

## RAMESH CHAUHAN - MAHARASHTRA

Fundamental rights guaranteed in the constitution and safeguards within law which have been enhanced by orders of the Supreme Court in theory provide protection to detainees against violations of their human rights. These include the right to legal counsel which the Supreme Court has held includes the right to the presence of legal counsel during interrogation. However, it is rare for lawyers to be present during interrogation and given the heavy reliance of police on interrogation and confession rather than scientific investigation, torture and ill-treatment during interrogation is widespread. In 1994 when Amnesty International delegates visited Mumbai they were told that police practice in Mumbai was not to allow lawyers to enter police stations or to be present during interrogation. As in many areas of India, political influence over police and broad powers provided to police to arrest without warrant allows powerful individuals to use police to punish those against whom they have a grievance, most often through filing criminal cases and in some cases detention and even torture.

On 24 December 1998 at approximately 11.30am Ramesh Chauhan, a 28-year-old ambulance driver was picked up from his residence in Worli, Mumbai and taken to Worli Police Station. He was not informed of the grounds of his arrest but on arrival at the police station was asked to remove his clothes. When he refused he was beaten on his hands with a belt and then forced to sit with his knees bent and arms in the air for half an hour. Suffering from exhaustion Ramesh Chauhan sank to the floor. A constable immediately pulled his hair back and held his hands while another beat the soles of his feet with a canvas belt. While he was being beaten officers kept telling him to sign a confession stating that he had committed a theft in 1997 of Rs. 60,000 [\$1,300] from Rajan Naik - a man whose office was adjacent to Ramesh Chauhan's employer's. When Ramesh Chauhan refused to sign the confession statement he was further beaten. Two constables placed their feet on his legs to stop them from shaking while he was being beaten on the soles of his feet. The torture continued for roughly two hours during which time police ignored his pleas that he was suffering from tuberculosis.

When Ganga Bai (Ramesh Chauhan's mother) went to the police station to find out why her son had been arrested she was told that he had been accused of theft. Having been informed by his mother of his younger brother's arrest, Dinesh Chauhan and his wife Nirmala Chauhan went to the police station at around 4.30pm. When they asked a police officer to confirm whether Ramesh Chauhan was being held at the police station the officer replied that there was no entry in the General Diary of his arrest. At the same time, however, another officer from inside the station asked the family to come inside. Upon entering the room they saw Ramesh Chauhan sitting in a corner with two constables sitting beside him. He looked like he had been assaulted. Speaking in Gujarati, Dinesh Chauhan asked Ramesh Chauhan whether he had committed any offence. Ramesh Chauhan replied in Gujarati that he had not committed any crime but that he had been tortured and forced to sign a confessional statement. They were told to speak in Hindi or Marathi and one of the constables allegedly told Ramesh Chauhan, in front of Dinesh Chauhan and Nirmala Chauhan, that he would be beaten if he changed his confession. Nirmala Chauhan asked the constable whether a written complaint had been filed; she was informed that no complaint had been filed.

Ramesh Chauhan and Nirmala Chauhan were taken aside and told to pay Rs.60,000 by 8pm that day. They pleaded with the officer to allow them more time as they needed to talk to Mohan Chauhan (Ramesh Chauhan's other brother). They left the police station and consulted with Mohan Chauhan after which they tried to see Rajan Naik to ask him for an explanation. However, Rajan Naik refused to talk to them and told them to arrange to pay the money to the police officers.

After raising some of the money the family proceeded to the police station. When they arrived there they saw Rajan Naik standing outside with two police officers. Dinesh Chauhan approached one of the officers to inquire about his brother. He was told that Ramesh Chauhan would be released if they paid the Rs. 60,000 that he had stolen. Dinesh Chauhan told the officer that the family was unable to raise the full amount. The officer reportedly suggested that the family could pay the money in separate installments. Dinesh repeated that the family was unable to pay the full amount and that they would have to let the law take its own course. Ramesh Chauhan was finally released when Dinesh Chauhan handed over the money they had raised -- around Rs.10,000 -- on the understanding that the rest would be paid the following day.

At the time of releasing him Chauhan a constable reportedly told the family to give Ramesh Chauhan a massage and bath as he had been beaten, but that "he would be alright". He was taken to Patdar Hospital by his brothers for treatment. Medical records confirmed the allegations of torture.

On 25 December 1998 immediately after his release, Ramesh Chauhan filed an anticipatory bail application in the Mumbai sessions court fearing further detention and torture by police in the theft case. The court expressed concern about the detention of Ramesh Chauhan by police and the extortion of Rs.10,000 from his relatives pointing out that no case had been registered against Ramesh Chauhan. It further expressed displeasure at the failure of police to provide an explanation for his detention or to appear before the court.

On 29 January 1999 Ramesh Chauhan wrote to the Commissioner of Police, Mumbai, requesting that an FIR be registered against police for his illegal detention and torture. As of December 2000 no reply has been received. A complaint was also filed with the National Human Rights Commission. Apart from an acknowledgement letter no investigation, to our knowledge, has been initiated into the incident.

### **Recommendations:**

*Please write polite letters to the central and state authorities in India listed below making the following points:*

Expressing concern at the continued use of torture in Maharashtra. Urging the Government of Maharashtra to make a clear public commitment to ending torture and condemning the use of torture in all its forms. Outlining that the Government of Maharashtra must make it clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated and that its unlawfulness is absolute, whoever it is inflicted on and by whomever.

Urging the Government of Maharashtra to order independent and impartial investigations into all allegations of torture including the torture of Ramesh Chauhan in December 1998 and to ensure that police officers found responsible for torture are brought promptly to justice.

