. After a brief insurrection launched from India, Congress established a rival government in parts of the terai and lower hill areas. The eventual consequence was an agreement between the Ranas, King Tribhuvan and Congress to form a coalition cabinet operating under the general

supervision of the king. Congress was assigned several key ministries and allowed to organize itself as a broad-based national party. This new arrangement did not last long, however, since disagreements soon arose within the coalition. In January 1952 the king declared a state of emergency. Certain political parties - the Nepal Communist Party and the party formed by leading Ranas - were declared illegal and political meetings were banned indefinitely. The ban on the affected political parties was enforced but other parties effectively continued to organize.

When King Tribhuvan died in 1955 he was succeeded by his son, King Mahendra, who attempted to consolidate a central political role for the monarchy during the late 1950s. However, there was concerted protest by the major political parties and in 1959 the king held elections to a national parliament. Congress won 74 seats from the 109 parliamentary districts and in July 1959 Bisweswar Prasad Koirala, the Congress leader, became the country's first elected prime minister. The Congress administration was relatively short-lived, however. In December 1960, King Mahendra assumed total power. He invoked the emergency powers available to him under the constitution: the government was dismissed and Congress leaders and other politicians were arrested on the grounds that they had failed to maintain law and order and provide national leadership. All political parties and their activities were banned.

In the face of the king's action some Congress leaders and supporters organized armed opposition but by 1962 this had largely subsided. Many of those arrested in the aftermath of the clamp-down remained in jail until the late 1960s or early 1970s. The former Prime Minister, B. P. Koirala, was released in 1968 and went into exile.

A new constitution was introduced in 1962. This provided for a "partyless" panchayat (assembly) system of government based on a four-tiered pyramid of councils with the king at their head. In descending order, the Rastriya Panchayat (National Assembly) was elected from members of the Anchal Sabha (Zonal Councils), who in turn were elected from members of the Zilla Sabha (District Councils), who were elected by members of the Gaon Sabha (Village Councils). However, the king's powers were absolute since the National Assembly had only advisory authority and he was not obliged to act on its advice.

By the time of King Mahendra's death in 1972, the monarchy's political dominance was well established. However, although they were formally banned, party organizations were still active and had not accepted the panchayat system. The police continued to try to control political party activity by arresting people and intervening in political gatherings.

King Birendra succeeded his father amid hopes that he might liberalise the political system. In 1976 the constitution was amended to allow a widening of the franchise and more frequent elections to the National Assembly. The king's powers remained absolute, however.

In 1979 there was widespread unrest initiated by students calling for

political reform. Some opposition leaders and many students were arrested. At the end of May, the king announced that a national referendum would be held to choose between the panchayat and multi-party systems. Following the king's proclamation, Nepalis were allowed to campaign for an against a multi-party system, although the ban on political parties was not revoked. A few weeks before the referendum took place, in mid-April 1980, the king decreed a general amnesty for political prisoners and exiles, except for some charged with criminal offences. More than 150 prisoners were reported to have been released as a result.

By a relatively small majority - approximately 54 per cent to 42 per cent - the electorate voted to retain the panchayat system. Amendments to the constitution were subsequently enacted providing for direct elections to 112 of the seats in the National Assembly by universal adult franchise, with the remaining 28 members to be appointed by the king; for the Prime Minister to be elected by members of the National Assembly; and for the Council of Ministers to be answerable to it. The amendments did not reduce the powers of the king. Thus, while the Council of Ministers currently manages day-to-day government operations and advises the king, the king retains supreme authority over all government institutions - whether legislative, executive or judicial.

Political parties have continued to be active in defiance of the constitutional ban. Elections to the National Assembly took place in 1981, and although they were boycotted by the Nepali Congress Party, members of some other political parties stood as independent candidates. Many students and political activists were arrested in the months preceding the elections for attempting to publicize the programs of the political parties which they supported.

Before the next general elections, scheduled for May 1986, Nepal underwent a series of political protests. In late 1984 the Nepal National Teachers' Association (NNTA), a nationwide professional association to which the Nepali Government had not granted official recognition, went on strike and staged a series of demonstrations and protests. The NNTA's proclaimed objectives in launching such activities were to obtain formal registration of their association and improved working conditions for teachers. Dozens of teachers were briefly detained while some leaders of the NNTA were imprisoned for longer periods.

The teachers' protests had only ended a short while before the Nepali Congress Party, together with other political parties, launched in May 1985 a satyagraha (non-violent civil disobedience movement) to press for the restoration of the multi-party system, the release of political prisoners and other reforms. This lasted for one month during which hundreds of people were arrested.

The satyagraha was called off when in mid-June 1985 a series of bombs exploded in Kathmandu and elsewhere. Over 1750 people were arrested, and 102 were eventually charged with complicity in the bombings. The principal defendant was Ram Raja Prasad Singh, a former National Assembly member. He

is reported to have trained dozens of young men in the use of firearms and other weapons from the late 1970s onwards, with the ultimate objective of overthrowing the political system by force. About 60 of the defendants were held in incommunicado detention for months, and several were apparently tortured.

The 1986 election campaign was accompanied by further arrests. These elections were also boycotted by the Nepali Congress Party, although more than a dozen of those elected were closely identified with radical political parties. Some of those arrested were election candidates and their supporters whose comments were deemed insulting to the government or monarchy or who had accused the local administration of corruption or vote-rigging.

### 2.3 Domestic provisions for the protection of human rights

Part 3 of the 1962 Constitution of Nepal is entitled Fundamental Duties and Rights. It proclaims many of the freedoms enshrined in the Universal Declaration of Human Rights, but with two major restrictions. The freedoms of speech and expression, to assemble peaceably and to form unions and associations (Article 11(2) (a) (b) and (c) of the Constitution) are limited by the condition that :

"...no political party or any other organisation, union or association motivated by party politics shall be formed or caused to be formed or run." (Article 11(2)(a)).

The second restriction is contained in Article 17(1):

"Laws may be made for the sake of public good to regulate or control the exercise of fundamental rights....".

Among the laws enacted for the "public good" is the Public Security Act of 1961, which allows preventive detention without trial.

The right to religion, as proclaimed in Article 14 of the Constitution, states:

"Every person may profess his own religion as handed down from ancient times and may practise it having regard to the traditions.

"Provided that no person shall be entitled to convert another person from one religion to another."

People responsible for religious conversions and also the converts themselves have been prosecuted in Nepal. This violates the Universal Declaration of Human Rights, Article 18, which specifically upholds "the

right to freedom of....religion; this right includes freedom to change....religion....". Most of those prosecuted have been Christians accused of seeking converts among Hindus, or Hindus charged with having converted to Christianity. However, some Christians have been arrested apparently just for practising their faith.

The constitutional ban on political parties and their activities clearly substantially negates the fundamental rights to freedom of expression and association. Furthermore, under the constitution, prisoners held in preventive detention are excluded from some basic rights available to other prisoners.

However, many of the provisions in Nepali law to protect prisoners conform to international human rights standards, although in practice some appear to be regularly infringed. Safeguards for prisoners in the constitution include protection against retrospective punishment (Article 11(3)), double punishment (Article 11(4)) and self-incrimination (Article 11(5)). These rights are also contained in the Civil Rights Act, 1955. Clause 6 of Article 11 of the constitution requires that "No person who is arrested shall be detained in custody without being informed, as is practicable, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice." Furthermore, under clause 7 everyone arrested "shall be produced before a judicial authority within a period of 24 hours of such arrest....and no such person shall be detained in custody beyond the said period except on the order of such authority." However, excluded from the provisions of clauses 6 and 7 of Article 11 are "a citizen of an enemy state" and, most significantly, a person who "is arrested or detained under a law providing for preventive detention." (Article 11(8)). In practice prisoners are often not brought before a judicial authority within 24 hours of their arrest nor told the grounds for it.

There are other provisions of Nepali law which are intended to protect the rights of prisoners. For example, when recording a statement from a suspect in police custody, a district attorney, an official responsible to the Attorney General, should be present. Section 9(2)(2) of the Evidence Act of 1974 prohibits the acceptance in evidence of the statement of any suspect "extorted by torturing or threatening to torture him or any other person...". However, the court may require a person claiming to have been tortured to produce evidence of it. A Supreme Court judgment in 1971 ruled that the statement of a suspect in police custody does not constitute sufficient grounds for conviction unless it is corroborated by other independent evidence. Furthermore, Section 25 of the Evidence Act clearly places the burden of proof in any trial on the prosecution. To ensure prompt justice, Section 14 of the Muluki Ain (legal code) on court procedure stipulates that a prisoner's trial should be completed within a maximum period of six months to one year.

Article 71 of the Constitution allows people to petition the Supreme Court to complain of actions taken by administrative authorities which violate their fundamental rights. Writs of habeas corpus in detention

cases may also be submitted to zonal courts in all zones except Bagmati, where the Supreme Court sits and which may be approached directly.

In a compilation of essays on the Nepali legal system written by Nepali legal experts and published to mark the king's birthday in 1985, one contributor considered that:

"....the Supreme Court of Nepal does not seem to have played its due role as....the promotor and protector of human rights. The analytical study of judicial behaviour amply show[s] that the attitude of the judiciary has been basically....non-assertive."

The Supreme Court has ordered the release of some political prisoners, ruling that there was inadequate evidence to warrant their continued imprisonment or that their detention was illegal. However, the Supreme Court's jurisdiction does not extend to substantive examination of preventive detention orders. Furthermore, the police and other authorities have on occasion apparently disregarded or circumvented Supreme Court orders to produce prisoners before the court or release them. Senior police officials have told the Supreme Court that a person was not in their custody, although the prisoner was subsequently released by them. Finally, few prisoners can afford the expense of litigation at the level of the Supreme Court.

It is an internationally recognized principle that the judiciary should decide exclusively on all matters of a judicial nature. The quasi-judicial powers granted to zonal commissioners and CDOs to act as judges in certain hearings or trials, often those involving political offences, seriously undermines this principle. Moreover, the combination of executive and judicial functions in these officials raises serious doubts about the fairness of such hearings. It further conflicts with the internationally accepted standard that those responsible for dispensing justice should be both independent and impartial.

### 3. THE LAWS AND POLITICAL IMPRISONMENT

#### 3.1 The Public Security Act, 1961

Many prisoners of conscience and other political prisoners in Nepal are held under the Public Security Act (PSA) of 1961.

