SHORT REPORT

ON

DETENTION CONDITIONS

IN WEST BENGAL JAILS

prepared by

The Research Department of Amnesty International
on the Basis of Newspaper Reports and
Individual Statements made to Amnesty International

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INTRODUCTION

When Jawaharlal Nehru published his autobiography in 1936, he could write that "political imprisonment had become a frequent enough occurrence in India".[1] Nehru himself, like many other prominent Indian leaders, suffered from political detention on several occasions under the Defence of India Rules (DIR) and the Indian Penal Code, both introduced by the then British Government. Both these laws are still in force in India and being used to detain people with different opinions from the Government in power. Observations once made by Nehru while in prison are now relevant to many of the prisoners held in India today.

The Indian constitution has laid down detailed safeguards to protect human rights and the record of the judiciary in enforcing these safeguards has been impressive. The Indian prison system is unusual in the sense that it allows for special and better treatment for political prisoners (Class A, or Division I); this classification is, however, now given to only a small proportion of such prisoners. The majority live in prison conditions which not only fall far short of such preferential treatment, but also of the minimum prison conditions as laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners. Amnesty International estimates that between 15,000 - 20,000 prisoners are now held for political reasons in one Indian state alone, West Bengal. A large number of these prisoners have spent periods of up to three years without trial as "Under Trial" prisoners.

Amnesty recognizes that its concern about this policy of large-scale untried detention is shared in the highest legal forum in the country. Lately, the Supreme Court of India observed that "the new jurisdiction of the '<u>jejune</u>' judicial protection was an erosion of citizens' fundamental right of personal liberty against arbitrary deprivation".[2] In its judgment, the Supreme Court observed that "the final cure for prejudicial activities threatening the survival of the community is not the executive shut-up of all suspects in prison for how long one is guessing. Such a strategy may alienate and embitter men".

Amnesty International has raised the issue of political imprisonment in West Bengal (where most of the political prisoners are being held) both with the central and with the provincial governments on several occasions (on 15 March 1973, 19 October 1973 and 1 February 1974). When 46 political prisoners went on a hunger strike on 17 May, Amnesty prepared a report on the conditions and the treatment of political prisoners in West Bengal. The report, making specific recommendations for policy (which are attached) was sent to the Indian Prime Minister and the Chief

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1 <u>Jawaharlal Nehru, An Autobiography</u>, London, 1947, page 90.

2 <u>The Times of India</u>, 15 March 1974.

Minister of West Bengal on 14 June 1974. Since the prisoners have called off their strike, the West Bengal Jail Minister had conceded to some of the basic demands made by the prisoners (ie, that prisoners can be visited by their relatives; that some non-proscribed newspapers and periodicals be allowed; and that clothes be supplied to Under Trial prisoners whose relatives are not in a position to do so).

However, on none of these four occasions has Amnesty International received any response from the government, and has therefore decided to publish the updated report on detention conditions in West Bengal jails.

SHORT REPORT ON DETENTION CONDITIONS IN WEST BENGAL JAILS

1. Numbers

Amnesty International estimates that at the moment between 15,000 and 20,000 prisoners are being held in West Bengal for their alleged involvement in extremist left-wing political activities. Last year, the West Bengal Home Minister stated in the State Assembly that the total number of "prisoners arrested for being Naxalites was 17,787" (Ananda Bazar Patrika, 17 March 1973). On 1 January this year, the Statesman reported that 2,000 are held under the Defence of India Rules(DIR) and the Maintenance of Internal Security Act (MISA); these are preventive detention laws introduced after the declaration of a state of emergency on 3 December 1971 at the time of the war with Pakistan. According to this report, more than 17,800 are, in addition, held as "Under Trial" prisoners, but the majority have now been detained for two or more years without trial. Some of them have been so detained for nearly five years. On their release, prisoners held under preventive detention laws are often reported to be re-arrested, either under different clauses of the same laws or charged with specific criminal offences. Thus, although the Supreme Court of India ruled on 19 April 1973 that the special detention powers under Article 17A of the MISA (extending the period of preventive detention to 21 months) were illegal, and ordered the release of 1,760 prisoners who had been detained under this provision, nearly all of these prisoners remained in detention, either under different sections of the same act or on criminal charges (Economic and Political Weekly, Bombay, 12 May 1973 and Le Monde, Paris, 15 May 1973).