Urging the Government of Maharashtra to take urgent steps to eradicate illegal practices of police including corruption and extortion and to ensure that safeguards for the protection of detainees including those set out by the Supreme Court in D.K. Basu vs. State of West Bengal are rigorously implemented. Independent monitoring mechanisms should be established to ensure their implementation and action taken against police officials found to have ignored these safeguards.

Urging the Government of Maharashtra to ensure that independent monitors be given immediate and unhindered access to all places where people may be held in detention. In addition, lawyers should be given unhindered access to detainees in police stations including during interrogation in accordance with Supreme Court orders.

**Addresses:**

Vilasrao Deshmukh <u>Chief Minister of Maharashtra</u> Office of the Chief Minister Mantralaya Maharashtra INDIA	Amarjeet Singh Samra <u>Director General of Police</u> Maharashtra State Police Headquarters Old Council Hall, Opp Regal Cinema S B Marg, Mumbai 400 039 Maharashtra INDIA
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**RAMPAL - PUNJAB**

In Punjab in the 1980s and 1990s hundreds of people were tortured, extrajudicially executed or "disappeared" during a conflict between armed opposition groups fighting for secession from India and the Indian security forces. Despite calls by human rights organizations including Amnesty International for impartial investigations into these human rights violations, there has still been no comprehensive investigation into the pattern of human rights violations perpetrated by police. Amnesty International believes that this situation has facilitated the continuation of torture and other illegal activities by police in the state. Despite an end to the conflict, Amnesty International continues to receive regular reports of torture by police in Punjab. Methods of torture used in the past against political detainees by police in the state -- including rolling wooden rollers over the legs of suspects thereby tearing muscles, stretching the legs apart and electric shock treatment -- are now used against common criminal suspects or against individuals detained merely for the purpose of extortion. Political interference and the ability of vested interests to "use" the services of police ensures that often the most socially and economically weak members of society are most vulnerable to abuses including torture and ill treatment by police at the behest of those groups.

One such case is that of Ram Pal, a migrant labourer from Uttar Pradesh working in Chandigarh who was picked up on suspicion of misappropriating funds from his employer. On 3 September 1999 Ram Pal's employer Subhash Sethi, took Ram Pal to the Sector 26 Police Station alleging that he had stolen Rs.1 lakh [Rs. 100,000 or \$2,150] from one his employer's clients. When Ram Pal arrived at the police station he was forced to remove his clothes in the presence of several police officers. He was then beaten with leather belts, *lathis* [long wooden sticks] and *ghotanas* [iron rods] and subjected to electric shock treatment around delicate areas of his body including his ears and genitals. The torture was reportedly carried out by three police Sub-Inspectors. After three days of being tortured Ram Pal fell unconscious.

When Ram Pal's family discovered that he had been detained, with the help of a local human rights organization they filed a complaint in the High Court of Punjab and Haryana. When on 8 September 1999 news of the complaint reached the police officers they reportedly left Ram Pal outside his residence. Ram Pal was taken to the chambers of some human rights lawyers in the District Courts who seeing his condition took him straight to a judicial magistrate seeking a medico-legal examination by a

board of doctors. They also took him to the Police Headquarters in Chandigarh and produced him before the Inspector General who ordered that an inquiry be carried out by a Deputy Superintendent of Police.

The medical examination which was conducted by the Board of Doctors of General Hospital, Sector 16, substantiated Ram Pal's claims of torture. The medical report confirmed ten external injuries resulting from beatings, internal injuries resulting from electric shock and a fractured right foot. Ram Pal spent several weeks in hospital recovering from his injuries.

A Sub-Inspector -- only one of several police officers who were present during the torture of Ram Pal -- was suspended. However, he and other police officials reportedly offered Ram Pal and his relatives large sums of money to stop pursuing the matter. Although a petition was filed in the High Court seeking orders for police to file a First Information Report against accused officials, before the date of hearing, a compromise was reportedly reached between Ram Pal and the accused police officials. Ram Pal reportedly submitted an affidavit before the Permanent *Lok Adalat* [Peoples Court], Chandigarh, that he would not pursue a complaint against the police. In return he was given Rs.75,000 [\$1,600] by the accused police officials. The suspended police officer was reinstated and is currently serving in a nearby police station.

**Recommendations:**

*Please write polite letters to the central and state authorities in India listed below making the following points:*

- Expressing concern at the continued use of torture in Punjab. Urging the Government of Punjab to make a clear public commitment to ending torture and condemning the use of torture in all its forms. Outlining that the Government of Punjab must make it clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated and that its unlawfulness is absolute, whoever it is inflicted on and by whomever.
- Urging the Government of Punjab to initiate impartial and independent inquiries into all allegations of torture including of Ram Pal and to bring those found responsible to justice. Calling on the Government of Punjab to grant compensation to Ram Pal.
- Urging the Government of Punjab to take urgent steps to eradicate illegal practices of police including corruption and extortion and to ensure that safeguards for the protection of detainees including those set out by the Supreme Court in D.K. Basu vs. State of West Bengal are rigorously implemented. Independent monitoring mechanisms should be established to ensure their implementation and action taken against police officials found to have ignored these safeguards.
- Expressing concern at the failure of the state to systematically investigate the pattern of widespread human rights violations in Punjab and at the climate of impunity which continues in the state. Pointing out that impunity is one of the main factors which allow torture to continue and that when the institutions responsible for upholding the law routinely flout it when dealing with their own members, they undermine the whole criminal justice system.