The PSA provides for administrative detention without trial on four broad grounds to prevent violation of the:

- "(a) Security of the Kingdom of Nepal;
- (b) Peace and tranquillity inside the Kingdom of Nepal;
- (c) Amicable relations between the Kingdom of Nepal and other states, or
- (d) Amicable relations among people of different classes or regions in the Kingdom of Nepal." (Article 3(1))

There are a number of rules governing the application of the PSA. According to Rule 3, anyone arrested under the PSA must be served with a detention order within 24 hours of being taken into custody. The order is merely a confirmation of the person's arrest and provides no precise grounds for it. Anyone wishing to challenge their arrest may submit a petition to the authority responsible for the arrest within 35 days. In preparing the petition, the prisoner "may consult his agent or attorney in the presence of a government employee." (Rule 4). If the petition is rejected, it must then be sent within seven days by the authority responsible for the arrest to the Home Ministry, together with the reasons why it was not accepted and "any other evidence in respect thereto". (Rule 5).

Detention orders imposed by central government, in effect the Ministry of Home Affairs, are for up to 18 months. Those authorized in the first instance by a zonal commissioner or CDO are for up to nine months. This nine month order may be extended to 18 months if confirmed by the Ministry of Home Affairs within the first nine months' detention. If detention orders are to be renewed after 18 months the procedure followed "...except in special circumstances" provides for the establishment of an "advisory board". The advisory board consists of three members appointed by the government: a Supreme Court judge and two civil servants, one from each of the Ministries of Home Affairs and of Law and Justice. When the advisory board is established the Ministry of Home Affairs submits a report setting out the grounds for the detention order, together with a written petition

from the detainee, if the detainee so wishes. There is no provision for a detainee to have access to legal counsel in preparing such a petition, or for a lawyer to represent the detainee at hearings of the advisory board. The advisory board then reports to the government. The maximum period of detention under the PSA is three years.

Since the advisory board submits recommendations only, detentions under the PSA are controlled solely by the executive authorities. The PSA expressly prohibits judicial scrutiny:

*"No order issued under this act shall be questioned in any court of law." (Section 11)*

Although detention orders under the PSA have been challenged, as described below, few prisoners have been promptly released as a result of such action. The Supreme Court has interpreted its role as limited to examining whether the detention order was imposed according to the correct procedures, not scrutinizing whether the grounds for detention are lawful. If the arresting authorities present information which they regard as providing grounds for a person's detention - for example, a police report that a gathering of a political party took place in which the accused was involved - the court does not examine whether this information contains sufficient evidence to justify the detention under the law. Moreover, the information on the grounds for arrest presented to the court is not shown to the defence, so the defence cannot argue against it.

The provisions of the PSA fail to satisfy international legal standards. There is no requirement that the arresting authorities inform the detainee in detail of the precise grounds for arrest. The constitution and procedures of the advisory board do not accord to internationally recognized notions of a fair hearing. Two of the board's members are officials of government ministries, and the board cannot thus be regarded as an independent and impartial body. It has powers to make recommendations only, not binding decisions. Furthermore, the detainee has no right to appear before the board in person and to have legal representation at the time his case is being heard, and therefore no opportunity to comment on the evidence presented at the hearing. In the light of these violations of the detainee's rights, it is of particular concern to Amnesty International that the Supreme Court has only limited jurisdiction in habeas corpus petitions. Under Article 9.4 of the International Covenant on Civil and Political Rights, every prisoner "shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

Amnesty International knows of numerous instances when the provisions of the PSA itself have been breached. For example, detention orders are not always presented to the detainee within 24 hours of arrest. Also, the provision requiring Ministry of Home Affairs authorization for the extension of a nine-month detention order imposed by a local authority - generally a zonal commissioner - is regularly circumvented. Prisoners are

released after nine months' detention, only to be rearrested a matter of minutes later under a new nine-month detention order. Prisoners have also sometimes been held in detention beyond the three-year maximum set by the PSA. As to the advisory board system, this does not seem to function: not one of the prisoners interviewed by Amnesty International who had been held under the PSA was aware of a hearing by an advisory board.

### 3.1.1 Case histories

The following case histories of prisoners of conscience illustrate the various ways in which the PSA's provisions are circumvented or disregarded. They also show that the law is used to imprison non-violent opponents of the political system and the government.

Bishnu Bahadur Manandhar, the 57-year-old leader of one of the factions of the Nepal Communist Party, was arrested on 4 June 1985. This was in the middle of the satyagraha (non-violent civil disobedience campaign). He was arrested at a house where he had met four party workers before a procession and public meeting which he was to address. Police reportedly forced their way into the house before arresting Bishnu Bahadur Manandhar and the others. Bishnu Bahadur Manadhar was taken first to the District Superintendent of Police (DSP) Office, where he spent the night. The next day he was sent to Nakkhu Jail, a few miles from Kathmandu.



Nakkhu Jail

He was detained continuously without charge or trial for 18 months until 6 December 1986, when he was presented with a release notice. However, he was not released. Without producing any warrant of arrest, police took him from inside the jail compound to Jawalakhel police station where he was held until 8 December. He was then returned to Nakkhu Jail after a new PSA detention order was issued against him. In September 1987 Bishnu Bahadur Manandhar's detention order was reported to have again been extended.

Bishnu Bahadur Manandhar was the only person detained during the satyagraha who was still in jail in 1987. The specific reasons for his long detention have not been disclosed by the authorities as they are not required by the PSA to provide such information to the detainee or anyone else.

It remains unclear how many people were arrested during the satyagraha of late May and June 1985 as widely divergent claims were made by government and opposition sources. Opposition sources claimed that several thousand people had been arrested but the government admitted holding only one thousand or so at any one time. Not only were people participating in demonstrations or picketing government offices taken into custody, but others were arrested during police raids on their homes to prevent them supporting the satyagraha. Some journalists who wrote articles in support of the satyagraha were also held for short periods. Although some of those arrested were freed after only a few days' police custody, a few hundred others were still in detention under the PSA in late 1985. Most were released during the first half of 1986.

Suresh Nepal is one of those to have been released only to be rearrested. An activist in a radical students organization, the All Nepal National Independent Students' Union (ANNISU), Suresh Nepal was detained under the PSA in connection with a cultural festival at Piskar village in Sindhupalchok district in mid-January 1984. The authorities deemed a play and songs performed at the festival to have been insulting to the monarchy although Amnesty International has been told by some of those present that they simply represented the need for peasants to unite against large landowners who abused the local people. The cultural festival is an annual event and hundreds of peasants from the surrounding area had gathered for it. The authorities of the Piskar area are understood to have been concerned for some time about the influence and activities of radical groups who, according to a police report, were "defaming" local landowners. Police were sent from Kathmandu to disperse the people gathered at the cultural festival at Piskar. They apparently arrived while the play was being performed. They opened fire in an attempt to disperse the crowd and two people were killed. The authorities claimed this action was taken only after some people in the crowd had thrown stones at the police but this was denied by some of those present, who said that stones were thrown at the police after they opened fire. No official inquiry is known to have been held into this incident.

Suresh Nepal was at his workplace in Kathmandu in late January 1984

when he was summoned to present himself at the zonal commissioner's office. On arrival, he was immediately arrested and accused of having been at Piskar. Although he comes from Sindhupalchok district, Suresh Nepal denied being at the cultural festival. Twice, on 30 July 1985 and 29 April 1986, he was presented with release orders. The first time, he is understood to have left the jail for several minutes before being rearrested; on the second occasion he was given his release papers at the same time as a new detention order was imposed. He was finally released in early 1987.

Arun Nepal, also an ANNISU activist arrested in connection with the play at Piskar, has now been detained under the PSA for longer than the three-year legal maximum. A government official stated in an informal conversation with a foreign visitor that Arun Nepal would be held until he is prepared to change his political views and state that he accepts the "partyless" political system in Nepal.

Several other people were also arrested under the PSA in connection with the Piskar incident. A few were still in jail in mid-1987. One is Sabitri Bohra, whom Amnesty International believes is held because of her non-violent political activities and beliefs. She was active in the women's section of the ANNISU, was outspoken in her criticism of the political system and tried to spread her views among village women.

Sabitri Bohra was a student in her mid-20s, when she arrested a few days after the Piskar incident. She is said to have been in Kathmandu at the time of the festival and was reportedly arrested when travelling to Sindhupalchok district from there. She was first held under the PSA. In July 1985 her detention order was again renewed by the Bagmati Zonal Commissioner, apparently with the approval of the Home Ministry.

At this stage a petition was filed in the Supreme Court arguing, among other things, that Sabitri Bohra's detention was illegal as no objective grounds had been provided to demonstrate that she had acted in violation of the "peace and tranquillity" of Nepal. The Supreme Court accepted the petition and ordered her release. Her detention was held to be unlawful because no advisory board had been established to examine her case before the third 9-month detention order was issued. However, once the decision of the Supreme Court was made known, the zonal commissioner charged Sabitri Bohra with sedition under the Treason (Crime and Punishment) Act (see Section 3.2 below). She was sentenced to one year's imprisonment.

Prisoners held under the PSA are often required to sign a written undertaking that they will not take part in political activities in the future. This is provided for in Section 4 of the PSA. Contravening this document may be punished by a fine or by imprisonment for one year. Two students, Lallan Singh and Bajrang Nepali, were detained for refusing to sign such a declaration. They belong to the student organization affiliated to the Nepali Congress Party, the Nepal Students' Federation (NSF), and were arrested in October 1985 in Janakpur Zone. At the time they were organizing an NSF meeting. When they were taken into custody, the local administrator asked them to sign a document which stated that they

would no longer take part in activities on behalf of the Nepali Congress Party, which they refused to do. After 18 months in detention, they were released in April 1987.



Lallan Singh



Bajrang Nepali



Modnath Prasrit

The PSA has also been used to keep some political activists in jail after their prison sentences expired. In the mid 1980s more than a dozen prisoners who had been active in radical groups in the 1970s were held under the PSA when their prison terms expired. Most of them were released during 1986.

One prisoner still held after serving his prison sentence is Modnath Prasrit, a writer in his late 40s. He was originally convicted in 1982 under the Treason (Crime and Punishment) Act and sentenced to three years' imprisonment. He was apparently convicted because his poetry was

deemed objectionable to the monarchy. In a second case brought under the same law he was sentenced to a further nine months, and an additional nine month sentence was imposed on him after a brief escape from jail. With the deduction of the period he had spent awaiting trial all his sentences had expired by late 1984 and a writ of habeas corpus on his behalf was submitted to the Supreme Court. In March 1985 the court ordered his release. On leaving the court, he is reported to have given an impassioned speech to his supporters gathered there, whereupon he was again arrested by the police. It was subsequently made known that he was being held under the PSA. In mid-1987, he was being detained in Gaur Jail.

