

INDIA

Words into action

Recommendations for the prevention of torture

In October 2000 Amnesty International launched a year-long international campaign against torture which seeks to highlight the continuing problem of torture worldwide (Amnesty International's research shows that out of 195 countries and territories on which it has research files, there were reports of torture or ill-treatment by state officials in more than 150 and that torture was widespread or persistent in more than 70). The campaign focuses on three major areas: preventing torture, confronting discrimination and overcoming impunity. Reports on the use of torture in countries around the world are being published during the course of the campaign along with major thematic reports highlighting the global phenomena of the torture of children and women, the international trade in implements of torture as well as the continuing problem of impunity¹.

Amnesty International believes that the global campaign presents an appropriate opportunity to take stock of the current situation of torture in India. Over the coming months, as part of its international campaign, Amnesty International aims to work in cooperation with human rights organizations in India to raise awareness of the continuing widespread practice of torture and ill-treatment in the country and to point to steps that can be taken, most importantly by the state and its agents but also by political representatives, the judiciary and civil society as a whole, to address that situation. These recommendations mark the start of that campaign. This document is an attempt to focus on the reasons why torture and ill-treatment continues in India and to suggest a series of measures that if implemented may go some way to addressing the continuing problem of torture and ill-treatment. These recommendations are based on an analysis of patterns of torture and ill-treatment in India researched by Amnesty International over a number of years, consultations with government officials, officials of the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs), serving and retired police officials, lawyers, members of human rights organizations and victims of torture.

In making these recommendations, Amnesty International acknowledges that there have been several positive attempts to address the problem of torture and ill-treatment over a number of years, notably by the Supreme Court and several High Courts which have handed down numerous judgements prescribing practical measures for its prevention and seeking to compensate victims, and more recently over almost a decade now by the NHRC. Many of the recommendations set out in this document have previously been made by government-appointed commissions, committees, statutory bodies and judicial officers. In 1992 Amnesty International undertook an international campaign to highlight the endemic nature of torture in India. At that time talks were held with officials of the Government of India and recommendations made for the prevention of torture. Amnesty International subsequently welcomed a greater acknowledgement by the government and within the public at large about the widespread existence of torture in India. The establishment of the NHRC under the Protection of Human Rights Act (PHRA) in 1993 promised further commitments to addressing torture and other human rights violations in the

¹ Information about Amnesty International's global campaign against torture can be found at: www.stoptorture.org

country. The Commission's immediate actions in taking steps to monitor incidents of custodial violence leading to death by issuing an order that all cases of death or rape in custody should be reported to it within 24 hours, gave further cause for hope and ensured a further increase in openness about incidents of custodial violence. India's signing of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Convention against Torture) in October 1997 appeared to be a further reiteration of its long standing public commitment at an international level to address the practice of torture.

At the beginning of December 2000, Amnesty International sent a copy of these recommendations to officials of the Government of India seeking their comments and commitments prior to publication. During meetings with those officials in New Delhi, Amnesty International delegates received assurances that addressing the continuing use of torture was on the government's agenda and although progress might be slow, there was an ongoing commitment to its eradication including through ratification of the UN Convention against Torture. No detailed response to the recommendations had been received by the time this document went to print in the first week of January. Amnesty International looks forward to receiving a detailed response and an indication of whether or not the Government of India intends to implement some or all of the recommendations set out in this document.

Amnesty International acknowledges that making the necessary changes in law and practice to bring about an end to torture and ill-treatment will require time, resources and expertise. It is hoped that these recommendations will be accepted as a constructive way forward in identifying ways of achieving that goal. The organization is seeking a commitment from the Government of India that the political will exists to make necessary changes. Through its campaign, Amnesty International will also be calling on civil society to support those changes where they are proved to be effective and to reflect prohibitions against torture and ill-treatment in their own actions. In the course of its campaign, Amnesty International will also be appealing to armed groups operating in India to stop torture, reminding them that the basic standards of humanitarian law require that all people taking no active part in hostilities should at all times be treated humanely.

The recommendations set out below focus mainly on issues of torture and ill-treatment of individuals by police and security forces in custodial situations. They attempt to address situations of armed conflict where special legislation is in force as well as other areas of the country recognizing that prohibitions against torture are absolute.

This document does not address the issue of torture or ill-treatment in prisons and other custodial institutions such as remand homes for children and conditions in such institutions which amount to cruel, inhuman or degrading treatment since Amnesty International has not carried out specific research in this area. However, the organization does receive reports of torture and ill-treatment of individuals in prisons and of children in remand homes and believes that efforts to address torture and ill-treatment by the state must address the situation in these institutions also. Several initiatives have been taken by the NHRC and non-governmental organizations including Penal Reform International and human rights organizations at

state level in recent years to address acute problems within the penal system including over-crowding, the high percentage of prisoners awaiting trial and poor conditions of detention often amounting to cruel, inhuman or degrading treatment. However, the high numbers of deaths in judicial custody which continue to be reported to the NHRC indicate grave problems with conditions of detention in prisons and medical treatment available that need to be addressed urgently. Amnesty International is concerned that a new Prison Management Bill which seeks to replace the Prisons Act of 1894 and which has been under discussion for several years should be promptly finalised and should incorporate international standards including the UN Standard Minimum Rules for the Treatment of Prisoners and more recent developments in the field of good prison management.

Finally, these recommendations do not address torture of individuals within the home or community by private actors. However, during the course of its campaign against torture, Amnesty International will be addressing this issue, particularly in relation to violence against women². Under international human rights law, states also have an obligation to act with due diligence to prevent, investigate and punish abuses of human rights, including acts by private individuals. This basic principle of state responsibility is established in all the core human rights treaties. The International Covenant on Civil and Political Rights (ICCPR), for example, obliges states to "ensure" the rights set out in that treaty, including the right to freedom from torture, an obligation which the Human Rights Committee extends to acts inflicted by people acting in a private capacity. The concept of due diligence is a way to describe the threshold of effort which a state must undertake to fulfil its responsibility to protect individuals from abuses of their rights. Due diligence includes taking effective steps to prevent such abuses, to investigate them when they occur, to prosecute the alleged perpetrator and bring them to justice through fair proceedings, and to provide adequate compensation and other forms of redress to the victim. It also means ensuring that justice is imparted without discrimination of any kind.

Continuing use of torture in India

Despite several positive initiatives in recent years, torture and ill-treatment continues to be endemic throughout India³ and continues to deny human dignity to thousands of individuals. Amnesty International believes that there is a depressing repetitiveness about statements made by government officials, members of the judiciary, senior police officials and others in official reports and studies during the 1990s and further into the past, many of which are referred to throughout this document, which have all identified and acknowledged a serious problem of torture and ill-treatment within the criminal justice system.

² See *Respect, protect, fulfill - Women's human rights: State responsibility for abuses by 'non-state actors'*, September 2000, AI Index: IOR 50/01/00.

³ The NHRC disclosed in August 2000 that between 1999 and 2000 there were 1,143 deaths in custody reported to them (these include deaths in judicial as well as police custody). Figures for the number of complaints of torture reported to them were not disclosed (in fact the NHRC does not log cases of torture as a separate category of complaints).

Amnesty International continues to receive numerous complaints of torture and ill-treatment from all states of India which indicate that Supreme Court orders, NHRC guidelines and official sanctions have not deterred officials from inflicting torture on individuals in their custody. Methods of torture range from electric shocks to suspension from ceilings to severe beating with *lathis* [long wooden sticks] and kicking. In many areas of India beatings are not reported as torture or ill-treatment because they are so much a part of the arrest and detention process. This is particularly true in areas such as Jammu and Kashmir where detainees are routinely subjected to torture but rarely make complaints for fear of reprisals and because they feel lucky to be alive.

Corruption and extortion, lack of investigative expertise, a confession-oriented approach to interrogation, demands for instant punishment in the context of a crippled criminal justice system, the belief that punitive action will not be taken against torturers, and discriminatory attitudes are all reasons why torture and ill-treatment by law enforcement officials continues throughout the country. Discriminatory attitudes amongst law enforcement officials continue to mean that the most socially and economically vulnerable members of society are particularly vulnerable to torture and ill-treatment. These include women who are not only targeted directly but as a means of punishing their male relatives, *dalits*⁴ and *adivasis*⁵ who often bear the brunt of social discrimination in the form of physical violence and children who are easy prey.