Most political prisoners are described as sympathizers with, or members of the CPI(ML) (Communist Party of India, Marxist-Leninist), commonly known as "Naxalites". A smaller number are members of the main parliamentary opposition party in Bengal, the CPI(M) (Communist Party of India - Marxist). Apart from being held under preventive detention laws, prisoners are also detained on a variety of serious criminal charges, but often released before actually having been tried. Such was the case, for example, with Dr Gholam Yazdani, physician and former member of the United Front Government of Bengal, arrested in 1971. He was released in December 1973, without having been tried. Prisoners tried and not found guilty on one charge are often immediately re-arrested on different charges. Thus, it was reported to Amnesty International that Karune Mukerjee, Gour Banerjee and Nag, all Naxalite suspects, had been arrested in 1970-1971 and were since detained charged with murder and illegally carrying arms and explosives. In October 1973 the Calcutta magistrate pronounced a verdict of not guilty on their case, but the prisoners were re-arrested within the court premises and taken into police custody on charges of robbery. After their release, prisoners, even if cleared of all charges brought against them, are often put under "restrictions", ie have to report regularly to the police, whereas, according to a number of statements made to Amnesty International, restrictions are being imposed on their movements and political activities.

2. Prison Conditions

Many jails are grossly overcrowded; at the moment Alipore Special Jail, Presidency Jail in Calcutta and Jamshedpur Jail in Bihar are among the prisons containing more than the official capacity. This has made it difficult for the prisoners to obtain certain essential facilities. Accounts from ex-prisoners received by Amnesty International indicate that hygiene conditions in most jails are bad. According to a recent report in the Economic and Political Weekly (22 December 1973), in Calcutta Presidency Jail, only one water tap is available for 150-200 prisoners, and in the dry season it is often difficult to obtain drinking water for the inmates. In Alipore Special Jail, there is only one water tap for 700 prisoners. In some other jails, prisoners reportedly have to take drinking water from ponds where other prisoners bathe and wash their clothes. Under Trial prisoners are kept in wards of 80-100 inmates which are dark and airless, and prisoners are locked up from 5.30 in the evening until 6.00 am without any sanitary facilities. In the morning, prisoners are allowed out for two hours to have meals, wash and use lavatory facilities.

Although Presidency Jail is one of the few prisons with a sick ward, very few prisoners are admitted to the ward. According to the same report, medical facilities are scarce, and skin diseases, particularly scabies, widespread. Amnesty International has been told that in some cases, despite recommendations from jail doctors, no permission was given for prisoners to be treated in outside hospitals. Of the cases reported to Amnesty, one was of Ramal Roy Chowdhury, arrested in October 1970, who allegedly had been tortured and whom the jail doctors had recommended for outside treatment, which was never given. The prisoner is said to have died in April 1972 on the day of his "Special Release" from jail. Another prisoner, Azizul Haque, is said to be seriously ill following alleged torture during police interrogation which left him partly paralyzed. Despite doctors' recommendations for outside treatment, he remains in jail.

Visits, according to the Economic and Political Weekly report, are officially allowed twice a month. In the case of Under Trial prisoners, such visits last usually 3-5 minutes, except in the case of the few prisoners classified as Grade II, who are allowed 20-minute visits. However, on occasion, families are refused permission to visit the prisoners at all, as has happened with the prisoners on hunger strike in May. Most of the Under Trial prisoners and prisoners held under the MISA - who form the vast majority of the prison population - have no access to the library, and reading material is restricted to a few officially allowed newspapers.