The use of the PSA to detain non-violent government opponents continued during 1987. Radha Krishna Mainali and Sita Ram Maskey were active in protests against the sale of milk powder from Poland in April. A boycott of the milk powder was organized by radical groups in Kathmandu who feared it had been contaminated by nuclear radiation from the accident at the Chernobyl reactor in the Soviet Union. Dozens of students were arrested during demonstrations. Some were detained for only a few weeks but others were held for longer. Radha Krishna Mainali, a leader of one of the communist factions using the name Nepal Communist Party, was arrested on 28 April after he had spoken at a protest meeting at a Kathmandu university campus. Sita Ram Maskey, a teacher active in trade union affairs, was arrested in the street in Kathmandu on 9 May. Both men were sent to Bhadragol Jail in Kathmandu under nine month detention orders.



Radha Krishna Mainali



Sita Ram Maskey

Radha Krishna Mainali had already spent 13 years in jail. He had been arrested in July 1973 and sentenced to 10 years' imprisonment on criminal charges. At that time the political group to which he belonged had committed acts of violence in their opposition to the government. On the expiry of his sentence in 1983, he had been held under the PSA for a further three years, and had finally been released in December 1986.

Sita Ram Maskey, aged 39, had also been in jail briefly some two years previously. At that time he was Treasurer of the Nepal National Teachers Association (NNTA), a professional association with international affiliations which the Nepali Government does not recognize. The NNTA had been taking industrial action to press for improved working conditions and the formal registration of the NNTA by the government.

### **3.2 The Treason (Crime and Punishment) Act, 1961**

The right to freedom of expression in Nepal is severely restricted by the Treason (Crime and Punishment) Act, known in Nepal as the Rai Kaj Act. It is the law most frequently invoked to bring political prisoners to trial on charges of criticizing the king, other members of the royal family, or the government. It has been regularly used against student activists and, more recently, journalists and publishers.

Under international standards, the right to freedom of expression may only be restricted "for respect of the rights or reputations of others" or "for the protection of national security or of public order, or of public health or morals" (Article 19.3 of the International Covenant on Civil and Political Rights). In applying such restrictions, however, international standards require that they must be shown to be necessary. In Amnesty International's view, laws such as the Treason (Crime and Punishment) Act ought not to be used to prevent public questioning of the political activities of those holding state power, nor to prohibit comment, including critical observations, on the nature of the political system.

The Treason (Crime and Punishment) Act provides the death penalty for acts of violence against the state or royal family. The section of the law used to convict prisoners of conscience is Section 6, entitled "treason". Section 6(1) states:

*"In case any person foments hatred, malice or contempt for His Majesty or the royal family directly or indirectly through written or spoken words, signs, postures or otherwise, or instigates others to do so, or attempts to do so himself, he shall be punished with imprisonment for not more than three years...."*

Section 6 (2) provides for imprisonment for up to two years for the same acts committed against the government.

Offences committed under Section 6 (1) are subject to no qualification. However, under Section 6 (2) - offences against the government - the following provision is included;

*"Criticism made in a healthy and restrained language with the object of bringing about changes in any governmental policy or administrative action by lawful means....shall not be regarded as an offence committed under this sub-section."*

Finally, Section 6(3) provides for three years' imprisonment for anyone who "foments hatred, malice or contempt on the basis of class, community, religion or region" so as to undermine "the sovereignty or territorial integrity" of Nepal. This provision has occasionally been used in the recent past to prosecute individuals advocating the rights of people living in the terai. Many of the people residing in this area are of Indian origin and terai inhabitants have complained of discrimination against them by the government.

Sections 6 (1) and (2) are, however, those most frequently invoked. To Amnesty International's knowledge, direct public criticism of the king is rare in Nepal. Other members of the royal family are also rarely criticized publicly. Criticism of the government is more common. Although the independent press and opposition politicians often criticize the government quite candidly without being prosecuted by the authorities, there remains a constant uncertainty as to what constitutes "legitimate" criticism. This uncertainty is increased by the fact that local administrators appear able to apply the law at their own discretion. Moreover, many prisoners of conscience claim that their remarks were critical of the political system, but the authorities interpreted them as criticisms of the institution of the monarchy, and so offensive to the king.

For all offences committed under Section 6 of the Treason (Crime and Punishment) Act the zonal commissioner acts as prosecutor and judge (Section 10 (1)). Such a combination of functions seriously damages the fairness of the hearing of these cases. Furthermore, it contravenes Article 10 of the Universal Declaration of Human Rights which requires prisoners to be brought before an "impartial and independent" tribunal. The zonal commissioner's decision may be appealed against before the Regional Court, the Zonal Court and then the Supreme Court. As is the case for prisoners held under the PSA, however, defendants do not often petition the superior courts, usually because they cannot afford to.

There are frequently delays of a year or more before prisoners charged under the Treason (Crime and Punishment) Act are brought to trial. These delays assume particular significance as prisoners charged with offences against the king are subject to special restrictions in obtaining bail.

### 3.2.1 Case histories of prisoners of conscience

The use of the Treason (Crime and Punishment) Act to detain people for the expression of their conscientiously-held beliefs is illustrated by the cases of six men, mostly journalists, arrested in 1986. Although in recent years journalists and newspapers deemed to have published "objectionable" articles have been prosecuted, it has generally been under the 1982 Press and Publications Act. In most cases the journalists were fined and their newspapers' licences were withdrawn. Until 1986 few journalists were prosecuted under the Treason (Crime and Punishment) Act. Then in mid-August 1986, Keshav Rana, a well-established businessman and publisher of The Valley News and Views, and Harihar Raj Joshi, a well-known journalist, were arrested under Section 6 (1) of the act. On 11 August the newspaper had published an article by Harihar Raj Joshi about the "Gorkhaland movement" in the Darjeeling area of West Bengal in India. The article outlined the background to the demand of people of Nepali origin living there for a separate state, which had been pressed by the Gorkha National Liberation Front (GNLF). Citing the Indian intelligence services as the source of its information, the article alleged that over two million US dollars had been provided to the GNLF "from the King of Nepal's political fund".

Keshav Rana was released on bail in mid-October 1986. Harihar Raj Joshi remained in jail until 29 June 1987. Neither of the two men had apparently been tried but it was not clear whether the charges against them had been withdrawn.

In another case, Keshav Raj Pindali, the 71-year-old editor of Saptahik Bimarsha (Weekly Thought), and Rup Chand Bista, a member of the National Assembly were arrested in October 1986. They were also charged under Section 6 (1) of the Treason (Crime and Punishment) Act because Saptahik Bimarsha had printed the following poem (given below in translation from the Nepali):

#### Beware

The Rastriya Panchayat's main task  
Is to make laws for the country,  
But to prevent laws being made  
A clique of 28 is enrolled\*  
Defrauding the panchayat system  
Turning it into a honey-pot  
Making an anti-people constitution.  
People are brought over by any means  
By billions of rupees too,  
The sinner by prospect of gain, the greedy by expectation,  
The frightened by fear and the foolish by error.  
Controlling and organizing  
Licensed to commit any offence  
Destroyer of the country, destroyer of the poor, the clique  
Does not only lord it over the people

But gaining victory through their outrages  
 They have been elected M.P.s also.  
 Free people who refuse  
 To praise the life-destroying clique  
 Will not even escape with their lives.  
 Beware! Beware!! Beware!!

\* those members of the National Assembly appointed by the king

Rup Chand Bista had already printed this poem in a leaflet he had produced during the May 1986 election campaign, but no action had been taken against him at that time.

Keshav Raj Pindali and Rup Chand Bista were both required to make statements at the zonal commissioner's office giving their views on the poem. Rup Chand Bista denied that the poem contained criticism of the king, only that it advised the public to be cautious of people who were using the constitution to serve their personal interests. He also denied that the poem criticized the king's power to appoint 28 members of the National Assembly, but simply the manner in which some of those members carried out their duties. Efforts to secure bail for the accused by petitioning the courts were initially unsuccessful. However, Rup Chand Bista was released on 14 April 1987 and Keshav Raj Pindali a few days later. The zonal commissioner has announced no verdict in the case brought against them.



Keshav Raj Pindali



Rup Chand Bista

After Rup Chand Bista's arrest, a number of protest demonstrations were held in Makwanpur district, the area he represents in the National Assembly. Dozens of people were arrested, most of whom were released after a few days in police custody. However, several spent some five months in jail under administrative detention orders.

Aang Dorje Lama, editor and publisher of Radjhani (The Capital), a weekly paper, was taken into custody on 10 November 1986. This was as a result of an article published in Radjhani by Bhairav Risal, a freelance journalist, who was arrested approximately one month later. The article had commented on shortcomings in government economic policy and had referred indirectly to a statement by the king in which he said that living standards in Nepal would rise by the year 2000 to match those of other Asian countries. The article argued that this could not occur since Nepal did not have the necessary infrastructure for such growth. The article contained comments such as "...we are just like a parrot, simply repeating one person's statement...." and "it is true it is merely the hypothetical policy of one person....". Both Aang Dorje Lama and Bhairav Risal were charged under Section 6(1) of the Treason (Crime and Punishment) Act.



Aang Dorje Lama



Bhairav Risal

In late March 1987, during the hearing of a bail application for the two prisoners, the Central Regional Court ruled that their imprisonment was

unlawful as the zonal commissioner authorizing it had not specified clearly how they had committed an offence under Section 6(1) of the act. However, the court did not categorically order their release. Following the court's ruling, the zonal commissioner issued a new order, taking into account the point the court had raised. As of the end of August 1987, the two men were still in custody and they had not been tried.

The failure of the authorities to hold trials under the Treason (Crime and Punishment) Act is graphically illustrated by the case of Rekh Bahadur Blon, who spent over two years in jail without trial before his release in late 1986. A teacher, he had been arrested in Ilham, Meki zone in the far east of the country, in 1984. He was charged with possessing "illegal" documents, including publications by student groups. Six other people were arrested in the same case.

Rekh Bahadur Blon said he was detained by the police when he was staying in a friend's room in a student hostel. He first spent 32 days in police custody, during which time he said the police tried to make him sign a statement confessing that he was involved in the activities of groups opposed to the monarchy. He said he was denied visitors while in police custody and was beaten on the soles of his feet with a bamboo stick to make him sign a "confession" they had prepared. He said that another prisoner arrested with him had pins inserted under his nails to force him to "confess". However, neither prisoner is believed to have signed a "confession".

After 32 days, Rekh Bahadur Blon was moved from Ilham police station to Jhapa prison in Meki zone but no formal case had apparently been registered against him by then. He was later moved to Ilham prison.

Since no legal proceedings had been started against Rekh Bahadur Blon and the others arrested in the same case, a writ challenging their continued detention was filed in the Regional Court. This was apparently dismissed and led to an appeal to the Supreme Court in Kathmandu. In early 1986 the Supreme Court ordered their release because their trial had not taken place within a year of their arrest, as required under the legal code. However, there is reported to have been a four month delay before the release order reached the authorities in Meki and the prisoners were released.