While constitutional and legal provisions do, as the Government of India regularly argues at international fora, provide an elaborate framework of safeguards for detainees against torture, non-implementation of these safeguards and their absence in special legislation, ensure that torture continues despite these safeguards. Those arrested in areas of armed conflict are particularly vulnerable to torture, often leading to death in custody or extra-judicial execution since they are not offered some of the same basic legal protections as individuals in other areas.

⁴ This term -- meaning 'oppressed' -- is widely used to describe members of the "Scheduled Castes" (designated as such in the Constitution) formerly known as "untouchables".

⁵ This term -- meaning 'original inhabitants' -- is widely used to describe tribal people, also known as "Scheduled Tribes" (designated as such in the Constitution).

Recommendations:

- 1. Condemn and never tolerate torture**
- 2. Address discrimination**
- 3. Prohibit torture and ill-treatment in law and amend or repeal legislation which facilitates it**
- 4. Address institutional problems which facilitate torture**
- 5. Provide adequate safeguards for detainees during arrest and detention in law and practice**
- 6. Provide adequate safeguards for interrogation**
- 7. Provide effective independent monitoring mechanisms to ensure implementation of safeguards**
- 8. Ensure investigations into torture**
- 9. Ensure adequate procedures for medical examination of torture victims**
- 10. Bring to justice those responsible for torture**
- 11. Provide reparation to victims of torture**
- 12. Strengthen and support the National Human Rights Commission and other statutory bodies**
- 13. Provide effective human rights training to police and security forces**
- 14. Increase cooperation with national and international bodies in the fight to end torture**

1. Condemn and never tolerate torture

That no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment is a well established and non-derogable international obligation. It is part of customary international law, is found in the Universal Declaration of Human Rights (Article 5), in the ICCPR (Article 7) and in international humanitarian law treaties to which India is a party, and is provided for in detail under the Convention against Torture. Despite this, Amnesty International is concerned at a widespread tolerance and social acceptance of torture and ill-treatment in India which appears to run through government as well as much of civil society.

Although as mentioned the recommendations in this document do not address the role of the state in preventing acts of torture in the private sphere, Amnesty International is concerned that publicised cases of torture and ill-treatment of domestic employees, the routine use of violence by political groups against one another's cadres, the beating and stripping of *dalits* and other vulnerable groups as a method of community punishment, as well as the widespread use of

... crime and violence and the links between criminals, politicians and important people in society, has become almost an unholy alliance... At every social and political level there is crying need to speak out against crimes and violence of all kinds, but even such rhetoric is absent in India today.
[Address to the Nation by the President of India, Shri K.R. Narayanan on the eve of Independence Day, Monday, August 14, 2000]

violence against women in the home and community underline the urgent need for steps to be taken to end torture and ill-treatment prevalent throughout society. Amnesty International believes that there is responsibility on the part of the authorities in India to address a high level of public acceptance of violence. The message should be clear that the unlawfulness of torture is absolute, whoever it is inflicted on and by whomever.

Amnesty International is concerned that it has become acceptable to demand instant justice for offenders through torture or ill-treatment in the context of an increasingly dysfunctional criminal justice system. The Padmanabhaiah Committee⁶ has recently concluded that:

“A large section of people strongly believe that the police cannot deliver and cannot be effective if it does not use strong-arm methods against the criminals and anti-social elements of society. And these people include India's political class, the bureaucracy, and large sections of the upper and middle class... In their own perception, the policemen feel that they are doing a job. They resort to torture for 'professional objectives' - to extract

⁶ Police Reforms Committee presided over by former Home Secretary Mr K. Padmanabhaiah appointed by the government in January 2000 which presented its report and recommendations to the government in October 2000.

information or confession in order to solve a case; in order to recover stolen property or weapons of offence; in order to unearth other crimes that an arrested hardened criminal may have committed; in order to ascertain the whereabouts of other criminals; and in order to locate hide-outs... another 'professional objective' of the police often follows, which is, to terminate the criminality of a professional criminal, who could be a burglar, a robber or a gangster, or even a terrorist... by maiming him, by making him lame, rendering him incapable of further crime".

Amnesty International believes that this perception of torture as an effective means of policing or punishment is not only unlawful but is fundamentally flawed. The use of torture or ill-treatment only serves to perpetuate violence and lawlessness rather than combatting it.

The "lynching" of criminals by angry crowds as well as reports of the "lynching" of police suspected of turning a blind eye to or colluding with criminals reflects the social acceptability of violence as a form of justice. Police often plead that in torturing suspects they are merely responding to the demands of the public and it is often said that the public gets the police force they deserve. Such a reality cannot be acceptable for a country whose Constitution is rooted in fundamental rights. Rather than demanding instant justice through violence, civil society should demand changes in the system as a means of ensuring justice.

Article 5 of the UN Code of Conduct for Law Enforcement Officials states that: "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment". Furthermore, Article 4 of the ICCPR makes it clear that certain rights, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment are non-derogable even in times of public emergency. Article 2(2) of the Convention against Torture states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture". Despite this, state and central governments and police officials in India continue to justify the use of torture -- as well as other grave human rights violations including extrajudicial executions and "disappearances" -- in "extreme circumstances" and to effectively sanction both its continuance and impunity for its perpetrators. This is also reflected in a common perception in India that torture of certain categories of individuals is somehow acceptable. These include "hardened criminals" and "terrorists". In many conversations with police officials and even with judicial officers, Amnesty International has heard justifications for the use of torture by police against such groups. Such attitudes run directly counter to statements made at international fora concerning India's respect for international human rights standards and its efforts to end torture.

Amnesty International is calling on the Government of India to make an unequivocal commitment through public statements and through implementation of the recommendations which follow, that it does

not accept that torture and ill-treatment are part of the criminal justice system and will not tolerate their continuation in any circumstance. Amnesty International will be seeking this commitment also from state governments during the course of its campaign.

- # **Officials at all levels of the administration in India should condemn all forms of torture and ill-treatment whenever they occur. They must make clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated. Talk of degrees of torture or torture of certain groups of "hardened criminals" or "terrorists" as being "acceptable" should be condemned promptly and publicly.**
- # **Public officials should lead by example. Any public officials found responsible for committing acts of torture or ill-treatment whether in their private or public capacity should be publicly condemned and prompt action taken against them.**
- # **The authorities in all states should institute public education programs to educate people about the unlawfulness of torture and ill-treatment in all their forms.**
- # **The Government of India should make a public commitment to end impunity for torturers as an important signal that torture will not be tolerated.**
- # **Government officials should make it clear that India is committed to upholding its existing obligations under international standards to prohibit torture. Pending ratification of the Convention against Torture it should be clear that as a signatory to the Convention the state is bound not to do anything which is inconsistent with the object and purpose of the treaty.**

2. Address discrimination

Discrimination on the basis of gender, religion, caste, ethnicity, social, political and economic background is widespread throughout India. Torture feeds off discrimination. All torture involves the dehumanization of the victim, the severing of the bonds of human sympathy between the torturer and the tortured. This process of dehumanization is made easier if the victim is from what is considered a despised social, political, ethnic or religious group. Discrimination paves the way for torture by allowing the victim to be seen not as human but as an object, who can, therefore, be treated inhumanely. Amnesty International acknowledges and welcomes the fact that discrimination is outlawed within the Constitution which provides for equal rights for all. It also acknowledges that specific legislation exists to outlaw discrimination and to afford special protection to certain groups identified as vulnerable to abuse, specifically members of scheduled caste and scheduled tribe communities. In addition, Amnesty International welcomes India's ratification of the UN Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, treaties designed to prevent discrimination of certain groups.

However, the reality in India is far from that envisaged by the Indian Constitution and UN Conventions. Amnesty International is concerned that certain groups in society are particularly vulnerable to torture and ill-treatment and there is evidence of discrimination within the police system. Cruel, inhuman and degrading treatment sometimes amounting to torture is particularly common in this context. Physical and verbal abuse and intimidation of individuals by police on the basis of their caste, ethnicity, religion or gender is commonplace not only for detainees but also for those who visit the police station to make a complaint.

Amnesty International believes that the current policing structure encourages discrimination by allowing police to act at the behest of particular powerful groups rather than to act lawfully in the interests of society as a whole and by encouraging arrest on the basis of suspicion rather than on investigation and evidence. In practice also, the failure to prosecute many unlawful activities of police and the problems for victims in accessing justice mean that discriminatory practices are perpetuated.