**Addresses:**

Prakash Singh Badal <u>Chief Minister of Punjab</u> Office of the Chief Minister Chandigarh Punjab India	Sarabjit Singh <u>Director General of Police</u> Office of the DGP Chandigarh Punjab INDIA
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## MOHAMAD ALAM - WEST BENGAL

Torture in West Bengal, like many other states in India, is endemic. The particular prevalence of torture in West Bengal can in part be attributed to the lack of political will of the state to address the use of torture. In recent years, senior government and police officials have expressed contempt for the work of the West Bengal Human Rights Commission -- which was established in 1995 and has played an active role in investigating custodial violence by police and recommending prosecution of officers -- claiming that it hampers the work of police. Investigation and prosecution of crime by West Bengal police appears to have become secondary to the maintenance of law and order by any means. The police, as in the rest of India, have used torture as a means of retribution and extortion. Illegal detention in violation of existing legal safeguards including the requirement of bringing a detainee before a magistrate within 24 hours of arrest is a regular practice.

The death of Mohammed Alam described below took place several years ago. Scores of deaths in custody have taken place in West Bengal since he died. However, for the mother of Mohammad Alam, who was interviewed by an Amnesty International delegate in Calcutta in June 1999, the incident was vividly present in her mind.

In March 1995, Mohammad Alam was 25-years-old and worked at a ship-building yard earning Rs.100 [\$2] a day. The eldest son of Jabeda Khatoon who had been recently widowed with whom he lived along with his brother and sister, his marriage had been fixed to take place that year. At 4am on 29 March four non-uniformed police officers entered the family house and arrested him without a warrant. When his mother asked the police for the reason for his arrest they told her that the Officer-in-Charge (OC) of Garden Reach Police Station wanted to speak to him but promised that he would be returned safely by 7pm the same day. Mohammad Alam was taken to the local police outpost (Fari No.28).

Jabeda Khatoon went to the police outpost at 7am and pleaded with the officer in charge to release her son. She was permitted to see him where he was being held in a lock-up in one corner of the outpost. When she asked him whether he had been tortured he replied that he had not been and that he was waiting his turn for questioning. When Jabeda Khatoon and other relatives and friends returned to the police outpost at 7pm that evening they witnessed Mohammad Alam being beaten by police officers. Jabeda Khatoon pleaded with the officers to stop beating her son and asked that he be presented before a magistrate. Police officers (including the OC of Garden Reach police station) responded by verbally abusing her.

At midnight approximately 25 non-uniformed police men from the Garden Reach Police Station came and searched Jabeda Khatoon's house. They informed the family that they were looking for money which Mohammad Alam was alleged to have stolen. Jabeda Khatoon was told to accompany the police officers to the police outpost where the OC of Garden Reach Police Station demanded that she pay Rs. 4,000 [\$86] for the release of her son. When Jabeda Khatoon responded that she did not have this kind of money the OC ordered that Mohammad Alam be beaten in front of his mother. Mohammad Alam was made to lie on a table and was beaten with *lathis* [long wooden sticks]. Unable to bear the torture Mohammad Alam started crying. Despite Jabeda Khatoon's repeated pleas, the police officers continued the beating. In response to Jabeda Khatoon's tears one of the police officers hit her on the head with a *lathi* and began to verbally abuse her.

Police continued to harass the family for money for four days. Jabeda Khatoon continued to go to the police outpost with food but she was not allowed to speak to her son or to give him the food. She desperately tried to raise the money that police were demanding but was unable to do so. She claims to have approached a lawyer and offered to pay him Rs.200 to get her son released but that he told her she would have to pay the Rs.4,000 to the police if she was to stand any chance of getting her son back. By the third day of his detention, Jabeda Khatoon recalls that Mohammad Alam was unable to speak and only able to communicate using signs. Her requests that he be provided with medical treatment were ignored by the OC and Mohammad Alam was subjected to several days of further torture both at the police outpost and at Garden Reach Police Station.

On the morning of 9 April 1995 Mohammad Alam was taken to the Alipore court for remand. He was held in the court lock-up where Jabeda Khatoon saw him being held up by two police officers and claims that he looked near death. He was remanded by the magistrate to judicial custody. His mother claims that the magistrate never saw him as he was kept in the lock-up and that the court ignored her pleas for him to be provided with medical treatment. On arrival at Alipore Central Jail the jailor reportedly refused to admit Mohammad Alam because of his condition and he was reportedly returned to the court where the magistrate passed orders that he be admitted to Presidency Jail Hospital for treatment.

At approximately 1.20pm on 10 April 1995 Mohammad Alam died of his injuries in Presidency Jail.

His mother, who was still trying to obtain his release on bail, was not informed of his death by jail officials. She heard from the mother of another detainee. Neighbours of the family brought the body back at around 5pm the next day. A post mortem report substantiated the claims of torture.

Five years on Jabeda Khatoon continues to fight for justice in the courts. After a complaint was filed before the Chief Judicial Magistrate, Alipore, warrants for the arrest of police officers were issued by a magistrate in July 1996 but police appealed the decision. In 1998 when the case came up for hearing in the High Court it was found that the lower court records were missing. Finally in February 2000 the matter was referred back to the lower court for recording of evidence afresh. This was done and on 3 July 2000 warrants were issued for the arrest of police officers. Police subsequently questioned the admissibility of a minor witness and the case continues to be argued in court.

Jabeda Khatoon claims to have repeatedly been offered Rs.50,000 [\$1,000] by police to drop the case. Despite the fact that she earns Rs.150 [\$3] a month as a domestic help she has refused this money. She is determined to continue her fight.