3. Discipline and Punishment in Prison

Amnesty International has been particularly concerned about the use of bar fetters ("danda-berri" and "Shikliberri") on prisoners regarded as dangerous or as security risks. While such fetters seem to be used in West Bengal jails, reports of this have reached Amnesty also from Bihar

especially. Fifty-one alleged Naxalite prisoners are kept in chains in Hazaribagh Jail, some of them for periods of more than two years. The fetters are kept on day and night, according to the jailer of Hazaribagh Jail "to avoid further trouble". They consist of an iron ring on each ankle, each of which is attached to an iron bar some 20 inches long, the bar being connected to another one connected to the waist. One of the prisoners recently on hunger strike, Ashim Chatterjee, was chained for a period of two years. It was also reported to Amnesty that the same prisoner had spent two years in solitary confinement. Another case known to Amnesty International is that of Soibal Roy, detained in the same jail, who contracted tuberculosis during imprisonment. After having received hospital treatment, he returned to jail and was put in irons again. Prisoners held in this condition in Hazaribagh Jail spend 24 hours locked with four or five in a cell, which they may only leave to use the lavatory. The use of bar fetters is also reported from other jails: in Calcutta Presidency Jail, prisoners are allegedly kept in fetters for periods of three to six months or even longer. Such treatment is contrary to Rule 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners - even for those who are convicted (see Appendix II).

4. Correctional Institutions for Political Prisoners

The Jail Minister of West Bengal, Mr Gyan Singh Sohonpal, announced on 21 February 1974 that "The West Bengal Government will convert Barasat Sub-Jail in 24 Paraganas district into a correctional institution to bring about a psychological change in the behaviour of the 'misguided youths', mainly Naxalite prisoners." (The Indian Express, 22 February 1974.) According to the Jail Minister's statement, the Naxalites are regarded as "psycopaths and in need of psycotherapy to get rid of the extremity of mind".

Amnesty International understands the term "Naxalite" to describe a particular political orientation of a group of young men and women who sympathize with the Maoist-oriented peasant uprising which occurred in 1967 in West Bengal. Their ideology advocates armed struggle to bring about a change in the social and political structure. Numerous acts of violence have been committed by members of the movement in Bengal and its neighbouring provinces, particularly in the period 1970-1971. As such, the term describes a particular ideology rather than a pathological state. Amnesty International therefore wrote to the West Bengal Jail Ministry early this year to inquire about the evidence in existence to qualify these prisoners as psycopaths. Its request for an assurance that any psycotherapeutic treatment administered to, or carried out upon these prisoners be with their voluntary consent, has so far remained unconfirmed.

5. Torture Allegations

Over the past three years, a number of torture allegations have reached Amnesty International from legal sources in Calcutta. According to these

reports, torture is frequently applied during police interrogation, both in the Special Police Office (14 Lo Sinha Road, Calcutta) and in the Lal Bazar Police Station in Calcutta. Allegations of torture include severe beatings - to the extent of fractured limbs - prisoners being hung upside-down and pins and nails being inserted into their nails and other sensitive organs of the body, including the genitals. In a number of cases the use of modern electric shock methods is reported, and prisoners are also allegedly burned with cigarettes, extinguished on their skin. According to the same reports, appropriate medical treatment was denied to prisoners who had suffered such treatment, which resulted in their being partly paralyzed (as in the case of Azizul Haque and Megharanjan Sen Gupta, detained in Presidency Jail). In the case of Ramal Roy Chowdhury (mentioned in paragraph 2), who died after his release, it was reported that his death was due to inadequate medical treatment following police torture.

Allegations of torture of women have most recently been made in a report[3] by the "Nikhil Banga Mahila Samiti" (All Bengal Women's Association). Members of the association were detained in May this year, together with some 25 female Naxalite suspects, whom Amnesty estimates now to be detained in Calcutta's Presidency Jail. According to members of the association, these women were taken to Lal Bazar Police Station one month after their original arrest. When failing to supply the wanted information, they were stripped naked, burned with cigarettes on all parts of the body and, in some cases, iron rulers were inserted into the rectum and vagina. When recovered, these women would, according to this report, be taken to Lal Bazar for the same treatment after 20-22 days.