The prevalence of political interference in policing by powerful individuals and groups, ensures that 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.

The particular vulnerability of *dalits* to violence by private actors as well as by law enforcement officials has been documented by Human Rights Watch in its report *Broken People: Caste violence against India's 'untouchables'* (published in March 1999). Amnesty International is aware of many incidents in which police have reportedly beaten members of the *dalit* community, including women, following requests by members of upper caste communities that they be punished. *Dalit* women are particularly vulnerable to sexual torture by law enforcement officials, often as a means of punishing male relatives or "teaching their community a lesson". The failure of police to register complaints of violence against *dalits* or *adivasis* or to pursue investigations under legislation specially designed to protect members of these groups -- the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 -- has also been well documented.

Members of the weaker or poorer sections of society, are arrested informally and kept in police custody for days together without any entry of such arrests in the police records. During the informal detention they are subjected to torture, which at times results in death. In the event of death in custody, the body of the deceased is disposed of stealthily or thrown to a public place making out a case of suicide or accident. Records are manipulated to shield the police personnel. The relatives or friends of the victim are unable to seek protection of law on account of their poverty, ignorance and illiteracy. But even if some voluntary organizations take up their case or public interest litigation is initiated against the erring public officers, no effective or speedy remedy is available to them, as a result of which erring public officers go scot-free. This situation gives rise to a belief that the laws' protection is meant for the rich and not for the poor. If the incidents of custodial crimes are not controlled or eliminated, the Constitution, the law, and the State would have no meaning to the people which may ultimately lead to anarchy de-stabilising the society. [Introduction to the 152nd report of the Law Commission of India on "Custodial Crimes", August 1994]

The situation of "denotified tribes" exemplifies the problem of discrimination within the police system. In 1871 the British authorities governing India notified certain tribes as "criminal" in 1871 under the Notification of Criminal Tribes and Castes Act which placed them under constant surveillance. After independence these groups were officially "denotified" by the Government of India in 1952 and are now known as "denotified tribes". However, human rights activists report that members of these tribes are particularly vulnerable to violations at the hands of police because they are often the first port of call for officers wishing to solve a crime. "Every year such tribes are either mob-lynched, killed by the police or forcedly kept engaged in criminal activities like daring robberies, so that the police, the political worthies and the receivers of stolen goods can grow rich. In such cases, they always are brutally punished" (*Budhan*, newsletter of the Denotified Tribes Rights Action Group, April 1998). Activists have alleged that police officers undertaking Indian Police Service training are told unofficially to treat members of denotified tribes as born criminals and blacklist those of them who have served jail sentences.

In areas of armed conflict individuals and communities have been targeted for attack by the state because of their social or ethnic origin. In particular, young males are often assumed to have links with armed opposition groups and are picked up arbitrarily by security forces and are often subjected to human rights violations including illegal detention, torture and extrajudicial execution. Amnesty International has received numerous reports of young men in Jammu and Kashmir with no apparent links to armed opposition groups being detained and often tortured simply because of their name, age or appearance. The situation is similar in the north-east state of Manipur, where young men are regularly arbitrarily detained on suspicion of having links with armed groups. The absence of safeguards for the protection of detainees, the disregard for arrest and detention procedures and the existence of special legislation in areas of armed conflict which allows for the arrest and detention of individuals on vaguely defined grounds, ensures the continuing use of discriminatory practices by security forces in these areas.

The discriminatory attitude of many law enforcement officials to women in India continues to place them in a vulnerable position. Women are particularly at risk of human rights violations at the hands of police as criminal suspects taken into custody for questioning and as female relatives of criminal suspects wanted by police. Women approaching the police for redress have also been subjected to ill-treatment in the form of violations of their personal integrity which range from beating to extreme verbal insults referring to sexuality, caste or religion.

Numerous investigations into incidents of communal violence between religious communities in which police have been involved have demonstrated bias amongst police along religious lines. However, the recommendations of successive commissions of inquiry into incidents of communal violence which have included suggestions for addressing discriminatory attitudes amongst law enforcement officials have been ignored by state governments, which often argue that years after the incident occurred, their implementation might lead to further communal unrest.

Amnesty International is aware of a perception amongst police that an increase in "social legislation" (such as the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989, and section 498A of the IPC which deals with dowry-related crimes against women) which they are supposed to police without an increase in resources has made them ineffective in their job of crime control and maintenance of law and order. At a meeting held in Chennai in December 1998 attended by members of the judiciary, police and non-governmental organizations, several police officials referred to the fact that individuals from particular communities were approaching police to deal with social issues such as caste discrimination and domestic violence and that it was not their job to deal with such issues since their main task is law and order. Amnesty International is concerned that such an attitude contributes to the problems of accessing justice for groups already discriminated against and that official inaction facilitates violent manifestations of prejudice that are seen in the community context. The state must find ways of protecting individuals from violent situations in the home or community through a joint program of ensuring adequate training, expertise and resources within the criminal justice system and supporting the work of voluntary sector organizations.

Amnesty International believes that implementation of carefully thought out recommendations in relation to institutional reform should go some way towards addressing discrimination within the police. Improved investigative methods should ensure that police will not need to pick up the nearest "criminal": often a member of a "denotified tribe", a landless labourer or a young Muslim man. Ensuring that police act independently of political or other powerful individuals or groups in society and only in accordance with the law should prevent groups already vulnerable to violence within communities from being targeted by the police at the behest of their persecutors. In addition, serious efforts need to be made to ensure that law enforcement officials act impartially and without discrimination. These could include ensuring broad representation of sections of society within police, armed and paramilitary forces so that they are representative of society as a whole and training that addresses issues of discrimination and community service (see under recommendation 13 below).

- # Implement existing legal sanctions against police officers found responsible for illegal actions based on discrimination and initiate disciplinary action against police officers found to have acted in a discriminatory manner towards individuals.**
- # Ensure that any program of police reform includes steps to eradicate discrimination within the police and to specifically prohibit acts of discrimination which lead to torture or ill-treatment. Reforms should include ensuring representation within police and security forces of all sections of society.**
- # Ensure full implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules of 1995 which provide for penalties against those perpetrating atrocities on members of these communities who are particularly vulnerable to abuse. In particular, ensure that:**
 - (i) section 4 of the Act, which makes it an offence for a public servant to wilfully refrain from discharging his duty under the act, is rigorously enforced;**
 - (ii) police officers who put pressure upon victims of abuses to enter into a compromise with the perpetrators should be proceeded against under section 4;**
 - (iii) the Act is also used against police personnel who subject members of the Scheduled Castes and Scheduled Tribes to torture or ill-treatment;**
- # The authorities should ensure that training programs for law enforcement personnel include training on the prevention of violence against women, on the rights of the child, on the inviolable right of every person to respect of their dignity and physical integrity and on prohibiting discrimination on such grounds as racial, ethnic, caste and religious orientation.**
- # All police stations should hold and display in regional languages copies of relevant legislation enacted to protect certain vulnerable groups from violence and abuse.**

- # **Incidents of torture and other human rights violations should be carefully monitored with a view to determining correlation of their occurrence with victims belonging to certain categories in society. Statistics should be published and steps taken to provide special protection on the basis of this information. Monitoring mechanisms should involve the statutory commissions established to protect particular groups in society as well as non-governmental bodies and individuals who come from or represent these groups in society.**

3. Prohibit torture and ill-treatment in law and amend or repeal legislation which facilitates it

Article 4 of the Convention against Torture requires that all state parties ensure that all acts of torture or attempts to commit torture be offences under criminal law and that these offences be “punishable by appropriate penalties which take into account their grave nature”. The UN Human Rights Committee has recommended that in reporting on implementation of the ICCPR states parties should indicate “the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons”.

Torture has not been specifically defined in the Indian Constitution or specifically prohibited in penal laws. However, the Supreme Court has held that the right not to be tortured is enshrined in the right to life guaranteed in Article 21 of the Constitution. Given the review of the Constitution currently being undertaken⁷, Amnesty International believes that it is an opportune time to explicitly prohibit torture within the Constitution thereby sending a clear signal that torture will not be tolerated. Sections 330 and 331 of the Indian Penal Code (IPC) provide for punishment for “voluntarily causing hurt to extort confession or to compel restoration of property” and section 29 of the Indian Police Act 1861 provides for imprisonment not exceeding three months with or without hard labour for offences including “unwarrantable personal violence to any person in his custody”. However these provisions are rarely used against police officials. Guidelines such as the “Dos and Don’ts” issued to security forces in states of the north-east⁸ include instructions such as “do not use torture”, but their effect is weakened by continuing barriers to victims of torture who wish to make complaints about the acts of security forces.