*Please write polite letters to the central and state authorities in India listed below making the following points:*

**Recommendations:**

- Expressing concern at the continued use of torture by police in West Bengal. Urging the Government of West Bengal to make a clear public commitment to ending torture and condemning the use of torture in all its forms. Outlining that the Government of West Bengal must make it clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated and that its unlawfulness is absolute, whoever it is inflicted on and by whomever.
- Urging the Government of West Bengal to suspend the officers against whom arrest warrants have been issued pending the conclusion of the case. Expressing concern at the attempts by police officers to harass Jabeda Khatoon and to offer her out of court settlements.
- Expressing concern at the length of time taken to conclude the court proceedings in this case. Referring to Article 12 of the Convention Against Torture which stipulates that there should be a prompt and impartial investigation into all cases of torture. Urging the Government of West Bengal to ensure the prompt initiation of court proceedings against these officers and that they be tried in accordance with international standards for fair trial.

**Addresses:**

- Urging that Jabeda Khatoon be granted adequate compensation for the death in custody of Mohammad Alam.
- Urging the Government of West Bengal to take urgent steps to eradicate illegal practices of police including corruption and extortion and to ensure that safeguards for the protection of detainees including those set out by the Supreme Court in D.K. Basu vs. State of West Bengal are rigorously implemented. Independent monitoring mechanisms should be established to ensure their implementation and action taken against police officials found to have ignored these safeguards.

**MERCY KABUI - MANIPUR**

Buddhadab Bhattacharjee <u>Chief Minister of West Bengal</u> Office of the Chief Minister Writers Building Kolkatta West Bengal INDIA	D. C. Vajpai <u>Director General of Police</u> Office of the DGP Police Headquarters Kolkatta West Bengal INDIA
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Manipur has been riven by internal conflict and has been under a permanent state of emergency for decades, fuelled by economic under-development and corruption. Armed opposition groups have emerged, organized on the basis of community affiliations and conflicting demands for greater autonomy and self determination. Amnesty International has for several years expressed concern about widespread human rights abuses which have been committed by all sides in the conflict. Women living in areas of armed conflict in India are particularly vulnerable to a wide range of human rights abuses. Many incidents of rape and other forms of sexual abuse have been reported from Manipur, most in the context of "cordon and search" operations where house to house searches are conducted by security forces including army and paramilitary forces who are present in large numbers in the state. Security forces operate under the Armed Forces Special Powers Act which grant them broad powers to detain individuals and to use force and which also protects them from prosecution for abuses.

Mercy's father-in-law provides testimony about the incident in October 2000 to the Indigenous People's Inquiry Commission, an initiative of several human rights organizations to document human rights violations in the state.

On 19 July 2000 at around 5.30pm, 25-year-old Mercy Kabui from Lamdan Khullen village in Churachandpur district of Manipur was standing on the porch of her home with her father-in-law, Maringmi Thaitounga, and husband, Akham, when the Assistant Commander of the 112<sup>th</sup> Battalion of the Central Reserve Police Force (CRPF) and six heavily-armed CRPF personnel approached their house. Ignoring the welcome from Maringmi Thaitounga the Assistant Commander ordered the CRPF personnel to grab Akham. When Maringmi Thaitounga asked why his son was being arrested the Commander offered no explanation but instead ordered his men to beat Akham. Maringmi Thaitounga tried to intervene to stop the beating but was distracted by cries from his daughter-in-law who was being dragged into the house by three of the CRPF personnel who said that they wanted to conduct a search of their house. As soon as the CRPF personnel entered the house they began to touch Mercy Kabui saying that they needed to do a body search. Maringmi Thaitounga was forcibly prevented from entering the house by one of the CRPF personnel as the two remaining officers proceeded to rape Mercy Kabui at gunpoint.

*"They forcibly pushed me inside by my neck and pointing their guns. I had (an) inclination of what was going to happen and I tried to run away through the back door. They dragged me back by tearing at my hair and clothes. Then, on the pretext of searching things, they bodily touched me. I resisted and tried to escape. But they overpowered me and raped me. I begged them repeatedly to spare me but they persisted".*

Following the departure of the CRPF personnel Maringmi Thaitounga, who is the village chief of Lamdan Khullen, immediately went to the army camp to report the incident to the Commanding Officer. A complaint was also filed at Loktak Police Station. Mercy Kabui did not immediately seek medical attention -- her village is in a remote area of the country far from medical facilities -- but was medically examined three days after the incident.

No investigation was initiated by CRPF officials stationed in Lamdan who instead denied the accusations. While police initiated an investigation soon after the incident, it was reported in the media that the CRPF were failing to cooperate and as of November 2000 the investigation had not been concluded.

#### **Recommendations:**

*Please write polite letters to the central and state authorities in India listed below making the following points:*

- Expressing concern at the continued use of torture in Manipur. Urging the Government of Manipur to make a clear public commitment to ending torture, including rape, and condemning the use of torture in all its forms. Outlining that the Government of Manipur must make it clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated and that its unlawfulness is absolute, whoever it is inflicted on and by whomever.
- Urging the Government of Manipur to initiate an independent and impartial inquiry into the allegations of rape of Mercy Kabui and to take steps to ensure that security forces involved are suspended pending the inquiry and are not in a position to influence the investigation or harass the victim or her relatives. Urging that those found responsible are promptly arrested and speedily brought to justice in accordance with international standards for fair trial. Urging the Government of Manipur to grant Mercy Kabui prompt and adequate compensation.