Although Amnesty International has not been able to make an investigation of the majority of these allegations, Amnesty representatives have talked to a small number of ex-prisoners who allege they have been tortured. In at least one case, the Amnesty representative was able to establish that the right hand of an ex-prisoner was paralyzed and could find no reason to question his statement that this was caused by severe beating during police interrogation: this prisoner was a lawyer who had been detained in January 1970 on three criminal charges, and, after he had been acquitted of all the charges, was released in June 1973 on the condition that he report regularly to the police and not engage in political activities.

6. Jail Incidents

According to official figures which appeared in the Statesman, the Times of India and the Jugantar, 88 prisoners were killed in 12 jail incidents during the period from December 1970 to June 1972 in West Bengal and

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3 - extracts from which appeared in the Economic and Political Weekly of 27 July 1974. This report mistakenly mentions the All India Women's Association.

Bihar alone (see Appendix I). Unofficial reports from ex-prisoners which have reached Amnesty International put the number of prisoners who died in these encounters between prisoners and the jail staff and police at three times that figure. Only in a limited number of these incidents was an official inquiry ordered to take place, ie as in the case of the 26 July 1971 Hazaribagh incident in which 16 people died. While no official report on these incidents has ever been published, so far as we know, the Times of India and the Statesman of 4 August 1971 stated that "The preliminary inquiry held by the Commissioner of the Chotanagpur Division and the Deputy Commissioner for Hazaribagh also shows that the remaining 12 inmates died of injuries caused by convict officers". Regarding the incident at Asansol Jail, which took place on 7 August 1971, the Statesman also reported: "... about Thursday's incident in Asansol Jail, it was learnt that all the nine killed had been beaten to death ...".

Such reports cast serious doubts on one common official explanation: that the prisoners were shot while trying to escape from prison.

7. Legal Aid

While Article 22(i) of the Indian Constitution confers the right to every citizen to be informed as soon as possible about the grounds for his arrest, and the right to consult a lawyer, the main complaint of the Legal Aid Committee in Calcutta - a committee of lawyers whose aim is to extend legal aid to political prisoners - is that members of the committee are often denied access to their clients in prison. Letters written by prisoners to the committee have, in a number of cases, not reached their destination; while prisoners, when they have a lawyer, often complain that they cannot meet their counsel in jail and can only see him for the first time when they are actually brought to court. Whereas the work of the Legal Aid Committee in the High Court has been fairly successful, a report from the committee, issued in November 1973, mentions that "The Committee moved 200 bail petitions in different courts in West Bengal (in 135 Under Trial cases and 52 MISA cases). Bail was granted to six Under Trial prisoners and 46 prisoners held under the MISA. Still now, only six prisoners have been released." Like many of the political prisoners in West Bengal, they were re-arrested under different charges immediately after their release had been ordered by the court.

Research Department

September 1974

RECOMMENDATIONS ARISING FROM A SHORT REPORT ON DETENTION CONDITIONS IN WEST BENGAL JAILS, SUBMITTED TO THE PRIME MINISTER OF INDIA AND THE CHIEF MINISTER OF WEST BENGAL*

Amnesty International, while concerned about the policy of large-scale detention without trial, would like to draw Your Excellency's attention to the detention conditions of political prisoners, many of whom are held in West Bengal jails. On the basis of a report on detention conditions of such prisoners, prepared by Amnesty International's Research Department, and guided by the principles of the Universal Declaration of Human Rights, which states in Article 9 that

> "No one shall be subjected to arbitrary arrest, detention or exile",

and also led by the principles laid down in Article 22 of the Indian Constitution, which provides safeguards against such arrests, we would now like respectfully to submit to you the following recommendations:

1a. That your Government confines itself to prosecuting only those against whom evidence exists that they have committed offences punishable under the Indian Penal Code.

b. That all prisoners held under criminal charges either be brought to trial without further delay, or that in the absence of such, that prisoners likely to be held for more than three months in prison without trial be instead at least released on bail.