While to a large extent the practice of torture continues *despite* legal safeguards for those in custody, Amnesty International is concerned about a body of Indian law which in its opinion facilitates torture or ill-treatment.

In particular, the powers to preventively detain people provided for in the Indian Constitution involve the suspension of important legal and constitutional safeguards and thereby facilitate torture and cruel, inhuman and degrading treatment of detainees. Clause 3(b) of Article 22 of the Indian Constitution excludes those detained under preventive detention legislation from the right to be informed of the grounds

⁷ In 1999, the Government of India established a Constitutional Review Committee. One of a number of panels established by the Committee focuses on the enlargement of fundamental rights and is chaired by the Attorney General of India.

⁸ See *Naga Peoples Movement for Human Rights vs. Union of India* (SC 1997(7) SCALE 210).

of arrest "as soon as may be", the right to consult and be defended by a legal practitioner of their choice and to be produced before a magistrate within 24 hours guaranteed under Article 22. The UN Special Rapporteur on torture has noted, "torture is most frequently practised during incommunicado detention [detention without access to the outside world]. Incommunicado detention should be made illegal and persons held in incommunicado detention should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention."⁹ In addition, the UN Human Rights Committee has stated that the practice of incommunicado detention may violate the right not to be subjected to torture or ill-treatment (Article 7 ICCPR) and the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10 ICCPR).¹⁰

Preventive detention legislation includes the National Security Act, 1980 (which is in force throughout the country) and numerous state legislation including the Jammu and Kashmir Public Safety Act 1978 (PSA), the Tamil Nadu "Goondas" Act¹¹, 1982, and the Gujarat Prevention of Anti-Social Activities Act, 1985. In its report *Punitive use of preventive detention legislation in Jammu and Kashmir* (May 2000, AI Index: ASA 20/10/00) which outlined concerns about the PSA, Amnesty International reported that it had been informed of severe torture and ill-treatment of some detainees held under the Act.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which lapsed in 1995 was found to have led to widespread use of torture by law enforcement officials. As well as withdrawing safeguards under Article 22 of the Constitution for those suspected of broadly defined offences of "disruptive activities" and "terrorist acts" it withdrew further safeguards and thereby facilitated the use of torture. Under sections 25 and 26 of the Indian Evidence Act, confessions made to a police officer are not admissible as evidence. These provisions acknowledge the danger in relying upon such "confessions" in view of the continuing suspicion that they will be obtained by the police resorting to illegal practices including torture. Evidence of the continued use of torture to extract confession despite this apparent safeguard (see under recommendation 6 below) reinforces the need for its continuing existence and rigorous application. However, Section 15(1) of TADA suspended this safeguard and made confessions to a police officer of the rank of Superintendent of Police and above admissible evidence. In its majority judgement in *Kartar Singh vs. State of Punjab* (JT 1994(2) SC 423) upholding the constitutional validity of TADA, the Supreme Court nevertheless observed: *'Whatever may be said for or against the submission with regard to the admissibility of a confession before a police officer, we cannot avoid*

⁹UN doc. E/CN.4/1995/434, para 924(d).

¹⁰UN doc. CCPR/C/51/D/458/1991 and CCPR/C/50/D/1990.

¹¹ Its full title is the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act. "Goondas" is a term for used for criminals.

but saying that we... have frequently dealt with cases of atrocity and brutality practised by some over-zealous police officers resorting to inhuman, barbaric, archaic and drastic method of treating the suspects in their anxiety to collect evidence by hook or crook and wrenching a decision in their favour".

At the time of drafting these recommendations, the Government of India is considering the enactment of new legislation: The Prevention of Terrorism Bill 2000. The Bill has been drafted by the Law Commission of India and replicates section 15(1) of TADA in its section 30(2). Amnesty International has made its concerns about this Bill known to the Government of India in its report, *The Prevention of Terrorism Bill 2000: Past abuses revisited?* (June 2000, AI Index: ASA 20/22/00). Subsequent to the publication of that report, the organization welcomed the position taken by the NHRC that such a law was not necessary and that if enacted, the Bill would threaten human rights and violate international standards to which India is a party. In particular, in its opinion on the Bill, the NHRC stated: "The Commission is of the view that this [making confessions before a police officer admissible in evidence] would increase the possibility of coercion and torture in securing confessions and thus be inconsistent with Article 14(3) of the ICCPR". Furthermore, in an interview reported in the media subsequent to the NHRC making its position known, Justice Verma, Chair of the NHRC, pointed to the impact of introducing legislation which withdraws safeguards against torture within a system that already allows for substantive abuse: "I had the privilege to see as a Judge the enforcement of MISA (Maintenance of Internal Security Act) and the entire period of TADA. My agony is that you don't have another machinery to implement it. It is the same machinery which had enforced MISA."

Legislation in place in areas of armed conflict which gives security forces increased powers to act "in aid of civil authority" have also led to widespread human rights violations including torture and ill-treatment. In areas where the Armed Forces (Special Powers) Act is in operation (Jammu and Kashmir and states of the north-east) there have been widespread allegations of torture. Section 4(c) of the Act provides that any person arrested and taken into the custody of the armed forces should be handed over to the nearest police station "with the least possible delay". In May 1996, the NHRC made a ruling on a case of the death in custody of Kheshiho Sumi. He had been arrested by members of the Assam Rifles in Nagaland under the Act and had allegedly died in their custody while being taken to identify a "militant hideout". The NHRC commented that it was the obligation of security forces to hand arrested persons over to the police and not to keep them in custody for carrying out interrogation. These directions were reiterated by the Supreme Court in *Naga Peoples Movement of Human Rights vs. Union of India* (SC 1997(7) SCALE 210) in 1997 in its list of "Dos and Don'ts" for forces acting under the Act which it ordered should be binding and punishable under the Army Act, 1950.

In 1997, when considering India's report to the Human Rights Committee, a committee member commented:

"all these laws and statutes form a network that will necessarily lead to misuse and misunderstanding by the police officers or armed forces that have to execute these laws.

Those laws will set free, I think with necessity, base instincts. They create an atmosphere that cannot be controlled. They will lead to brutality, to rape used just for humiliating the women themselves of course and their families. These laws just lower the hurdles, the thresholds for a reasonable contact of all those who are in charge of these laws".¹²

The suspension of safeguards against torture in such legislation reinforces Amnesty International's concern about a prevailing attitude within the administration that certain categories of suspects do not deserve protection against torture.

As well as directly facilitating torture by suspending safeguards for detainees, legislation exists in India which facilitates impunity for perpetrators of torture and therefore in Amnesty International's opinion leads to further acts of torture by officials who believe that they are immune from prosecution. These are discussed in more detail under recommendation 10 below but Amnesty International believes that all such provisions should be urgently repealed as a step towards ending impunity which is an important factor in the continuation of torture.

Several other provisions of the Criminal Procedure Code (CrPC) and state legislation governing policing are referred to in the subsequent recommendations as well as legislation governing police operations including the Indian Police Act 1861. Amnesty International believes that a range of provisions which exist in the ordinary criminal law should be reviewed with the aim of preventing rather than facilitating torture and ill-treatment.

- # **The right not to be tortured should be explicitly enshrined within the fundamental rights chapter of the Indian Constitution. In addition, torture should be prohibited as a distinct penal offence in Indian law. Its definition should incorporate the definition in Article 1(1) of the UN Convention against Torture. All forms of cruel, inhuman and degrading treatment or punishment should be similarly prohibited. The prohibition against torture being absolute, it should be made an overriding law applicable to all situations and conditions where the potential of torture may exist, including situations of preventive detention as well as custodial institutions including juvenile homes and prisons and must not be suspended under any circumstances, including states of war or other public emergency.**

- # **The law should lay down an active duty on the part of public officials to protect human rights and prevent torture or ill-treatment rather than a passive one of merely abstaining from it and should include offences of ordering, preparation, participation, encouragement and complicity in torture. Article 5 of the UN Code of Conduct of Law**

¹² Member of the UN Human Rights Committee during its examination of India's Third Periodic Report of measures taken to implement the ICCPR, July 1997. From transcript of recording by Amnesty International delegates attending the hearing made with the consent of the Human Rights Committee.