To Central government authorities:

- Expressing concern about provisions of the Armed Forces Special Powers Act which grant widespread powers to security forces to act in aid of civil authority. Note that despite the existence of "Do's and Don'ts" issued to security forces acting under this Law which include instructions not use torture or ill-treatment, particularly against women and children and to ensure that women are not searched/arrested without the presence of female police, such human rights violations continue to be widely reported from Manipur and other states where the Act is in operation.
- Expressing concern about the climate of impunity in Manipur facilitated by provisions of the Armed Forces Special Powers Act which protect members of the armed forces from investigation and prosecution. Urge that such provisions be repealed and ensure that there are no legal or practical impediments to bringing those responsible for human rights violations to justice in accordance with international standards.
- Calling for the amendment of section 19 of the Protection of Human Rights Act to allow the National Human Rights Commission and the State Human Rights Commissions to investigate allegations of violations by members of the armed forces as recommended by the UN Human Rights Committee.

Urging that human rights training including gender sensitive training be provided to police, the security forces, judiciary and medical professionals, in additions to the programs already undertaken. The training should be provided to all levels of personnel from the highest to the lowest.

**Addresses:**

Nipamacha Singh <u>Chief Minister of Manipur</u> Office of the Chief Minister Imphal Manipur INDIA	Corps Commander <u>3rd Indian Army Corps</u> Rangapahar Nagaland INDIA c/o 99 A.P.O. (In charge of Nagaland/Manipur sector)
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**VIJAY EKKA-UTTAR PRADESH**

The National Human Rights Commission (NHRC) has consistently complained to the Uttar Pradesh government about the high number of human rights violations, including torture, reported from the state. Statistics compiled by the NHRC for 1999-2000 indicate that 26,829 cases were reported to it from the state totalling over 55 per cent of the total number of complaints received by the Commission during that year. 61 deaths in custody were reported from the state in the first six months of 2000. Despite repeated appeals by the NHRC and an order by the state High Court for the establishment of a State Human Rights Commission, none has so far been set up. As in other parts of India, police in Uttar Pradesh are subject to influence by powerful political or social groups and vested interests. Rigid caste, religious and gender-based divisions in this state ensure that *dalits*, religious minorities and women are particularly vulnerable to torture, ill-treatment and other illegal actions of police.

On 7 June 2000 Brother George Kuzhikanda, a teacher at St Francis School Mathura, Uttar Pradesh, was found murdered on the school campus. His death was widely reported in India as providing further evidence of a pattern of attacks against members of the Christian community, alleged to be carried out directly by or at the instigation of right-wing Hindu groups including the *Vishwa Hindu Parishad* [World Hindu Council]. In the aftermath of his murder a Sub-Inspector of the nearby Mathura Police Station was suspended for his failure to take action to investigate the incident.

A few days after the murder, press reports revealed that Vijay Ekka, the cook at St Francis School, had been sleeping in his room on the school campus which was located a few yards from the scene of Brother George Kuzhikanda's murder. According to press reports Vijay Ekka gave contradictory statements about whether or not he had seen those responsible for the death of Brother George Kuzhikanda. On June 10 Brother Emmanuel, the Principal of St Francis School, reportedly took Vijay Ekka to Nahrauli police station to give a statement. Brother Emmanuel left the police station on the promise that Vijay Ekka would be returned to the school later on in the day. However, Vijay Ekka was detained for questioning by police officers for several days. When the brothers from St Francis School took food to the police station on 12 June Vijay Ekka reportedly alleged that the police officers were torturing him and that he was afraid that they were going to kill him.

On 17 June Vijay Ekka was transferred to the reserve police lines - Manoranjan Hall. Vijay Ekka was accompanied to the reserve police lines by Brother Emmanuel. Brother Emmanuel stayed with Vijay Ekka for three hours of the interrogation and left the hall at approximately 1pm. Later during the day Jai Kumar Sharma, a teacher from Mathura, who was walking past Manoranjan Hall on the way to give tuition to the child of the local *pandit* [Hindu priest] allegedly witnessed Ekka being subjected to torture by several police officers. Among the police officers was the Sub-Inspector earlier suspended over the death of Brother Kuzhikanda. Jai Kumar Sharma claims to have seen the suspended Sub-Inspector holding Vijay Ekka's head back while a constable poured water down his nostrils. When Jai Kumar Sharma did not find the *pandit* at home he decided to go to the temple which again meant walking past Manoranjan Hall. On his return Jai Kumar Sharma reported that he saw a small crowd of policemen standing outside the doors of Manoranjan Hall. On inquiring what had happened, a constable told him that Brother George Kuzhikanda's cook had died during questioning.

A complaint was filed accusing police of the murder of Vijay Ekka. Police, however, claimed that he had committed suicide while in their custody. On 19 June the Senior Superintendent of Police, Mathura, was transferred on allegations that he was aware that the suspended Sub-Inspector, was interrogating Vijay Ekka. A constable from Nahrauli Police Station was suspended and both he and the Sub-Inspector were subsequently arrested.

Jai Kumar Sharma kept quiet about what he had witnessed for several weeks but eventually reported it to a local leader of the *Bharatiya Janata Party* (BJP). Almost immediately a complaint of rape was filed against him by police in Mathura which he alleges was filed in an attempt to silence him. He fled to Delhi fearing arrest and torture and filed a complaint with the National Human Rights Commission (NHRC) and the Prime Minister of India. The case of rape is reported to be still pending against him.

A *post mortem* was conducted on Vijay Ekka's body by three doctors which substantiated the claims of torture. According to the post mortem report Vijay Ekka died of asphyxia due to strangulation. Marks of contusion and laceration were also found on Vijay Ekka's body. The state government ordered the Crime Branch's Criminal Investigation Department to investigate the incident. Its report was subsequently submitted to the state Home department recommending the prosecution of 12 police officers found guilty of illegally detaining and torturing Vijay Ekka. However, in the meantime, the state government ordered a judicial Commission of Inquiry to investigate the death of Vijay Ekka and of Brother George Kuzhikanda. It is reported to have submitted its report to the government in September 2000. The NHRC, which also inquired into the incident asked the Uttar Pradesh Government to award compensation to Vijay Ekka's wife who is pregnant.