After his release, Rekh Bahadur Blon was required to report to the zonal commissioner's office for a hearing of his case. After some further delay he appeared before the zonal commissioner, only to be informed that a sentence of two years, two months and three days - the precise period he had spent in jail - had been imposed upon him, so validating the period he had already spent in jail. The co-defendants in the case, who had also been released by then, were sentenced similarly. The other prisoners had been students or teachers at the time of their arrest. One of them, Dip Kishor Limbu, was said to have been only in his mid-teens when first arrested.

Among the student activists held under the Treason (Crime and Punishment) Act as of August 1987 was Radheshyam Siwakoti. Radheshyam Siwakoti was a first-year student in Kathmandu in his early 20s when arrested on 2 September 1986. At that time, students were reported to have been organizing a strike in Patan, near Kathmandu. The strike was to protest at the transfer from a local school of a teacher who had actively supported an opposition candidate during the May 1986 general elections. Radheshyam Siwakoti was apparently suspected by the authorities of being one of the organizers of the strike.

He was arrested in Lalitpur, near Kathmandu. The police accused him of being at a secret meeting at the time of his arrest and of holding a similar meeting on 25 August "at which it was said that such things as....ruining the country were directed by the king and his two brothers and that they....should put an end to the monarchy and establish a people's system." (Police report, dated 2 September 1986). In a statement Radheshyam Siwakoti made to the police, he confessed to attending meetings of a communist student group and acknowledged that the object of the group was "to make the student classes aware of the weakness of the system, to spread disaffection with the system through poetry readings, plays, essay competitions and so on...."

When Radheshyam Siwakoti's statement was recorded at the Bagmati Zonal Commissioner's office on 15 September 1986, he said that while some of what he had told the police was correct, he wished to retract much of his statement because "...I wrote under duress and compulsion from the police." He denied that he was arrested during a secret meeting and that he had been present at a meeting of students on 25 August. He claimed that "Although my statement which the police have submitted is in my handwriting, I was given a paper to copy from which had previously been prepared by another policeman under the (police) inspector's direction". No inquiries appear to have been made by officials of the zonal commissioner's office to establish whether his claim that he made his statement under duress was valid.

A number of documents in his room were confiscated by the police at the time of his arrest. These were student publications, and essays and poems satirizing government policies and setting out the students' program for political change. Radheshyam Siwakoti accepted they had been confiscated from the room but since he shared this with others denied they were his personal property.

On 16 September 1986, the zonal commissioner issued a notification order authorizing Radheshyam Siwakoti's prosecution. In August 1987, Radheshyam Siwakoti was still awaiting trial. The accusations made against him in the police report relate to no more than his participation in peaceful political activities.

### 3.3 Other laws

Several other laws have been used to jail prisoners of conscience, but only infrequently. In most cases, the prisoners have been released after short periods and it seems that only rarely have they been brought to trial.

One such law is the Organizations and Associations (Control) Act, 1963. This provides for people violating the constitutional ban on political parties to be prosecuted. Section 2 of the act is broadly framed and states that no person may establish a political party, group or association "motivated by political party objectives", or join or instigate others to join such a body. Zonal commissioners are authorized to act against such activities, for which the maximum punishment is three years' imprisonment. Cases brought under this law are heard by the zonal court, from which appeal may be made to the regional court and then the Supreme Court.

In recent years, Amnesty International has received reports of a small number of prisoners being arrested for brief periods under this law, although it is unclear whether they were subsequently prosecuted. Among them have been teachers collecting funds or registering new members for the Nepal National Teachers' Association (NNTA), and two members of the Forum for Democracy and National Unity (FODENU) who were collecting signatures for a petition calling for the release of political prisoners. These two organizations do not consider themselves to be political parties, although some of their members do belong to political groups. The two FODENU members, Laba Pradhan and Dhrit Raj Neupane, were arrested on 26 July 1986 in one of the main squares in Biratnagar, Koshi zone. They were kept in the District Police Station in Biratnagar for some three weeks, following which they were released on bail by the zonal court. As of early 1987 their trial had not taken place. Under their bail conditions they had to appear before the zonal court every month.

Shortly after the May 1980 referendum on Nepal's political system, the government adopted the Freedom of Speech and Publication Act. This law prohibits publicity in connection with any political party or organization, as well as spoken or written words falling into such broad categories as disrupting peace, harmony and order or demoralizing the police, army or government officials.

The act appears to have been used only rarely. One example of its use occurred in early 1985. Jaya Krishna Yadav was arrested in Rajbiraj at the time of NNTA demonstrations and strike action. He was taken into police custody from a bookstall he owned and was held for some two weeks at the Office of the District Superintendent of Police in Rajbiraj. He was accused of undermining society by publishing a booklet supporting the action of the NNTA. He was released on bail, apparently after signing a statement admitting to his involvement in the NNTA's activities, which were deemed illegal. At his subsequent trial he was convicted and fined 500 rupees (approximately £30).

### 4. RELIGIOUS PERSECUTION

Nepal is the world's only Hindu Kingdom and the vast majority of the population are Hindus. The next largest religious group is the Buddhists, and the two religions are closely intertwined through a traditional religious tolerance. With Nepal's virtual isolation from the outside world until the early 1950s, foreign Christian missionaries were not permitted to enter the country and there were no more than a handful of native Nepali Christians, for example among Gurkhas who had served with the British armed forces or among workers in the tea plantations in the southeast of the country who had originally migrated from India. With the opening up of Nepal over the past four decades, there has been a spread of Western religious and cultural influences. The Christian population in Nepal is still very small: according to official statistics for the year 1981 there were 3,891 practising Christians, although others have estimated the number to be around 15,000. The majority of Christians belong to Protestant or evangelical denominations, although some are Roman Catholics. It is mainly the Protestants and evangelists who have been prosecuted for converting Hindus or trying to convert them.

The Constitution of 1962 provides the right to profess and practice one's religion "as handed down from ancient time" but no-one is "entitled" to convert another person to any other religion. To Amnesty International's knowledge there is no law preventing anyone becoming a Hindu, or to prevent a Muslim or Buddhist becoming a Christian. However, the Muluki Ain (legal code) on disciplinary matters specifies:

"No person shall propagate Christianity, Islam or any other faith so as to disrupt the traditional religion of the Hindu community in Nepal or to convert any adherent of the Hindu religion to these faiths. In case an attempt is made to do so, a sentence of imprisonment for three years shall be awarded. In case conversion has been effected, imprisonment shall be awarded for six years.

.... In case any adherent of the Hindu religion converts himself into any of the above-mentioned religions, he shall be imprisoned for a maximum period of one year.

.... In case conversion has already been effected, it shall be invalidated, and such person shall remain in his Hindu religion". (Part 4, Chapter 19, Section 1)

The Universal Declaration of Human Rights states that everyone has the right to

"....freedom of thought, conscience and religion; this right

includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public and private, to manifest his religion or belief in teaching, practice, worship and observance." (Article 18)

The same rights are contained in the International Covenant on Civil and Political Rights. The only limitations on these rights under the Covenant are that:

"No-one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice." (Article 18.2), and

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." (Article 18.3).

The restriction imposed under Nepali law prohibiting Hindus from voluntarily changing their religion contravenes these internationally recognized standards. To prohibit conversion, even when the individual is expressing free choice, is to deny the individual a fundamental right. Amnesty International recognizes that active efforts to seek converts may be considered offensive by many of those Nepali citizens who support the constitutional ban. However, in some instances Christians have apparently been arrested when practising their faith within their own community, without trying to convert others.

The provisions of the law do not appear to be implemented uniformly throughout the country and, as in the case of restrictions on political activities, local officials have considerable latitude. Few Christians spend more than a week or two in jail, since they are generally able to obtain bail pending trial or appeal. In August 1987 dozens of Christians were either awaiting trial or appeals before the higher courts. In fact, in all the completed cases known to Amnesty International the defendants were acquitted at the final appeal stage, on the grounds that conversion took place outside Nepal, that the parents of the individual concerned were not known to be Hindus, or that preaching took place only in private.

Two prosecutions illustrate Amnesty International's concern that the internationally recognized right to practice one's religion has not been upheld in Nepal. In May 1984, the Nepal Bible Ashram held a bible school near Dandeldhura, in western Nepal. Three officers of the society, which is based in Kathmandu, travelled there to take part. The school was held in a hospital room in a village several kilometres from Dandeldhura. No more than about a dozen local Christians took part, some of whom were new converts. It began on 7 May. On 11 May local police went to the hospital and asked the participants to go to the police station. A few of them went, their names were noted, and then they returned and continued the bible classes.

On 14 May the participants were again summoned by the police. This time they were all told to go to the police station in Dandeldhura. At the police station each one was questioned separately and apparently asked whether they would recant their Christian faith. The three non-local people - the class teachers - were reportedly told that they could leave, but that the others were under arrest. When the three maintained that all the bible school participants should be treated equally, they too were arrested.

All were released on bail 11 days later. They were charged under the Muluki Ain (legal code) with having converted from Hinduism to Christianity and with attempting to convert others. Their case was heard by the Dandeldhura District Court which announced its decision only in March 1985. On the charge of having converted to Christianity, three were acquitted, since their conversion had taken place outside Nepal. The other eight were sentenced to six months' imprisonment. All were acquitted of the charge of seeking converts, due to lack of evidence.

When the appeal in this case was heard by the Far West Regional Court the public prosecutor asked for the six month sentences to be increased to one year. In its verdict announced in mid-December 1986, the court confirmed the conviction and original sentences, with one exception. One man was acquitted because there was no evidence to show that his family had originally been Hindu. An appeal before the Supreme Court is now pending.

The second prosecution appears to have been the only case in which Roman Catholics have been brought to trial. In April 1986, two nuns and a priest, all Indian nationals, held an Easter retreat for Christians among the tea plantation workers in Sirisia, near Damak, in the far east of Nepal. The priest and one of the nuns had come especially from India for this, since they spoke Santali, the local language. On the fifth day of the retreat, 5 April, they went through the village blessing the homes of Christians, as apparently had happened in previous years. They had reportedly stopped to eat lunch when they were summoned to the police station and told the local administrator wanted to see them. They were immediately arrested, together with a number of local Nepali Christians, and charged with proselytizing.

Those who saw the prisoners subsequently alleged that they had been beaten in police custody. The two nuns were said to have been hung by their wrists and beaten on their arms, backs and legs. The men were also said to have been beaten. The following day they were taken to the District Superintendent of Police's office. They were required to sign "confessions" which they were apparently not given an opportunity to read. They were released on bail on 13 April.

The trial of these Christians started in the Biratnagar District Court in early 1987, but no verdict in their case had been announced by August.