Enforcement Officials, which states that it is a duty to disobey any order from a superior to inflict torture or ill-treatment, should be incorporated in relevant laws, especially the Indian Police Act. Such a provision should be included in training of and instructions to anyone who may be involved in the custody or treatment of detainees.

- # The Government of India should review Article 22 of the Constitution of India to bring it in line with international standards and ensure safeguards for all detainees.**
- # The Government of India should take all steps to abolish or amend laws or provisions of laws which facilitate torture or ill-treatment including those laws which provide for preventive detention and laws governing arrest and detention procedures.**
- # Evidence elicited as a result of torture should be excluded in all trials and specifically prohibited in legislation including special legislation.**
- # Protection should be provided for those refusing to carry out orders to inflict torture in addition to the prosecution of those who gave such orders.**
- # Any future challenges in the Supreme Court to special legislation which it is argued facilitates human rights violations should not only take into account the constitutionality of particular provisions but also their compatibility with the full body of international human rights standards and the practical result of implementation of particular provisions.**
- # The Government of India should take into account the views of the National Human Rights Commission and others who have expressed concern that the enactment of the Prevention of Terrorism Bill 2000 will lead to an increase in torture and ill-treatment of detainees. This should be considered with particular reference to India's ratification of the ICCPR and its signing of CAT which obliges it to refrain from taking any action which is inconsistent with the object and purpose of the treaty.**
- # The government should review all laws which prevent or seriously inhibit prosecution of those responsible for torture and thereby facilitate the continuing use of torture and should abolish any provisions which do so including Section 6 of the Armed Forces Special Powers Act, Section 22 of the Jammu and Kashmir Public Safety Act and sections 45 and 197 of the CrPC.**

4. Address institutional problems which facilitate torture

Amnesty International acknowledges that law enforcement officials have to operate within the context of the whole criminal justice system, civil society and the prevailing political system and that the responsibility for the continuing practice of torture and ill-treatment does not solely lie with them. Only a holistic approach to the interrelated components of the criminal justice system will be able to address the underlying pattern of human rights violations within that system and the failure to bring perpetrators to justice. References are made in the course of this document not only to police but to other wings of the criminal justice system and their role in perpetuating, facilitating or failing to guard against torture and ill-treatment: for example the failure of public prosecutors to question the role of witnesses and testimony clearly produced through coercion; the failure of magistrates and judges to order investigations into allegations of torture by witnesses or the accused; and chronic delays in the courts which mean that understandable frustrations about the failure of the courts to provide justice lead to calls for "instant justice" in the form of torture or ill-treatment. References are also made to the problem of corruption within the political and administrative system which benefits from the status quo of a police force which is subject to its influence. All these factors and more need to be considered when addressing the problem of torture and ill-treatment in India.

The majority of recommendations made in this section relate to the reform of the police. However, general recommendations are also made in relation to the criminal justice system as a whole and the political and administrative system.

Police

Amnesty International agrees with a growing body of opinion in India that there is an urgent need for reform of the police system. Demands for reform by police themselves, by the NHRC and by non-governmental organizations, have focussed mainly on the need to modernise a colonial police system which continues to operate under legislation enacted in 1861 and have called for a well-resourced police force free from political influence and operating efficiently and effectively as a professional service within the criminal justice system. Amnesty International believes that police reform is also an essential requirement in systematically tackling the problem of torture and ill-treatment.

Police are by no means the only perpetrators of torture. However, it is clear and has been widely acknowledged in almost all studies of the police carried out by both governmental and non-governmental bodies, that the system under which they operate on a day to day level facilitates torture and other abuses.

Amnesty International does not intend to list here all the problems identified within the current police system nor to rehearse all the arguments in favour of systematic police reform. However, the

organization wishes to reinforce the message that many of the problems identified within the police system lead to human rights violations and that therefore human rights protection must be at the core of any efforts towards police reform. Corrupt political influence over the police ensures that illegal actions by police are routine and sanctioned by vested interest. There is no independent body to monitor police operations which contributes to widespread impunity for illegal actions including torture. The lack of separate professional investigative departments within the police force, lack of scientific and technical resources and political pressure to “solve” crime, ensure that thorough and scientific investigation is rare and the use of torture or ill-treatment to produce confessions as a means of pinning blame for crime on individuals is common. Prevailing corruption within the police force encourages the practice of extortion which is often accompanied by threats or force.

Human rights training programs, directions to police to uphold human rights and action taken in individual cases of human rights violations are not sufficient to prevent the continuing use of torture and ill-treatment by police. Amnesty International believes that reform of the police would provide an opportunity to ensure that a human rights culture is incorporated into police operations. It is the organization’s firm conviction that human rights are not an impediment to effective policing but, on the contrary, vital to its achievement.

In the past 20 years there have been a series of attempts to address the problem of policing in India. Amnesty International is concerned that despite comprehensive recommendations made as a result of several

studies, no direct action has yet been taken towards reform of the Indian police system. Amnesty International fully endorses the view of the Law Commission of India which in its 152nd report on police reform published in 1994 reiterated the growing demand for police reform in the face of official inaction, commenting "we must reiterate our view in this regard, so that the cause of personal liberty and other fundamental rights may not suffer, merely by reason of official lethargy or inaction". From its experience in advocating human rights reforms, Amnesty International believes that the first step towards changing from a police culture that facilitates the violation of human rights into one that safeguards those rights is through the exercise of political will throughout the political hierarchy.

The 1902-3 Indian Police Commission found that "the police force throughout the Country is in a most unsatisfactory condition, that abuses are common everywhere, that this involves great injury to the people and discredit to the Government, and that radical reforms are urgently necessary". Over 75 years

The Commission... strongly feels that mere intervention in particular cases [of police abuse] and initiation of action against delinquent officials is not sufficient to bring about the necessary and desired change in police work and conduct. For this some systemic change is called for, otherwise the core of the problem will go largely untouched and unaffected.

[NHRC in submission to the Supreme Court in *Prakash Singh & others vs. Union of India & others* (WP No.310 of 1996)]

The answer to this malaise lies in not only making punitive laws to deal with such police officers but to also bring about changes in the system so that police officers do not feel compelled to hold individuals in illegal custody or to resort to third-degree.

[Padmanabhaiah Committee Report]

later the National Police Commission (NPC) observed "what the Police Commission said in 1903 appears more or less equally applicable to the conditions obtaining in the police force today". The NPC published eight comprehensive reports between 1979 and 1981 and made numerous practical recommendations for reform. However, no systematic action has subsequently been taken to implement them and 20 years later, even if the political will existed there would be a need to review them given the changes which have taken place in the country since they were drawn up.

In 1996 a writ petition was filed in the Supreme Court by two retired police officers requesting that the Government of India be ordered to implement the recommendations of the NPC. On the basis of the Supreme Court's orders in this case a Committee on Police Reforms was set up under J.F. Ribeiro (retired police officer) by the Government of India. The report of the Ribeiro Committee was finalised in October 1998. But the Supreme Court has given no orders on the basis of the Committee's findings and the matter remains pending in the court.

Amnesty International recognizes the enormous challenge that reforming the police in India presents to the Government of India. Law and Order is a state subject under the Constitution and there is therefore a need to reach a consensus amongst state governments for any proposed reforms. Proposals for reforms will have to meet the agreement of legislatures made up of politicians, many of whom benefit from the current situation which allows them to have significant influence over police operations and to use them for their own private and public purposes.

In its report to the Supreme Court in 1998 the Ribeiro Committee -- which looked specifically at the issue of establishing a State Security Commission (SSC) as a means of insulating the police from political influence -- indicated that it had sought opinions from state governments on the issue and found that:

"none of the State Governments we visited felt the need to set up a Security Commission on the lines suggested by the NPC and the NHRC. The reason obviously is that the executive authority, which comprises of a section of the political leadership, sections of the bureaucracy and the police fear a loss of power in case their decisions and actions are scrutinised by a separate Commission... The Committee has toured many States and held discussions with bureaucrats, police officers -- both serving and retired -- and politicians -- both ruling and in the opposition -- and also the general public. The views and opinions were typical. Most of the [police] officers welcomed the setting up of a SSC. The ruling party vehemently opposed it and the opposition parties had no objection as long as they were well represented on the SSC".