**Recommendations:**

*Please write polite letters to the central and state authorities in India listed below making the following points:*

- Expressing concern at the continued use of torture in Uttar Pradesh. Urging the Government of Uttar Pradesh to make a clear public commitment to ending torture and condemning the use of torture in all its forms. Outlining that the Government of Uttar Pradesh must make it clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated and that its unlawfulness is absolute, whoever it is inflicted on and by whomever.
- Expressing concern that a suspended Sub-Inspector was allowed to take part in the interrogation of Vijay Ekka and urging the state authorities to ensure that any punitive action taken against police officers are strictly enforced.
- Urging the Government of Uttar Pradesh to provide adequate protection to witnesses including Jai Kumar Sharma and to investigate claims that police have filed a criminal case against him as a means of harassment. All police officers accused of torturing Vijay Ekka should be suspended and should not be associated with investigations and should be removed from any position of influence over alleged victims of witnesses for the duration of the investigations and any trial proceedings.
- Urging the Government of Uttar Pradesh to initiate criminal proceedings against those allegedly involved with the death of Vijay Ekka in accordance with international standards for a fair trial. Urging the Government of Uttar Pradesh to grant compensation to Vijay Ekka's family in line with the recommendations issued by the NHRC.
- Expressing concern that despite several investigations into the death of Brother George Kuzhikanda those responsible for his death have not been identified and not been brought to justice. Urging that those found responsible be promptly brought to justice and tried in accordance with international standards for a fair trial.
- Urging the Government of Uttar Pradesh to recognise the urgent need for reform of the police to ensure that they act independently of political or otherwise powerful individuals or groups in society and only in accordance with law which prohibits torture or ill-treatment. Point out that torture feeds off discrimination.

**Addresses:**

Raj Nath Singh <u>Chief Minister of Uttar Pradesh</u> Office of the Chief Minister Lucknow Uttar Pradesh INDIA	Mahesh Chandra Dewedly <u>Director General of Police</u> Police Headquarters 1 Tilak Marg Lucknow INDIA
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## TAMIL NADU/KARNATAKA

Amnesty International has been concerned about the use of torture by police in Tamil Nadu and Karnataka for many years. Victims have included women and children. In the early 1990s Amnesty International highlighted the case of Nandagopal and his wife Padmini (f), who were detained and tortured in a police station in Tamil Nadu in June 1992. Nandagopal died in custody. His wife was raped by police. Five years later, six police officers were convicted of torture and rape after a long battle by Padmini and human rights groups to obtain justice. Six years after Padmini's ordeal, in July 1998 Angammal (f) and her husband Guruval were detained and tortured in shockingly similar circumstances. Guruval died as a result of the injuries inflicted on him by police. Angammal was raped by police and spent two weeks recovering in hospital. The battle for justice is now hers.

In April 1999, information about patterns of torture, including rape, and illegal detention of hundreds of people by members of the Special Task Forces (STF) of Tamil Nadu and Karnataka collected by a group of human rights organizations in Karnataka and Tamil Nadu was submitted to the National Human Rights Commission (NHRC) and the Tamil Nadu Human Rights Commission. The information was collected from people living in the border districts of Tamil Nadu and Karnataka -- an area where a notorious Sandalwood smuggler, Veerapan, has been operating for many years. The Karnataka and Tamil Nadu governments set up a STF to carry out operations against Veerapan and his gang members. So far they have not been able to detain him.

In June 1999 the NHRC constituted a panel presided over by Justice Sadashiva to investigate the allegations of human rights violations. This panel held its first sitting in January 2000 in Gobichettipalayam and its second the following month in Kolathur. The panel initially refused to hear complaints involving the Tamil Nadu police or the Tamil Nadu STF, any cases in which complaints had already been made to the Tamil Nadu Human Rights Commission, any cases of "disappearance" where police claimed that the victim had been killed in an "encounter" or cases where there were pending criminal cases against the victims. Following protests by human rights organizations who pointed out that if these limitations were in place the majority of allegations of human rights violations would not be heard, the panel reportedly agreed to record all evidence brought before it. The testimony of scores of alleged victims of illegal detention and torture including rape, as well as relatives of victims of "disappearance" has reportedly been recorded by the panel despite a large police presence at the hearings and threats by police against witnesses not to depose.

On 28 March 2000, as the third hearing was about to commence, the proceedings were stayed on the orders of the Karnataka High Court acting on a petition filed by a police official on the grounds that the inquiry had "demoralized the police" and that statements made by the victims were exaggerated. The High Court held that the NHRC had no jurisdiction for constituting a panel for conducting an inquiry into alleged incidents of human rights violations. As of late November 2000 an appeal against this stay order was pending in the High Court.

Also in 1999, human rights activists from Tamil Nadu and Karnataka obtained affidavits from scores of people detained in Mysore Central Jail on charges under the Terrorist and Disruptive Activities (Prevention) Act (TADA), as well as several who had been detained but subsequently released on bail. All those who provided affidavits to human rights activists in 1999 had been detained in the period 1992-1993 and eventually charged under TADA in connection with Veerapan's activities.

All those who provided affidavits alleged systematic torture by STF officials at the Madheswara Hills STF camp. Methods of torture included electric shocks, beatings while being tied or hung by ropes as well as the use of sexual torture against women including stripping and beating. During torture and interrogation many of them were accused of links to Veerapan on the basis that they were of the same caste.