On a few occasions members of other religious faiths are reported to

have been prosecuted for converting to another religion, or seeking conversions. Although the provision of the Muluki Ain (legal code) applies only to Hindus who convert, in January 1987 the official Nepali news agency reported that six Buddhists had been sentenced to one month's imprisonment for converting to Christianity. The legal basis for their conviction is unknown. There have also been occasional newspaper reports of Muslims being arrested for proselytizing, but Amnesty International does not have further information about these.

## 5. TORTURE AND ILL-TREATMENT

The torture and ill-treatment of criminal suspects arrested by the police seems to be commonplace in Nepal. Indeed, it appears to be part of the interrogation process. Some political prisoners have also been tortured in police custody, apparently in order to obtain "confessions", despite the fact that the Supreme Court has ruled that an unsupported confession to a police officer constitutes insufficient grounds for conviction. In many jails, prisoners are alleged to have been tortured or ill-treated as a form of punishment or intimidation.

The authorities appear rarely to investigate reports of torture and there is little evidence that they attempt to control the police force or jail administrations, or to train them so as to prevent torture occurring.

### 5.1 Torture of political prisoners in police custody

Rekh Bahadur Blon, whose case is described on page 24, is only one of a number of political prisoners who are reported to have been tortured while held incommunicado in police custody. The use of incommunicado detention in such cases clearly facilitates torture, since detainees are cut off from the outside world and there are no independent witnesses to their treatment. From time to time, defence lawyers have tried to obtain writs of habeas corpus from the Supreme Court requiring the release of prisoners held incommunicado. In some of these cases, however, the police have denied holding prisoners who have later been either transferred from police custody to prison or released.

At least 60 prisoners arrested following a number of bomb explosions in Kathmandu and elsewhere in June 1985 were held in incommunicado detention for several months under special legislation introduced at that time. Some of them appear to have been systematically tortured while in custody. Members of the National Assembly questioned the government in July 1985 about reports then circulating that the prisoners were being subjected to torture. Government spokesmen categorically denied these reports.

The Destructive Crimes (Special Control and Punishment) Act, 1985, the law under which these prisoners were held, was enacted in August 1985 for an initial period of three years. The act can be applied retroactively. It also removes an important legal safeguard for the protection of prisoners: the requirement that anyone taken into police custody should be produced before a magistrate within 24 hours of arrest. Instead, it provides for prisoners to be held for investigation purposes in police custody for 90 days before formal charges need be brought and, with the permission of a

court, this period can be extended for a further 90 days. The law does not specify, however, that such prisoners should be denied access to visitors or defence counsel.

According to the government, 1751 people were arrested during the investigations which followed the bombings. The majority were released after brief interrogation, but by early 1986 - when the 180-day investigation period had expired - at least 60 or more prisoners were still in police custody in Kathmandu. Throughout this period they had been held incommunicado. Relatives of some of these prisoners had tried to gain access to them by petitioning the Supreme Court towards the end of 1985. The response of the police authorities was to deny that the prisoners were in police custody. Subsequently, however, some of the prisoners for whom writs had been filed were released from custody, although the whereabouts of at least four people arrested at this time are not known (see chapter 6).

Most of the prisoners kept in prolonged incommunicado detention were held in police stations in Kathmandu, especially the District Superintendent of Police's Office (DSP) in Hanuman Dhoka, the main square in the old part of the city. Others were held at the police training centre in Maharajganj.



Deputy Superintendent of Police's Office, Hanuman Dhoka

According to first-hand information obtained by Amnesty International, while in incommunicado detention many of the prisoners were tortured or ill-treated. They are reported to have been beaten, particularly on the bone joints at the knees and ankles, to have had nettle leaves (in Nepali, *sisnu*) rubbed on the skin, bamboo splinters inserted under their nails, their fingernails pulled out and pins stuck into their tongues. For part of their imprisonment, some of the prisoners were handcuffed in pairs and fettered. At night the handcuffs and fetters were fixed to the wooden cots on which they slept, so that they were unable to move.

The prisoners were forced to sign statements "confessing" to their guilt. When their trial took place in late 1986 and early 1987, many prisoners retracted in court the statements they had made to the police. The trial took place in camera. Although the accused were allowed defence counsel, their lawyers are said initially to have found it difficult to obtain the documents they needed to present their client's defence, such as the statements of prosecution witnesses. The prosecution's case is reported to have been based largely on statements made by the accused and by four prisoners who had agreed to testify on behalf of the prosecution, who were kept in police custody throughout the trial. There was reportedly little other evidence. The verdict was announced in late May 1987: 69 defendants were acquitted, four were convicted and sentenced to death - all of whom were tried in absentia - and 27 were convicted and sentenced to periods of between five and 33 years' imprisonment. Given the evidence of torture and the reported use of statements extracted from them under duress as evidence against them, there must be concern that their trials may have been unfair. No investigation into the treatment of these prisoners is known to have been held despite the complaints that their "confessions" were extracted under duress.

Another case in which the police denied holding a prisoner in their custody is that of Sarbottam Dangol.

A teacher and former vice president of the Central Committee of the All Nepal National Free Students' Union (ANNFSU), Sarbottam Dangol was arrested on 29 May 1985 in Kathmandu, shortly after a student demonstration. He was taken to Kamal Pokhari police station where he was interrogated by three police officers about people with whom he was alleged to be associated. According to his testimony, when he refused to answer some of their questions, his ankles were bound together and a bamboo pole was inserted behind his knees. He was hung upside down and beaten in this position for at least 10 minutes, particularly on the soles of his feet. He was also beaten and kicked on other parts of his body after being taken down from the pole. He was interrogated for about three hours, then taken to a cell where he remained for four days. After that he was then taken to the police hospital in Maharajganj where his left leg was put into plaster - a bone had been broken in his foot. A doctor at the hospital urged the police to admit him to hospital, but they would not and he was returned to Kamal Pokhari police station.

His family learned that he was at the police station and asked to see

him, but the police said he was not there and would not provide any information about his whereabouts.

On 11 June 1985 an urgent application for his release was made to the Supreme Court. On 13 June the court ordered the police to produce him in court within three days, but the police responded by denying that Sarbottam Dangol had been arrested by them.

This was repeated when the case was then referred to other judges of the Supreme Court, who also ordered Sarbottam Dangol to be brought before the court. Again, the police denied his arrest. On 5 July the court ordered the police to provide the records of admissions to the police hospital and Kamal Pokhari police station. Again, the police did not comply with this order.

During June, Sarbottam Dangol was moved between three different police stations in Kathmandu, and then he was taken to Dhulikhel police station about 25 kilometres away, where he remained until early August. From there he was repeatedly taken to the police hospital for further treatment. In early August he was sent back to Kathmandu and about two weeks later he was moved to Nakku Jail, where he was served with a detention order imposed under the PSA. This order falsely indicated that he had been arrested on 21 August. He was only allowed to receive visitors after his arrival at Nakku prison.

#### 5.2 Torture of criminal suspects in police custody

Torture of criminal suspects by police is widespread and routine. As well as the methods described in the section above, police are reported to have set prisoners' hair alight and pulled it out, inserted chillies into the anus and, in a few cases, used electric shock torture.

Amnesty International knows of two cases in recent years in which criminal suspects have died in police custody, reportedly as a result of torture.

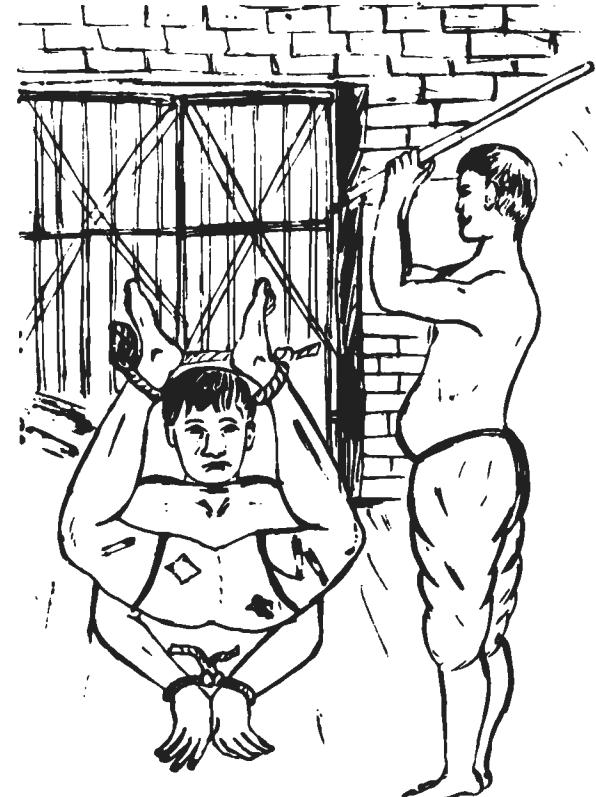
In November 1985 in Rajbiraj, Saptari district, Chaudhry, a young man accused of stealing a bicycle, died in police custody. He had reportedly been beaten by police, who had pressed a wooden stick against his throat. The police stated that he committed suicide by hanging himself. Two post-mortem examinations were carried out: one found bruising on the deceased's back and chest, and substantial bruising on the front of his neck; the other supported the police's account of suicide. Local people protested strongly about Chaudhry's death. Four police officers were arrested and charged with his killing. One was convicted of causing Chaudhry's death and the other three were acquitted, apparently because it could be shown they were not on duty at the time of Chaudhry's death. The doctor responsible for the post-mortem report which revealed bruising on the

prisoner's body, who was a government employee, was dismissed from his post in January 1986. The reason given for his dismissal was reportedly his "involvement in politics".

In the second case a Muslim, Sukraji Miyan, died in police custody in Dharan in July 1986. He had been arrested with several other Muslims and accused of armed robbery. He was reportedly beaten severely by the police, who stated that his death had been due to natural causes. Sukraji Miyan's wife was reportedly taken to the police station at night to sign for her husband's body and was unable to bury him according to Muslim rites, since the police buried his body. Sukraji Miyan's wife lodged a complaint in court that her husband had died as a result of torture. However, the court refused to hear her complaint.

#### 5.3 Torture and ill-treatment in prisons

Prisoners are transferred to jail once the police have completed their investigation of the case. Prisoners are therefore unlikely to be interrogated again. Amnesty International has, however, received reports that prisoners have been beaten to intimidate or punish them. Other prisoners who assist unofficially in running the jails apparently often participate in these beatings.



One of the forms of torture which has been described to Amnesty International is known as the "tortoise treatment". A rope is tied around the ankles of a prisoner and behind the neck, drawing the legs towards the chest and so arching the back like a tortoise. Prisoners have been kept like this for hours, and sometimes beaten while tied up. Former prisoners have said that they were treated like this when they arrived in a jail, so that they would be demoralized and not complain about their treatment.