In its analysis of the Ribeiro Committee's report, the Commonwealth Human Rights Initiative (CHRI) has commented: "While the State Governments have been stoically and consistently indifferent towards the recommendations of the NPC and even of their own State Police Commissions, the Central Government,

except for occasional outbursts of sudden enthusiasm, has been equally lackadaisical in pursuing the subject with the State Governments"¹³.

Amnesty International's calls for police reform are being made at a time when the Government of India has given indications that it is interested in making changes to the police system. In early October 2000 the Government of India indicated that it was considering recommendations made by the Police Reforms Committee established in January 2000 and headed by former Home Secretary Mr K. Padmanabhaiah. Its purpose was to "evaluate the strengths and weaknesses of the police force in the country and specify the challenges that the lawkeepers are likely to face in the new century". Amnesty International does not know how the Government of India is relating the work of this Committee to proceedings in the Supreme Court (referred to above) and prior recommendations of the NPC and other bodies. While Amnesty International welcomes indications that the current government is considering instituting reforms in the police, it is concerned that the Committee was made up of serving and retired police officials and a former Home Secretary with no representation from broader civil society. Moreover, the findings and recommendations of the committee have not been made public thereby denying an opportunity for members of civil society to comment on any proposed reforms. Amnesty International is further concerned by press reports of some of the statements made in the report which appear to indicate a level of tolerance of torture and ill-treatment for certain categories of "hardened criminals" and "terrorists" and that the establishment of this Committee is linked directly to other initiatives to strengthen national security against external terrorist threats. While Amnesty International is aware of the preoccupations of the current government with national security and recognizes the responsibility of the government to protect its citizens, the organization is seeking assurances from the Government of India that ensuring promotion and protection of human rights will be central to discussions on police reform and that any reforms will be grounded in international human rights standards.

- # **Amnesty International believes the manner in which the police service is reformed is as important as the content of the reforms. The organization therefore urges the Government of India to thoroughly consult the NHRC, human rights organizations and other members of civil society before implementing any announced police reforms, including training programs, amendments to laws or creation of new oversight institutions. Any proposals for police reform should be made public.**

- # **Police reforms should specifically address the problem of human rights violations in custodial situations and structural problems which have been identified as facilitating torture and ill-treatment and other human rights violations. They should also incorporate international human rights standards, particularly those relating to arrest and detention procedures and safeguards against discrimination. They should incorporate a code of ethics for police officers.**

¹³ Report of the Ribeiro Committee on Police Reforms: A Critical Analysis, Commonwealth Human Rights Initiative, January 1999.

-
- # Police reforms should ensure that police are able to operate independently in the interests of the whole community and are not, as they are now, open to political and other influences which commonly lead to abuses of the law including torture and ill-treatment.
 - # Any new legislation or manuals governing the operations of police should be kept under regular periodic review to ensure that the protection of human rights remains central.

Criminal justice system

- # The problem of overload within the criminal justice system must be urgently addressed recognising that it contributes to public tolerance of violence as a means of justice and the use of torture and ill-treatment by law enforcement officials as a means of "instant punishment", and prevents victims of torture or ill-treatment from obtaining prompt redress.
- # Urgent attention must be given to ensuring that evidence in criminal cases is collected through proper investigation by police and presented to the courts after careful consideration by members of the prosecution service. It should be made clear to all within the criminal justice system that the use of torture and ill-treatment as a means of coercing confessions from the accused or testimony from witnesses is unlawful and that all, including police, lawyers (including those provided through legal aid), prosecutors and judicial officers, play a crucial role in ensuring that such actions do not form part of processes for bringing people to trial.
- # Discussions of alternative forms of justice must ensure that there is full compliance with international standards for fair trial and ensure the human rights of all parties. Cases in which public officials are accused of human rights violations including torture and ill-treatment should be pursued within the existing court system and not in courts where the aim is to reach compromise and which often result simply in payment of a sum of money to the victim.

Political and administrative system

- # The link between corrupt practices within the political and administrative system and the use of threats or force often amounting to torture or ill-treatment must be acknowledged and addressed. In particular, corrupt political influence over police and the resulting resort by police to threats or force against individuals must be addressed by taking steps to remove the police from such influence and initiating criminal proceedings against public officials found to have abused their positions of authority for corrupt or malicious purposes.

5. Provide adequate safeguards for detainees during arrest and detention in law and practice

Section 41 of the CrPC provides police with sweeping powers to arrest individuals without warrant in a number of broadly defined situations including the arrest of a person “against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists”. This extremely broad provision has in practice allowed police to arrest individuals when little or no evidence exists against them. The NPC in 1979 commented that the powers given to police under section 170 CrPC to bring an accused before a magistrate created the impression that all suspects should be arrested pending investigation. It suggested amending this section in light of its concern that it encouraged large numbers of arrests of individuals against whom there was no evidence.

The Supreme Court in *Joginder Kumar vs. state of UP and others* (1994 SC 1172) commented that "existence of power to arrest is one thing but the justification for the exercise of it is quite another". In its submission to the Supreme Court in *Prakash Singh & others vs. Union of India & others* the NHRC stated: "The power of arrest now available to the police is often misused to harass and humiliate persons in several situations prompted by *malafide* considerations. Some *malafide* arrests get exposed in *habeas corpus* petitions filed in High Courts, but such exposures are very small compared to the large number of unjustified arrests that take place all the time". The NHRC has stated recently that at least 60% of all arrests are unwarranted and end in acquittal. It was reported recently that during 1998, 39,205 people were arrested but released without chargesheets being filed in Andhra Pradesh, 33,158 in Bihar and 29,124 in Uttar Pradesh. In early November 2000 the Law Commission of India published a Consultation Paper on Law Relating to Arrest¹⁴. Amnesty International welcomes this initiative which recognises the problems associated with the broad powers of arrest provided to police. The study conducted by the Law Commission, which with the help of the NHRC and police officials in several states put together figures for arrest and detention under various legal provisions, clearly demonstrates the continuing problem of unjustified arrests.

While Amnesty International is not arguing that all unjustified arrests necessarily lead to torture or ill-treatment, it is extremely concerned that such arrests are commonly accompanied by forms of ill-treatment including verbal abuse and intimidation and can lead to more severe forms of ill-treatment, including torture. Those arrests made by police at the behest of powerful individuals are on the whole made with a punitive intent and therefore incorporate some form of violence or intimidation. Those made by police who suspect, with little or no evidence, that an individual may be responsible for a crime, often lead to torture or ill-treatment to gain confession as a short-cut method towards solving that crime. Torture

¹⁴ This paper is available via the website of the Law Commission at www.nic.in/lawcom.

has proven to be ineffective and unreliable as a means of investigation. It facilitates corruption as it allows the police to find scape goats for criminal activity by forcing innocent people to "confess" to such crimes while protecting the real criminals.

Amnesty International continues to be concerned about the large numbers of people held in illegal detention whose arrests are not recorded despite the fact that Article 21 of the Constitution prohibits the deprivation of personal liberty otherwise than by "procedure established by law". The detention of individuals in a police station or unofficial detention centre without recording the fact is a fundamental abuse which encourages further abuse in the form of torture. Detainees are effectively "disappeared" and law enforcement officials have unfettered power over them. The UN Commission on Human Rights has repeatedly stated that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment"¹⁵.

Whenever a serious crime like a robbery or a major burglary takes place, the area police swoops on all possible suspects in the vicinity. They are picked from their homes and kept in the police station over several days, not formally in a lock-up, but in some other remote room, to escape detection... As the police is not quite comfortable keeping a man in illegal custody (because of fear of being discovered by the judiciary or the magistracy or the media or the human rights groups), the tendency is to get over with the whole thing quickly by the short-cut method of third-degree. The fact is that confessions do come quite easily with third-degree, except in a minuscule number of cases involving hardened criminals.
[Padmanabhaiah Committee report]

Many of the cases of torture which reach Amnesty International have occurred during a period of illegal detention when there is no formal record of arrest and detention and when police are involved in a form of "unofficial questioning" of a suspect. Often police deny the arrest of an individual for several days and then once they feel they have sufficient evidence, show the arrest as having taken place just prior to bringing the person before a magistrate. Despite punitive provisions including section 347 of the IPC which makes "wrongful confinement to extort property, or constrain to illegal act" an offence punishable with three years' imprisonment, such practices continue to be used by law enforcement personnel with virtual impunity. Police often admit unofficially to relatives that a person is undergoing questioning in their custody and in some cases demand money to ensure their safety or release. Amnesty International is also aware of many cases of illegal detention and torture where the sole purpose has been extortion of money from the family of the detainee.