*"One morning in the month of September 1993, when I was with my children the Special Task Force Personnel... took me by beating and blind folding my eyes to Madheswara hill on the allegation that I have supplied rice and dhal to Veerapan... They beat me by lathis. In Madeshwara hill workshop they removed my saree and tied my hand at the back and raised to me to a high. When I was hanging they beaten me with lathis on my hips and on my legs, electric shocks were administered to my eyes, nose and to my private part. They thrown chilli powder in my eyes. They have tortured me for 6 days which cannot be described. By this torture I could not even feel what was happening to me".*

This 38-year-old woman from Chamraj Nagar District of Tamil Nadu was hospitalised for three months as a result of her treatment before being sent to Mysore Jail. While there she learnt that her husband had been shot dead by members of the Karnataka STF. She spent three years in jail before being released on bail.

Another of those detained mentioned in his affidavit that when taken to court police officers threatened them saying "When the judge asks you anything, you should say that you were all with Veerapan when you were caught, if you do not do so, I will take you to Madheswara hill and shoot you" and "You should say that while in custody, the policemen did not beat you". The man did in fact complain of torture but no action was taken to investigate his allegations.

At the end of July 2000, when Veerapan kidnapped a veteran actor and listed the release of the 51 people still detained in Mysore Central Jail under TADA among his demands, the Government of Karnataka dropped all charges against them. In acquitting them, no reference was made by the court to the existence of serious allegations that they had been illegally detained after arrest and tortured. Previous attempts to obtain their release on bail in compliance with the orders of the Supreme Court that there should be a review of all TADA cases had been ignored for several years despite pleas by the detainees and human rights organizations. However, the detainees were not released. Judging on an appeal against the order by the father of a police officer who had been killed by Veerapan, the Supreme Court on 7 November ruled that the 51 should not be acquitted or released as a means of securing the release of the hostage. The Supreme Court appeared to ignore aspects of the case which exposed

fundamental violations of the human rights of the detainees, including the right not to be subjected to torture and the right to a fair trial. Following the release of the actor by Veerapan in mid-November, the Karnataka government was reported to be commencing proceedings to review the cases of the TADA detainees.

The majority of allegations of torture and other human rights violations by members of the STF remain uninvestigated.

**Recommendations:**

*Please write polite letters to the central and state authorities in India listed below making the following points:*

- Calling for prompt independent and impartial investigations into serious allegations of torture and ill-treatment made by detainees who continue to be held under TADA in Mysore Central Jail including access to reports of independent medical experts on the medical condition of the detainees.
- Calling for investigations into allegations of torture and other human rights violations by members of the STF being carried out on the orders of the NHRC to be promptly continued. Urging that the investigations and their resulting recommendations receive the full cooperation of state authorities and security forces.
- Expressing concern at the continued use of torture in Tamil Nadu and Karnataka. Urging the Governments of Tamil Nadu and Karnataka to make a clear public commitment to ending torture and condemning the use of torture in all its forms. Outlining that the Governments of Tamil Nadu and Karnataka must make it clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated and that its unlawfulness is absolute, whoever it is inflicted on and by whomever.

**Addresses:**

~~Chief Minister of Karnataka~~  
Office of the Chief Minister  
Vidhan Soudha  
Bangalore  
Karnataka  
INDIA

T. Srinivasulu  
Director General of Police  
Office of the DGP  
Police Headquarters  
Bangalore  
Karnataka  
INDIA

~~Chief Minister of Tamil Nadu~~  
Office of the Chief Minister  
Chennai 600 022  
Tamil Nadu  
INDIA

F. C. Sharma  
Director General of Police  
Office of the DGP  
Police Headquarters  
Chennai  
Tamil Nadu  
INDIA

**MOHAMMAD SHAFAT RATHER - JAMMU AND KASHMIR**

14-year-old Mohammad Shafat Rather died of injuries inflicted on him during a short period of detention in Jammu and Kashmir. Shafat was a pupil in the 7<sup>th</sup> grade at the Iqbal Model Public School in the Chodri Bagh Rainawari district of Srinagar. On the night of 11/12 November 1998 he was taken from his family home in Naidyar, Rainawari by members of the Border Security Force [BSF] 100 Battalion stationed at Soura in Srinagar. The soldiers said that he was being taken to be questioned in connection with militant activity in the area. Family members were not allowed to accompany him but were assured that he would be safe in BSF custody and that he would soon be released. When Shafat's relatives went to Soura and asked to see Shafat they were denied permission.

On the following evening, Shafat was handed over to the police at Police Station Rainawari in a critical condition. He bore all the marks of having endured a severe beating. In a statement made later, Shafat's father, Wali Mohammad, said that "Little Shafat had been tortured ruthlessly by his captors". The 14-year-old was taken first to the Bone and Joint Hospital in Barzalla, Srinagar, and then, when his condition proved to be very serious indeed, to the Institute of Medical Sciences in Sousa. Shafat died of his injuries in the Institute on 19 November 1998. The medical certificate produced by the hospital gives the cause of Shafat's death as *cardiac arrest, phebdonyolysis and pulmonary edema* which can all be symptoms of a body's collapse when subjected to severe beating.

Following the death of Shafat on 19 November 1998 members of the local community and his fellow students marched through the streets in protest. His family filed a complaint at the Police Station Rainawari but, to Amnesty International's knowledge, no action has so far been taken by the police. The case of Shafat was also brought to the attention of the Jammu and Kashmir State Human Rights Commission [SHRC] who are reported to be intending to hold a hearing into the case but this does not have much meaning as the SHRC are unable under the law to take any action on violations perpetrated by the security forces.