The "tortoise treatment"

In Kathmandu Central Jail there are nine segregated punishment cells called in Nepali gholghar (black house). These are reported to be small, airless cells with very small windows and no toilet facilities. Prisoners confined to these cells are reported to be allowed out for only approximately half an hour from time to time, at the discretion of their jailors. These cells are believed to be in regular use. Amnesty International has received reports that prisoners have been held in these cells for months at a time, and in a few cases even longer.

There is also one special punishment cell situated in the block containing the gholghar cells, although it is not reported to have been in use in recent years. This is a cage-like structure, measuring approximately two feet wide, four and a half feet high and four feet in length. It has a solid ceiling and floor and barred walls.

Amnesty International has received occasional reports of prisoners organizing protests to draw attention to the conditions in which they are kept. For example, in mid-July 1986 a number of political prisoners in Kathmandu Central Jail went on hunger-strike to protest against their continued detention without trial and other grievances. Ten days later other prisoners joined the hunger-strike and for one 24-hour period 265 prisoners - including some convicted of criminal offences - participated. It ended after some National Assembly members met the government minister responsible for prison administration. Several political prisoners were then moved to another jail in Kathmandu. After this, on the evening of 4 August 1986, some 30 to 40 political prisoners were reported to have been beaten by prison guards. Some were handcuffed and fettered and others were sent to the punishment cells (gholghar).

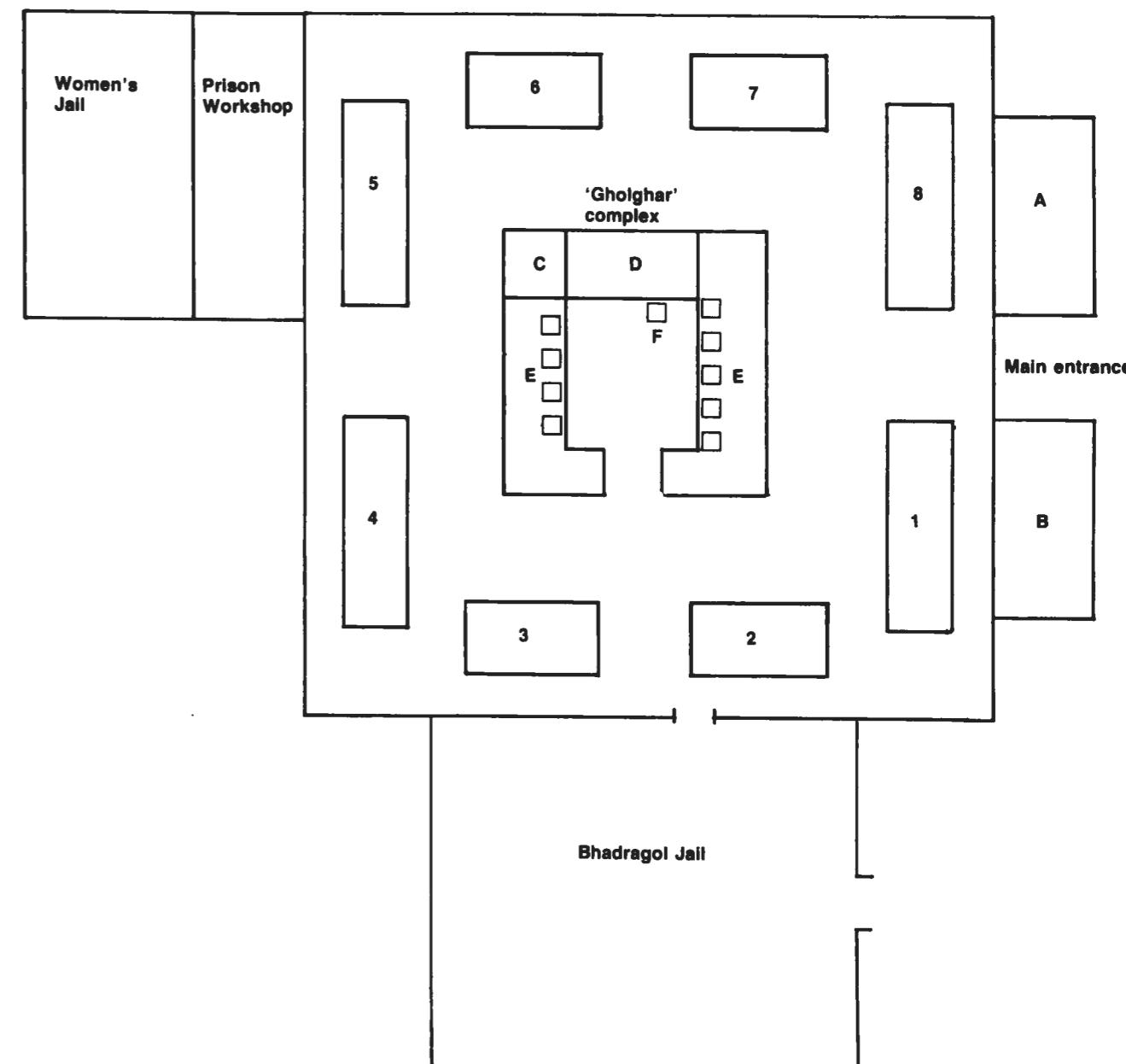
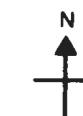
Amnesty International believes that the use of fetters constitutes cruel, inhuman and degrading treatment and should be abolished unconditionally. The use of fetters either for custody or as a punishment is prohibited under the United Nations Standard Minimum Rules for the Treatment of Prisoners. Under Nepal's Prison Act of 1963, Section 7(2) fetters are to be used on male prisoners sentenced to death, life imprisonment or convicted of dacoity (robbery). Prisoners in these categories should additionally be kept in handcuffs if they attempt to escape.

The use of fetters on prisoners is clearly much more widespread in Nepal than is permitted under the country's Prison Act. In some cases the authorities' justify this on the grounds that otherwise they do not have the resources to guarantee the safe custody of prisoners.

In an article on prison conditions published in the journal of the Nepal Law Society, a professional organization registered with the government, two Nepali lawyers described the Maygdi District Jail as follows:

"....prisoners....are all housed in a cold, ground-floor room, designed as a warehouse, with only one entrance door, resembling

**RECONSTRUCTION OF KATHMANDU CENTRAL JAIL**  
(based on prisoners' testimony - not drawn to scale)



**Key**

1 - 8 are barracks in which approximately 150 prisoners are held. In no.3 barracks, sick prisoners are kept segregated on one floor, but they use the same washing facilities as other prisoners.

A On the ground floor is a medical dispensary, where there is a limited range of medicines available, but no facilities for keeping prisoners there for treatment. Above the dispensary is the Jail Superintendent's Office.

B On the ground floor is a shop in which prisoners can buy food or other essentials. Above it is a police office.

C A small mosque, for Muslim prisoners.

D A room in which equipment such as leg irons and collars with weights attached is kept.

E The punishment cells.

F The caged cell.

a dark tunnel with illumination not even conceivable and without even a hint of window or ventilation. It does not even contain a place for the prisoners to cook their rice. The practice is to send prisoners in fetters and handcuffs out of the dark tunnel into a courtyard space with a perfectly ordinary fence like one round a field, in order for them to cook, eat, defecate and urinate.... When we asked the staff why all the prisoners were kept fettered and handcuffed like this, we received the reply that there was no secure compound around the prison, and that therefore the inmates would abscond if not in fetters and handcuffs."

Many prisons are overcrowded, and there are constant reports that prisoners suffering from infectious diseases are kept with other prisoners. Medical services are generally only rudimentary and Amnesty International has received reports that prison administrations have sometimes failed to transfer prisoners to local hospitals for necessary treatment as a deliberate act of harassment. There is often no sanitary provision and sometimes no facilities for exercise. Many prison buildings are ageing and dilapidated, although the accommodation in prisons in Kathmandu is relatively better than in prisons outside the capital.

## 6. "DISAPPEARED" PRISONERS

A disturbing development in recent years has been that people arrested by the police have subsequently "disappeared" in custody. Amnesty International is currently trying to find out what has happened to several men reported to have been arrested in mid-1985 who have not been accounted for since. It has collected detailed information on four men and has asked the Nepali Government for information about their whereabouts or fate. There has been no response to these inquiries. In view of the reports of torture of prisoners arrested after the bombings in mid-1985, there is grave concern for their well-being. Some of them were reported to have been seen in poor physical condition by other prisoners in police custody in mid-1985. Amnesty International believes that the authorities should investigate what has happened to all the people reported to have "disappeared" in police custody, and should tell their relatives as soon as possible.

Three of the four "disappeared" men about whom Amnesty International has details were arrested from the terai area in southern Nepal, where a group was active which followed Ram Raja Prasad Singh, the principal defendant charged with complicity in the mid-1985 bombings. All three are understood to have been named by other prisoners as having belonged to Ram Raja's group. The fourth man was arrested in a different area and it is not clear whether he too was suspected of being involved with this group.



Dr. Laxmi Narayan Jha

One of the men reported to have "disappeared" is Dr Laxmi Narayan Jha, a medical practitioner in his late 30s living in Janakpur, close to the Indian border, at the time of his arrest. He was a vocal spokesman on behalf of his community, critical of the local administration, and had been detained previously because of this. His father had been active in politics and a member of the government during the short-lived Congress administration of 1959-60. Dr Jha, who was unmarried, spent much of his spare time doing social work.