We feel that a prosecution policy along these lines, resulting in the release of considerable numbers of prisoners held without trial, would solve to some extent problems created by overcrowding as outlined in the attached report, under paragraph 2. But, until such a policy is declared, we would, moved by humanitarian considerations, respectfully suggest that Your Excellency considers the following steps for immediate consideration; in so doing, we are guided by the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR):

2. That, on the basis of the principle that all unconvicted prisoners are presumed to be innocent and be treated as such (Rule 84(2) of the SMR):

a. That no instruments of restraint, such as bar

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* These recommendations were submitted to the Indian Prime Minister and the West Bengal Chief Minister in letters dated 14 June 1974 from Martin Ennals, Secretary General of Amnesty International.

fetters and irons, be used in prison, in accordance with Rule 33 of the SMR. (For information on the use of these, see paragraph 3 of the attached report.)

b. That adequate facilities for accommodation, personal hygiene and food, as well as medical facilities, be supplied to the prisoners in accordance with Rules 10, 11, 12, 20 and 22 of the SMR (see paragraph 2 of the report).

c. That family visits, reading material and all other conditions applicable to persons held on remand awaiting trial be supplied in accordance with Rules 90 and 92 of the SMR (see paragraph 2 of the report).

d. That investigations be made into allegations of torture whenever they reach the Government, and that all possible steps be taken to prohibit such use in the future, including the punishment of any persons found guilty of such acts (see paragraph 5 of the report).

e. While seriously disturbed about the various incidents, resulting in the death of prisoners as described in paragraph 6 of the report, Amnesty International urges that an official investigation be made into the nature of these incidents and the resulting deaths of prisoners, and that adequate measures be taken to prevent the recurrence of similar excesses in the future.

f. Finally, that prisoners, in accordance with the provisions of Rule 93 of the SMR, be allowed to apply for legal aid and to receive visits from their legal advisers, and that such visits be in sight, but not in hearing distance, of the police or institutional officer (see paragraph 7 of the report).

APPENDIX I

JAIL INCIDENTS IN WEST BENGAL AND BIHAR DURING THE PERIOD FROM DECEMBER 1970 TO JUNE 1972

NAME OF JAIL	SOURCE	PERSONS KILLED (Official estimates)
Midnapore Jail 16 December 1970	Statesman 17 December 1970	10
Midnapore Central Jail 6 February 1971	Statesman 6 February 1971	1
Berhampur Jail 24 February 1971	Jugantar 25 February 1971	10
Dum Dum Central Jail 14 May 1971	Statesman 15 May 1971	16
Bankipur Jail (Patna) 8 July 1971	Times of India 8 July 1971	2
Alipore Special Jail 12 July 1971	Times of India 12 July 1971	6
Hazibargh Jail (Bihar) 25 July 1971	Statesman 26 July 1971	16
Alipore Central Jail 26 November 1971	Jugantar 27 November 1971	6
Asansol Special Jail 5 August 1971	Times of India 6 August 1971	9
Hooghly Jail 7 February 1972	Statesman 8 February 1972	1
Bhagalpur Jail 8 May 1972	Statesman 9 May 1972	9
Burdwan Jail 28 May 1972	Statesman 29 May 1972	2
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APPENDIX II

RELEVANT RULES OF THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (RESOLUTION ADOPTED ON 30 AUGUST 1955)

RULE 10: All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

RULE 11: In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

RULE 12: The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

RULE 20: (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well-prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

RULE 22: (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and

pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners and there shall be a staff of suitably trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

RULE 33: Instruments of restraint such as handcuffs, chains, irons and strait-jackets shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director if other methods of control fail, in order to prevent the prisoner from injuring himself or others or from damaging property; in such instances, the director shall at once consult the medical officer and report to the higher administrative authority.

RULE 82: (2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

RULE 90: An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

RULE 92: An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

RULE 93: For the purpose of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and to hand to him confidential instructions. For these purposes he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institutional official.