Failure to keep accurate, updated and regularly checked records of arrest in the form of General Diaries contributes to the continuation of this practice. Principle 12 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [Body of Principles] requires that the following details be recorded for all detainees: (a) The reasons for the arrest; (b) The time of the arrest

¹⁵ For instance, E/CN.4/RES/1998/38, 17 April 1998, para. 5; E/CN.4/RES/1999/32, 23 April 1999, para. 5; E/CN.4/RES/2000/43, 20 April 2000, para. 7.

and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody.

Illegal unrecorded detention is common in all parts of India but especially in areas of armed conflict. Human rights activists from Jammu and Kashmir have told Amnesty International that those arrested in the state on suspicion of armed opposition activities regularly go through a process of detention and interrogation which lasts several months. During this time there is no record made of their arrest and they are not brought before a magistrate. Finally, a First Information Report (FIR) is lodged with the police, showing the person as having been detained a few days earlier under sections of the PSA or other legislation including TADA which continues to be used retrospectively in the state. At this point, the investigation report is presented to a magistrate who orders that the detainee be remanded to judicial custody. During the period of incommunicado detention, detainees are transferred between various security force camps, temporary and unofficial detention centres as well as 'Joint Interrogation Centres'. Lawyers and relatives are denied access to detainees throughout this process. Although frequent applications for access to detainees are made to the High Court and granted, the orders of the High Court in this regard are regularly ignored by the security forces.

In Jammu and Kashmir, the detention and torture of individuals by "renegades" has been of increasing concern to Amnesty International in recent years. "Renegades" are former members of armed groups who have joined the side of the government. While they usually act on orders of or with the knowledge of police or security forces, they commonly operate outside existing command systems and outside the law.

While in most areas of India police or security forces detain individuals in recognized places of detention, in areas of armed conflict as well as in some more exceptional situations in other areas, it is common for individuals to at least temporarily be detained in "unofficial" detention/interrogation centres. These can be abandoned schools or hotels or in some cases even private homes. They have been widely used in Jammu and Kashmir, states of the north-east, Punjab and Andhra Pradesh. Principles 11(2) and 20 of the Body of Principles and Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance require that detained people be held only in an officially recognized place of detention, located if possible near their place of residence, under a valid order committing them to detention.

In its General Comment (No.20) on Article 7 of the ICCPR the UN Human Rights Committee has commented:

"In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State Party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions,

methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members".

Numerous Supreme Court judgements have been made in relation to arrest and detention procedures in an attempt to provide safeguards for detainees. However, there remains a yawning gap between the "law in the books" and the "law in practice". Amnesty International has been told by police officials that legal cells in police departments around the country are supposed to issue instructions in line with new court judgements. However the issuing of instructions, if this happens at all, does not appear to have a practical effect on the operations of police or security forces. N.R. Madhava Menon, a leading legal academic, in a preface to a "Training Manual for Police on Human Rights" published and produced by the National Law School of India commented: "Higher standards have been set in police conduct and better safeguards have been developed to ensure observance of human rights. While all these happened in the Constitutional Jurisprudence of the country, it is unfortunate that police organization and management continued in the century-old colonial framework under the Police Act of 1861".

In its most far-reaching judgement to date on this issue in *D.K. Basu vs. State of West Bengal* (Writ Petition (Crl.) No.539 of 1986), the Supreme Court in December 1996 issued 11 requirements to be followed as preventive measures against custodial violence in all cases of arrest or detention "till legal provisions are made in that behalf" (see Appendix I). They included the issuing of a memo of arrest. That judgement was made in 1996 and no efforts have yet been made to incorporate its provisions in law. Many of the court's requirements in *D.K. Basu* had been set out in previous Supreme Court judgements which had similarly commented that its guidelines should be followed till legal provisions were made. In *Joginder Kumar vs. state of UP and others* for example the Supreme Court directed that those arrested should be allowed to inform someone of their arrest and detention, that they should be informed of this right and an entry made in the general diary of who was informed. The court further directed that the magistrate before whom the detainee was brought should check that these requirements have been fulfilled and concluded that "The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in

the various Police Manuals. These requirements are not exhaustive. The DGPs (Director Generals of Police) of all states in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest".

While the Supreme Court in *D.K. Basu* went so far as to say that non-implementation by police officials of its requirements would invite contempt proceedings, in reality this direction means that challenges concerning non-implementation must be brought by human rights activists and others who are at the mercy of a court system which is already overloaded.

The CrPC Amendment Bill 1994 did suggest some amendments to the CrPC to incorporate safeguards for arrest and detention including an amendment to section 50 of the CrPC to ensure that "Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and the place where the arrested person is being held to such person as may be nominated by the arrested person for the purpose of giving such information". It also proposed prohibiting the arrest of a woman after sunset and before sunrise except in "exceptional circumstances". However, these amendments have been pending now for several years and are certainly not sufficient to fully address problems of illegal detention and resultant custodial violence. Amnesty International notes that the Law Commission in its Consultation Paper on Law Relating to Arrest has recommended the incorporation of the safeguards on arrest set out in *D.K. Basu* into law along with a series of other recommendations which Amnesty International believes would contribute to preventing torture or ill-treatment. They include restricting the powers of arrest of police including prohibiting arrest merely for the purpose of questioning altogether, incorporating the right of human rights organizations to inspect police stations within the CrPC, mandatory medical examination on arrest and the maintenance of comprehensive custody records.

- # **Police powers to arrest during investigation and without warrant should be strictly limited. Police should be required to clearly demonstrate in writing the need for arresting an individual as a means of reducing the number of unwarranted arrests at the instigation of vested interests. A regular periodic review of the number of arrests effected without warrants in proportion to the total should be undertaken by the police administration. This information should be made public and disproportionately high numbers of warrantless arrests should be given priority attention.**
- # **Records of all arrests should be kept in a general diary including details of the officer arresting, the full name and details of the arrestee, the time and place of arrest, any witnesses and any other relevant details. There should be periodic surprise checks by superior officers or by a visiting body (see under 'Detention procedures' below) and action taken against officials found not to have followed procedures.**
- # **Safeguards for detainees on arrest which have been set out by the Supreme Court, particularly in *D.K. Basu vs. State of West Bengal*, should be incorporated in relevant**

statutory law and all police manuals as a matter of urgency. Measures should be put in place to monitor their implementation and statistics published periodically. In areas of armed conflict where powers of arrest are provided to paramilitary and armed forces as well as police, information about arrests should be kept in a central register which is publicly available and which should also include any information on transfer of detainees between forces giving times and dates and individual officers responsible. Instructions which exist in law that those arrested by armed or paramilitary forces should be handed over to police within 24 hours of arrest should be strictly complied with and action taken against those failing to comply.

- # Arrests should only be made by recognized members of the security forces who should bear clear identification and name tags and not by "renegades" or others operating in civilian dress and outside clearly identifiable command structures.
- # Resources should be allocated to ensure that these safeguards can be implemented in practice by police and security forces including the provision of basic materials. Regular training should be given to police officers and security forces incorporating these safeguards and any future safeguards set out by the courts or in law to ensure that police officers are aware of how such safeguards can be implemented in practice and how they are an essential part of their role in safeguarding the rights of citizens.
- # An arrested person should have a right in law to be informed about their rights in custody. These should be read out to the arrestee (recognizing the low literacy levels in many areas of the country) and be publicly displayed in all police stations in relevant languages.
- # Where unrecorded detentions have been proven, those responsible should be disciplined and prosecuted for unlawful imprisonment and the victims granted compensation for illegal detention.
- # The government should introduce a system of comprehensive police custody records covering all aspects of the treatment of detainees including time of arrest, when offered food, when brought before a magistrate, period of interrogation, any marks of injury on the body, information about arrest and detention given to third parties, access to legal advice and independent medical inspection. Outside monitoring groups and lawyers should have access to these records at all times. Failure to keep proper custody records should be made an offence.
- # Detainees should only be held in officially recognized places of detention.