According to several witnesses, local police arrested Dr Jha in his home on 28 June 1985 after they had failed to find him at his clinic. The Janakpur District

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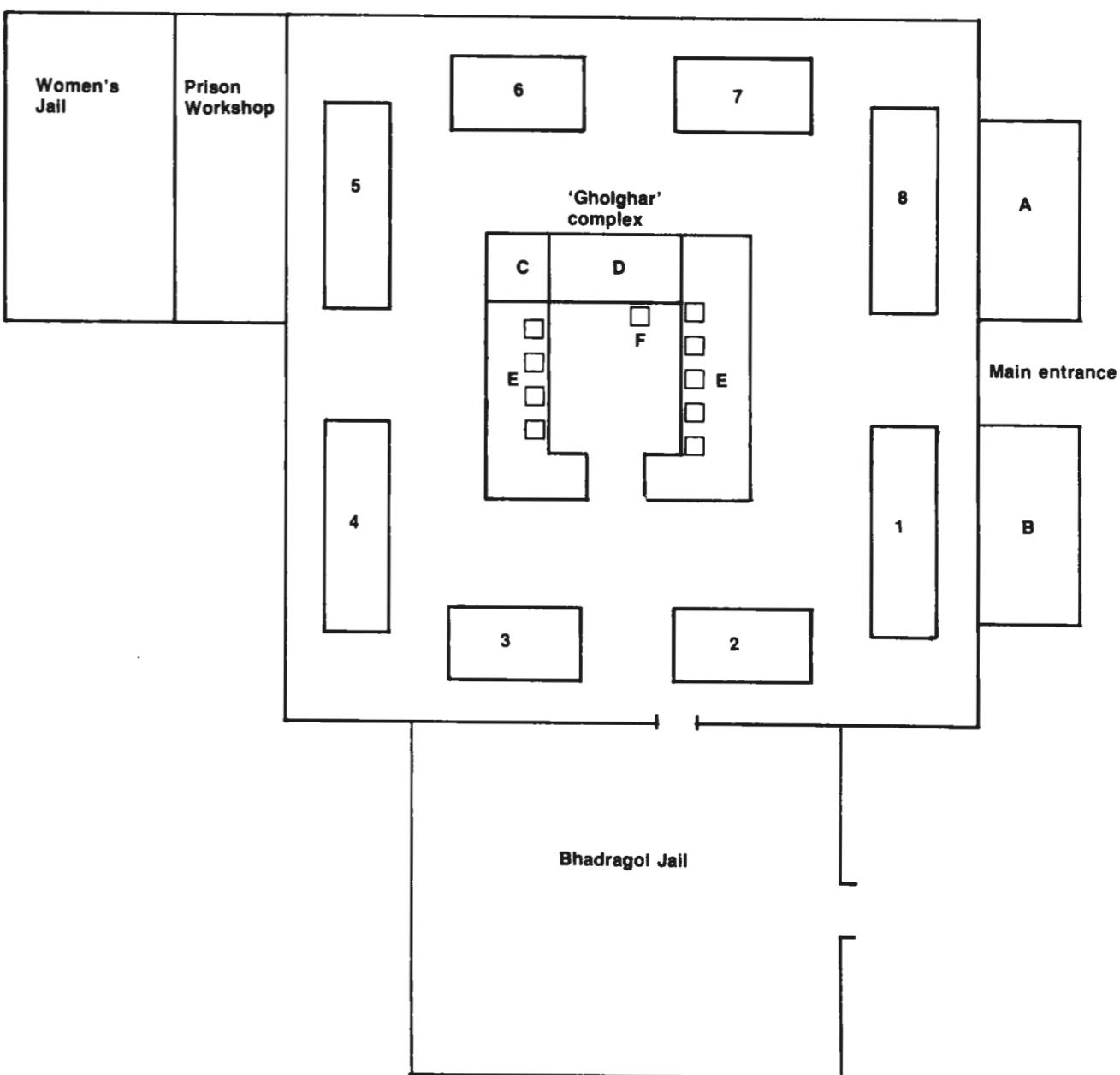
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According to several witnesses, local police arrested Dr Jha in his home on 28 June 1985 after they had failed to find him at his clinic. The Janakpur District

Superintendent of Police (DSP) is reported to have been present. Dr Jha was first held in the DSP's office, Janakpur, with other prisoners. His family is reported to have visited him there. After 10 or 15 days he was transferred by the police to Kathmandu. There he was understood to have been held in the Kathmandu DSP's office in Hanuman Dhoka.

In March 1986 his family filed a habeas corpus petition on his behalf, to ascertain his precise whereabouts. In the petition it was stated that his family had heard, unofficially, that Dr Jha was being held at police headquarters in Naxal. The petition expressed concern for his health, since his family had also heard from unofficial sources that he had become mentally deranged as a result of torture and had received medical treatment at the police hospital. The petition further stated that Dr Jha's father had asked various officials about his son's whereabouts and had been told that he would be released once the investigation concerning him was completed.

In mid-March the Supreme Court ordered the Inspector General of Police and other respondents named in the petition to provide information on Dr Jha's whereabouts. All subsequently denied that he was in their custody except the Home Ministry which did not reply to the question. In July 1986 the Supreme Court ordered the police in Janakpur to explain where Dr Jha was. The precise response of the Janakpur police is not known, although they too are understood to have denied that Dr Jha was in their custody. No further action was apparently taken by the Supreme Court, although it was asked to issue search warrants for the premises in which Dr Jha's family had heard, unofficially, that he was being held.

A police report dated 17 December 1985 named Dr Jha, together with some 30 other people, as having been incriminated by one of the people accused of the bombings. It stated that the "surnames and/or addresses" of these people had "not yet been ascertained", and "that proceedings would be instituted" once these details had been established. No further information about Dr Jha's alleged involvement in the June 1985 bombings is known to Amnesty International.

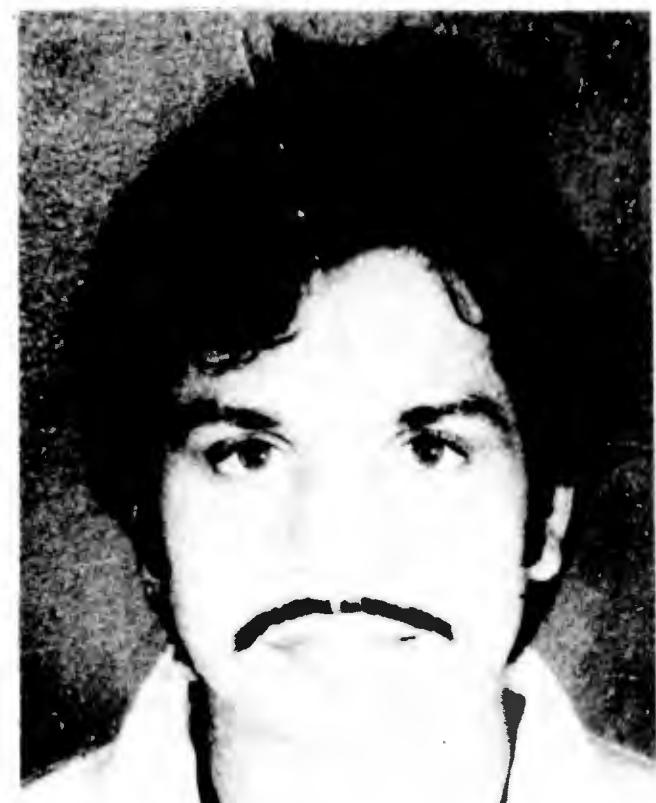
One of the defendants acquitted of involvement in the bombings stated that he had been held in custody with Dr Jha at the District Police Station at Hanuman Dhoka in Kathmandu in mid-July 1985. He described him as being ill at that time. This prisoner was then himself transferred to another police station and knew nothing further of Dr Jha's whereabouts. Dr Jha's present whereabouts and fate are unknown.

Satya Narayan Shah, who was in his early 20s at the time of his arrest, is also from Janakpur. At one time he reportedly worked as an assistant to Dr Jha. He was also reported to have been arrested on 28 June 1985 and taken to Kathmandu after his arrest. His family subsequently lost all trace of him.

On 3 July 1986 Satya Narayan Shah's father filed a habeas corpus petition to find his son and on 9 July the Supreme Court issued a notice to

the Janakpur Zonal Commissioner. However, when he returned home on 27 July, Satya Narayan Shah's father was apparently ordered by the police to go to the Zonal Commissioner's office in Janakpur. He said that the Zonal Commissioner asked him why he had filed a petition before the Supreme Court, and that he replied that he had done so because he had heard nothing about his son since his arrest one year earlier. The Zonal Commissioner is then said to have ordered Satya Narayan Shah's father to be placed in police custody. He was held in detention for five days until 1 August, during which time he said he was denied food and water. He was then apparently brought before the Zonal Commissioner again, and claims that he was told that if he did not withdraw the petition he would also be made to "disappear". Satya Narayan Shah's father, who is illiterate, says he then put his thumb print to a written document prepared by the Zonal Commissioner, after which he was released. He withdrew the writ to the Supreme Court on 4 August. Since then no further information about his son's whereabouts has emerged.

The name of Satya Narayan Shah appears in a police report of 17 December 1985 listing 96 people accused of involvement in the June 1985 bombings. No indication of his place of detention is given in this document. His name was also mentioned in statements made to the police by some of the accused. According to them, Satya Narayan Shah had been in India during 1984 and had been trained in the use of firearms and explosives at a camp established by Ram Raja Prasad Singh.



Saket Mishra

Saket Mishra was a student at Rajbiraj, close to the border with India. He was reported to have been arrested on 25 June 1985 and taken into custody from the house of his father, a former judge, in the village of Tilathi, Rajbiraj, by the local District Superintendent of Police (DSP). He was apparently taken to Rajbiraj Police Station and held there for two or three days and was then taken by night bus to Kathmandu and held in the DSP Office at Hanuman Dhoka in Kathmandu. Saket Mishra is reported to have been transferred repeatedly from one place to another over the next three months, but despite having been seen at the DSP Office at various times during this period, the authorities are said to have denied that he was held there. Other prisoners who saw him in custody stated that he had been

bleeding seriously from the rectum and was unable to move properly.

Saket Mishra's name appears in the same police report of December 1985 as that naming Dr Jha. He was one of the people whose names and addresses had to be established before proceedings could be brought. Several defendants also said in the statements they made to the police that he had been in India for training in the use of arms.

Maheshwor Chaulagai, a 25-year-old primary school teacher, was reportedly arrested on 30 June 1985 from Siddha Pokhari village, Sankhuwasabha district. Before his arrest he is reported to have been active in the protests of the NNTA. Support for the teachers' agitation had been strong in the area in which he lived, with many teachers refusing to join the teachers' organization then recognized by the government.



**Maheshwor Chaulagai**

produced before a judicial authority within 24 hours. The petition alleged that he had been tortured in Sankhuwasabha District Police Station.

The Supreme Court directed the Sankhuwasabha police to provide information on Maheshwor Chaulagai's arrest. The police submitted a letter to the court apparently signed by Maheshwor Chaulagai which stated that he had been released into the custody of the pradhan pancha (the head of the local council) on 9 July 1985 and that this was the day on which he had been arrested. Two other men were named in the letter who were said to

have been arrested and released with him. All three men had apparently signed the letter.

As of August 1987 the Supreme Court had ordered that the pradhan pancha should be produced before it. The court had not directed that the other two named men should be produced, despite an application by the lawyer presenting the habeas corpus petition.

To Amnesty International's knowledge, Maheshwor Chaulagai's name did not appear in any of the police reports listing individuals said to be involved in the June 1985 bombings. Nor is he known to have been named in any statements by defendants in the case. A former prisoner claimed, however, that in July 1985 he was held with prisoners arrested in connection with the bombings in the DSP Office in Hanuman Dhoka square.

## 7. THE DEATH PENALTY

Nepal abolished capital punishment for murder under the Muluki Ain (legal code) in 1946, after suspending it for an experimental period in 1931.