## BACKGROUND TO TORTURE IN JAMMU AND KASHMIR

While it is not known exactly why Shafat was picked up by the BSF, Amnesty International receives reports of both male and female juveniles being detained by the security forces in attempts to either extract information on the whereabouts of relatives suspected of being militants or to encourage older relatives to give themselves up to the security forces. While monitoring developments in Jammu and Kashmir we have noted that the name of the BSF is mentioned consistently in reports of torture and other human rights violations, including extra-judicial executions and "disappearances".

The enduring dispute between India and Pakistan over the control of the territory of Jammu and Kashmir and the continuing presence of armed opposition groups within the state itself has led to the region being one of the most militarized zones in the world. In the heightened tension of this situation security forces often resort to the practice of torture, especially as there is constant pressure from the authorities to "eliminate" militancy and to achieve this as quickly as possible. Many public statements by both the state and union authorities portray the "elimination" of militants as a good thing, congratulations are given when a high number of militants have been killed and the frequent use of use terms such as "seek and destroy" in public statements carries the inherent message that human rights may be sacrificed to achieve the larger goal of "eliminating" opposition. Added to this, members of the security forces are operating in an environment in which they live under poor conditions, are viewed with hostility by the population around them and where they may come under attack at any time, leading to their disconnection, alienation and brutalisation.

Without independent human rights organisations being given access to the state to make a thorough assessment of the situation it is impossible to gauge the true extent of torture currently taking place in Jammu and Kashmir but the number of cases being reported to Amnesty International remained high throughout the 1990s leading us to believe that the use of torture by police and security forces in the state is endemic. We recently documented around 70 deaths in custody, nearly all involving torture, allegedly committed by police and security forces in Jammu and Kashmir during the period of January to August 2000.

Impunity is an important factor in the continuing use of torture in Jammu and Kashmir in that: the authorities fail to take action against those who torture people; there is a lack of will in the judicial system and among officials to prosecute those responsible for torture; special laws and other measures are in place which give officials and security forces increased powers and protect them from the due process of law, consequently victims and their families face enormous difficulties when seeking redress. Despite the fact that the Government of Jammu and Kashmir has an obligation under international human rights law to undertake independent and impartial enquiries into all human rights violations, repeated expressions of concern by Amnesty International and others about the incidence of torture being reported from the state and calls for independent investigations into these have met with silence from the authorities.

Obstacles in the path to legal redress for victims of human rights violations and their relatives include the refusal of police to register complaints, chronic judicial delays, disregard for High Court orders by law enforcement and government officials and the requirement of government sanction for prosecution of law enforcement officials

## CONVENTION ON THE RIGHTS OF THE CHILD

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment  
No child shall be deprived of his or her liberty unlawfully or arbitrarily.  
The arrest, detention and imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort .....

(Article 37)

Where such separation [from parents] results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child.

(Article 9)

Mohammad Shafat Rather  
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found responsible for human rights violations. Doctors may be extremely reluctant to list details of deaths caused by gross trauma, including torture. When an investigation is carried out officials may obstruct the course of the investigation by withholding evidence or by refusing to obey court orders to attend hearings. Those trying to file complaints about human rights violations may be pressurized by the police or the army to withdraw them.

Legislation exists which facilitates impunity for perpetrators of torture and therefore in AI's opinion leads to further acts of torture. Preventive detention and special laws in force in Jammu and Kashmir give the security forces sweeping powers of arrest and detention and reduce vital safeguards for those held in detention. For example, people held under preventive detention laws such as the Jammu and Kashmir Public Safety Act (PSA) of 1978 are often held in solitary confinement and refused permission to see family, lawyers or doctors in the first days following arrest which according to the UN Special Rapporteur on Torture, is the time when torture is most frequently practised. Permission has to be sought from the Home Ministry of the Government of India before prosecutions may be pursued against members of the security forces and the few investigations carried out into such accusations are internal army enquiries the results of which are never made public.

AI is extremely concerned to note that senior representatives of the Government of India including its Minister of External Affairs, regularly claim at international fora that the National Human Rights Commission [NHRC] investigates all allegations of human rights violations in Jammu & Kashmir. This statement is false. Both the National Human Rights Commission and State Human Rights Commission have intervened in some cases of torture but their role has been limited by their statute: The Protection of Human Rights Act [PHRA] 1993. Section 19 of the PHRA bars the Commissions from independently investigating allegations of human rights violations by these forces (restricting it to the police). The NHRC has on several occasions recommended amendments to the PHRA to remove this restriction but this has not been agreed to.

#### **Recommendations:**

Please write letters to the authorities listed below:

- Giving details of the case of Mohammad Shafat Rather;
- Urging them to ensure that an independent, impartial and transparent inquiry is carried out immediately into the death of Mohammad Shafat Rather, that its results are made public and those found responsible are made to face the judicial consequences of their actions;
- Pressing that both the Governments of India and Jammu and Kashmir abide by their obligations under international human rights law to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment or deprived of his or her liberty unlawfully or arbitrarily;
- Expressing concern at the continued use of torture in Jammu and Kashmir and the high level of impunity which both facilitates and encourages further human rights violations in the state.

#### **Addresses:**

Chief Minister, Jammu and Kashmir

Office of the Chief Minister  
Raj Bhavan  
Jammu  
Jammu and Kashmir  
INDIA

Prakash Singh

Mr. Khurshid Ahmad Ganai

Divisional Commissioner  
Office of the Divisional Commissioner  
Srinagar  
Jammu and Kashmir  
INDIA

Director General of the BSF

BSF Headquarters

Srinagar

Jammu and Kashmir

INDIA

*Please send copies of your letters to:*

Chairperson

The Jammu and Kashmir State Human Rights Commission

Hyderpora

New Airport Road

Srinagar 190 014

Jammu and Kashmir

India