The Army Act of 1959 contains provision for the death penalty for some offences. The Treason (Crime and Punishment) Act also provides for the death penalty for a number of offences against the state and the royal family. The death penalty may be imposed on anyone who "assaults, obstructs the movement of or intimidates by the use of force" the king and other members of the royal family (Section 2). Taking up arms, or attempts to do so, "with the aim of overthrowing His Majesty's Government, or disrupting the sovereignty" of Nepal is also punishable by death (Section 4(1)), as is the action of any person colluding with a foreign state in an attempt or conspiracy "to undermine the independence, territorial integrity" of Nepal (Section 4(1A)).

Only three executions are known to have taken place since 1945. All three victims had been charged under the Treason (Crime and Punishment) Act.

In 1962 Durganand Jha was hanged. He had been sentenced to death, with two others, on charges of attempting to kill the king. The trial had been held in closed session before a special tribunal.



Yagya Bahadur Thapa

In February 1977 the Supreme Court confirmed the death sentences passed by a special court on Yagya Bahadur Thapa, who was convicted of insurrection against the state and on Bhim Narayan Shrestha, who was accused of throwing a grenade at the king in 1973. They were executed by shooting on 9 February 1979.

In 1985, however, the legislation providing for the death penalty was considerably broadened. The legal code was amended to allow the death penalty for certain murders, including those committed during hijacks or kidnappings, by using toxic substances or when "subjecting any person to prolonged torture...or recklessly using weapons." As of mid-1987,

however, no-one had been sentenced to death under these new provisions.

The Destructive Crimes (Special Control and Punishment) Act, enacted in August 1985 for an initial three years, also made the death penalty applicable to anyone convicted of causing death by using explosives or weapons in a public place "with the motive of harming or disturbing the security, tranquility or order" of the country. In May 1987, four people - all tried in absentia - were sentenced to death under this act, which was applied retroactively.

Finally, the Nepal Special Services Act, 1985, which established a Nepali intelligence service, contained the provision that a special service employee contravening his conditions of employment - misusing his position or divulging secret information for example - might face the death penalty "depending on the extent of his guilt".

The Nepal Bar Association has been outspoken in its criticism of the extension of legislative provision for the death penalty. In a press statement issued after the death penalty was re-introduced under the legal code it advanced seven points why the death penalty for murder should not be revived. One was the irrevocable and cruel nature of the punishment. Lawyers in Nepal also criticized the passing of death sentences on those convicted in the 1985 bombings trial, and drew particular attention to the retroactive application of the law.

United Nations General Assembly on 25 November 1981.

#### **8. AMNESTY INTERNATIONAL'S RECOMMENDATIONS**

On a number of occasions in recent years Amnesty International has informed the Government of Nepal of its concerns about prisoners of conscience and other human rights violations. In so doing, Amnesty International has recommended a number of measures, based on international human rights standards, which it believes should be implemented in Nepal to promote and protect basic rights. The following recommendations reiterate Amnesty International's previous submissions to the Nepali authorities.

1. Amnesty International urges the prompt and unconditional release of all prisoners of conscience, that is, people held solely for the expression of their non-violent beliefs or opinions or for exercising their right to freedom of association or assembly. In all other cases of political imprisonment, Amnesty International urges the authorities to ensure that prisoners are either released or charged with a recognizable criminal offence and tried within a reasonable period, according to internationally accepted standards.

2. Amnesty International recommends that the Nepali authorities review the Public Security Act (PSA) and amend its provisions to accord with international human rights standards. Amnesty International believes it is of particular importance that any law providing for administrative detention should define clearly and precisely the grounds on which a person may be detained.

Under Article 9 of the International Covenant on Civil and Political Rights, a detainee must be informed at the time of arrest of the reasons for the arrest and have access to a court which is empowered to rule on the lawfulness of the detention. Amnesty International believes that in scrutinizing a detention order the court should examine not only whether procedures have been complied with, but also whether the facts of the case justify detention of the individual as a necessary step to achieve the specified purposes of the PSA. Amnesty International also believes that detention orders should be regularly reviewed by a competent, independent and impartial body which is able to take binding decisions rather than being merely advisory to the government. The review procedure should also be conducted so as to provide all guarantees for a fair hearing, including, at a minimum, the right to be present at the hearing, to have legal representation and access to the documentation necessary to present a detainee's case.

3. Amnesty International urges the Nepali authorities to guarantee the right to freedom of religion, including the right to convert voluntarily from one religious belief to another and to manifest one's religious belief. This would conform to the provisions of the Universal Declaration on Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief adopted by the

4. Amnesty International calls upon the Nepali Government to take immediate and effective action to prevent the torture of prisoners, making known publicly its condemnation of this practice. Measures should be adopted to ensure that constitutional provisions, such as bringing prisoners before a judicial authority within 24 hours of arrest are rigorously implemented. All complaints and reports of torture should be effectively and impartially investigated. The Nepali Government should make it known that the act of torture is a punishable offence under criminal law and those responsible for torture shall be brought to justice. It should be made clear during the training of all officials involved in the custody, interrogation or treatment of prisoners that torture is a criminal act and that they are obliged to refuse to obey any order to torture a prisoner. Victims of torture and their dependants should be entitled to financial compensation and victims of torture should be provided with appropriate medical care.

Amnesty International believes that lengthy periods of incommunicado detention are themselves conducive to torture. Prisoners should always be allowed prompt and regular access to relatives, lawyers and doctors.

The Special Crimes (Control and Punishment) Act of 1985, which allows a detainee to be held in police custody for 90 days before being brought before a judicial authority, should be amended to conform with the stipulation in the Nepali Constitution that all prisoners should be produced before a judicial authority within 24 hours of their arrest.

5. Amnesty International urges the Nepali Government to undertake a speedy and impartial investigation into all complaints that people taken into custody have "disappeared". Governments have a clear responsibility for the safety of detainees in their custody and must account for them. Families have a right to know the fate and whereabouts of their imprisoned relatives.

6. As regards prison conditions, Amnesty International recommends that the authorities ensure that all places of detention are visited regularly by an independent body with the power to require the detaining authorities to rectify any abuses which it identifies.

The United Nations Standard Minimum Rules for the Treatment of Prisoners prohibit unconditionally the use of leg irons or fetters on any prisoner. Amnesty International urges the Nepali Government to abolish the use of these instruments and to amend the Prison Act of 1963 accordingly.

7. Relevant international standards lay down certain essential conditions for a fair trial. These include, for example, that the hearing should be before an "independent and impartial tribunal", and that a prisoner should be tried without undue delay and have adequate facilities for the preparation of his or her case. Provision for the trial of political prisoners under the Treason (Crime and Punishment) Act of 1961 by zonal

commissioners fails to uphold the minimum safeguards for a fair trial. Aspects of the Destructive Crimes (Special Control and Punishment) Act of 1985 also appear to contravene international legal standards. Amnesty International recommends that these and other laws providing for the trial of political prisoners should be reviewed and brought into full conformity with internationally recognized standards of fairness.

8. Amnesty International recognizes that the death penalty is rarely imposed in Nepal. However, it is disturbed by the reintroduction of this punishment under the Muluki Ain (legal code) in 1985, and by the extension of provision for the death penalty under other laws enacted at that time. Bearing in mind resolution 32/61 of the United Nations General Assembly, adopted on 8 December 1977, calling for "progressively restricting the number of offences for which the death penalty is imposed", Amnesty International urges the Nepali Government to withdraw the provisions for capital punishment introduced in 1985. Amnesty International also calls for clemency to be extended to those prisoners sentenced to death in absentia in May 1987 under the Destructive Crimes (Special Control and Punishment) Act.

Amnesty International also recommends that, in view of Nepal's tradition of not imposing death sentences, active consideration be given to the total abolition of this punishment for all offences.

9. In his message on Human Rights Day in December 1986, the United Nations Secretary General urged all governments to adhere to and comply with the international covenants protecting fundamental human rights. He also identified their universal ratification as one of the world community's priorities. Amnesty International urges the Nepali Government to demonstrate its commitment to upholding human rights for all its citizens by acceding to the International Covenant on Civil and Political Rights and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## Information from Amnesty International

This paper is part of Amnesty International's publications program. As part of its effort to mobilize world public opinion in defence of the victims of human rights violations, Amnesty International produces a monthly Newsletter, an annual report, and reports, briefings and other documents on countries in all quarters of the globe.

Amnesty International attaches great importance to impartial and accurate reporting of facts. Its activities depend on meticulous research into allegations of human rights violations. The International Secretariat in London (with a staff of over 200, comprising some 40 nationalities) has a Research Department which collects and analyses information from a wide variety of sources. These include hundreds of newspapers and journals, government bulletins, transcriptions of radio broadcasts, reports from lawyers and humanitarian organizations, as well as letters from prisoners and their families. Amnesty International also sends fact-finding missions for on-the-spot investigations and to observe trials, meet prisoners and interview government officials. Amnesty International takes full responsibility for its published reports and if proved wrong on any point is prepared to issue a correction.

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#### Amnesty International Newsletter

This monthly bulletin is a regular update on Amnesty International's work: reports of fact-finding missions, details of political prisoners, reliable reports of torture and executions. It is written—without political bias—for human rights activists throughout the world and is widely used by journalists, students, political leaders, doctors, lawyers and other professionals.



#### Amnesty International Report

This annual report is a country-by-country survey of Amnesty International's work to combat political imprisonment, torture and the death penalty throughout the world. In describing the organization's work, the report provides details of human rights abuses in over 120 countries. It is probably the most widely read—and most influential—of the many reports published by Amnesty International each year.



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### **NEPAL: A PATTERN OF HUMAN RIGHTS VIOLATIONS**

- A student has been held in prison in Nepal for over a year for possessing pamphlets criticizing the political system.
- A teacher who protested against the sale of milk powder feared contaminated by nuclear radiation from Chernobyl is also in jail.
- A journalist who wrote an article criticizing government economic policy is still in custody nearly a year later — and so is his editor.

**Political imprisonment is a persistent feature of life in Nepal. All political party activity is banned. Students, journalists and trade unionists have all been jailed for non-violent political activity.**

The practice of the Christian religion in this Hindu nation has also resulted at times in some people being jailed, and the basic right to choose freely one's own religious faith is explicitly restricted in the Nepali Constitution.

Torture in police custody is widespread. Criminal suspects are frequently beaten, especially on the soles of their feet, pins are inserted under their finger-nails, and stinging nettles applied to sensitive areas. Political prisoners have also been tortured to make them "confess".

This report documents a pattern of political imprisonment. It also describes torture and ill-treatment in police custody, religious persecution, several "disappearances" and the use of the death penalty in the Himalayan kingdom. It spells out a series of measures Amnesty International is urging the Nepali Government to take to protect the rights of its citizens.