-
- # **Police manuals/codes of practice and standing orders should be publicly available documents and be presented at police stations on request.**

Use of force in effecting arrest

Amnesty International is not only concerned about provisions which appear to encourage arbitrary arrest and detention and lead to torture and ill-treatment, but with provisions in the law which allow for law enforcement officials to use excessive force in arresting individuals which on occasion can amount to torture or ill-treatment. Under section 46 of the CrPC police can use unspecified and unlimited force to arrest individuals. Sub-section 2 permits a police officer to use "all means necessary to effect the arrest" if a person attempts to resist or evade arrest. Sub-section 3 allows police to cause the death of a person only if a person is accused of an offence punishable with death or with imprisonment for life. Amnesty International is concerned to note that the CrPC Amendment Bill 1994 which is once more pending consideration in Parliament seeks to broaden the category of offenders whose arrest could lead to death (section 46(3) CrPC) to include those who are "proclaimed offenders" under an amended section 82 which would include those accused of murder, robbery, kidnapping, dacoity, preparing to commit dacoity and house trespass. While it is widely acknowledged that section 46(3) has been used by police in some states, most notably Andhra Pradesh, to justify extrajudicial executions of suspected members of armed groups, Amnesty International is also concerned that its broad provisions allow for the use of torture or ill-treatment against individuals. It is common for individuals to be beaten with *lathis* during arrest and many women have had their clothes torn or stripped from them.

Article 3 of the UN Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary, and to the minimum extent required in the circumstances. In all cases they must act with restraint and in accordance with the seriousness of the situation and the legitimate objectives to be achieved.

- # **Use of force in effecting arrests provided for in section 46(3) of the CrPC and other legislation and guidelines should conform to international standards (minimum force necessary to avoid unnecessary injuries or death) and such legislation and guidelines should be amended accordingly.**

Judicial supervision of detention

Judicial supervision of detention is required under international human rights standards including Article 9(3) of the ICCPR which requires that anyone "arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power".

This requirement is provided for in Article 22(2) of the Constitution of India and Section 57 of the CrPC reflects this by requiring that all arrested persons be brought before a magistrate within 24 hours of arrest. Amnesty International is concerned that this crucial safeguard against torture is not only being

regularly ignored but routinely abused. In addition to the illegal detention of individuals several days before being brought before a magistrate, Amnesty International's research has found that it is common practice for police to bring a person who is not the detainee concerned before a magistrate to cover up evidence of torture. In some cases courts at district level cannot accommodate the accused so they cannot be physically produced or the facilities are so poor (including over-crowded barred areas with poor lighting) that it is impossible for magistrates to identify individuals or positively ascertain the basic medical condition of the detainee. It is further common for magistrates who deal with scores of cases in a day not to look up from their papers or to orally question the detainee brought before them.

In *Sheela Barse vs. State of Maharashtra* (AIR 1983 SC 378) the Supreme Court clarified that section 54 of the CrPC required that "the Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in the police custody and inform him that he has right under section 54 of the CrPC to be medically examined". Detainees are regularly threatened by police not to make complaints of torture and brought before magistrates by those same police who have been responsible for their interrogation and torture. Therefore if not specifically asked by a magistrate and placed in a safe environment where they do not fear reprisal, detainees will not make such a complaint. In many cases, complaints of torture are subsequently rejected by investigating authorities on the basis that the detainee did not make a complaint to a magistrate when brought before them. Amnesty International believes that given the current impediments to making a complaint of torture to a magistrate as stated above, this should never be used as a justification for refuting an allegation of torture.

Judicial officers play a crucial role in ensuring that legal procedures have been followed in arrest and detention and that abuses have not occurred. They should therefore be encouraged to play an active role in detecting and remedying torture and action should be taken against judicial officers found to have ignored evidence of torture. At a meeting held in Chennai in December 1998 attended by members of the judiciary, police and non-governmental organizations, an Amnesty International delegate was shocked to hear a district judge who had recently been appointed to a human rights court in the state commenting that there was a problem in deciding what *level* of violence could be used against detainees since a certain degree of torture was necessary to obtain the truth.

For those detained under preventive detention legislation, the judicial safeguards are negligible. An Advisory Board made up of executive officials oversees detention. Very often the detainee does not even appear before the Board which is examining the lawfulness of their detention.

Resources should be made available so that magistrates are able to apply themselves fully to the important role they play in assessing the lawfulness and monitoring the condition of detention of detainees. It should be a requirement that magistrates ask detainees questions which will clarify their identity.

-
-
- # **In order to ensure a safe environment in which detainees are able to bring complaints of torture before a magistrate, there should be an opportunity for detainees to be heard by the magistrate in the absence of those police officials who have brought them from the police station and may have been responsible for their arrest, interrogation and detention. Magistrates should question detainees brought before them to ascertain that they have not been tortured or ill-treated, have not made involuntary confessions and are not being held in conditions amounting to ill-treatment. In doing so, they must ensure that detainees are not withholding relevant information from them for fear of reprisals by law enforcement officials and make it clear to detainees that in the event that a complaint is made steps will be taken to protect them against reprisals.**

 - # **Judges should pursue any evidence or allegations of torture and order release if the detention of an individual is found to be unlawful.**

Medical examination

Under Principle 24 of the Body of Principles:

"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to his place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge".

Amnesty International is concerned that there is no arrangement for the medical treatment of detainees in police custody. Amnesty International has been told that doctors never visit police stations but that detainees must always be taken to a hospital for treatment. Section 54 of the CrPC provides for the medical examination of detainees on request of the accused in police custody. The Supreme Court has ruled that detainees should be informed of this right on arrest; however, this is rarely done in practice. The CrPC Amendment Bill 1994 suggested that a copy of the report of the medical examination under this provision should be given on request to the persons or a person nominated by him or her. The Supreme Court went further in its order in *D.K. Basu vs. State of West Bengal* when it said that the report of the medical examination should be sent to the concerned magistrate. However, Amnesty International is concerned that section 54 CrPC places such a request for a medical examination in the context of the detainee's appearance before a magistrate and the consequent ordering of such examination by the magistrate. Amnesty International believes that this provision is not adequate to ensure immediate medical examination of victims of torture or ill-treatment in the current context because of its apparent reliance on the detainee requesting a medical examination from the police or a magistrate.

Swift access to medical professionals for all detainees in police or security force custody as well as recording of any injuries found on arrest by a medical professional could ensure greater clarity in cases

where a detainee or relatives claim torture or ill-treatment and police claim injuries were either sustained prior to arrest or that death was due to illness.

Marks of injury on the body of those arrested should be noted within arrest records as should any illness, susceptibility (such as allergy) or any other special medical needs.

Detainees should have an enforceable right to a medical examination and should be informed of that right. A copy of the examination report should be given to the detainee or their nominated representative such as their lawyer or relatives. Medical personnel required to carry out examinations of detainees or to provide treatment to detainees in custody

should be independent of police and should be duty bound to file an official report of the examination indicating any injuries found.

Arrest and detention of women

Women continue to be subjected to torture and ill-treatment by police and security forces throughout India. Amnesty International has received reports which indicate that it is regular practice for police to arrest and detain women relatives of individuals whom they want to question. Women are often detained illegally without charge for several hours or days as "hostages" to force the surrender of a husband or other male relative. There is no legal basis to these arrests but in numerous cases, such women have been subjected to sexual abuse and rape while in detention. Section 160(1) of the CrPC allows police to require attendance of witnesses at a police station "provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides." It is, however, routinely ignored.

In areas of armed conflict, women are often subjected to such abuses in the context of search operations where security forces appear to be acting under similar compulsions of punishing a male relative or a particular community by violating the rights of women. The list of "Dos and Don'ts" recommended by the Supreme Court in its 1997 judgement on the Armed Forces (Special Powers) Act include the instruction that women should not be searched or arrested without the presence of a female police officer. In 1993 the National Commission for Women made proposals for legal provisions and amendments that would provide greater protections for women in custody. However these proposals have not been acted upon. In 1995 and 1996 numerous suggestions were made by lawyers and women's rights activists to strengthen legal safeguards in response to questionnaires on the criminal law distributed by the Law Commission of India, but it is unclear if and how these are being acted upon. In November 1994 the report of a Commission of Inquiry held into the rape of a woman and the death of her husband in custody in Tamil Nadu in June 1992 was made public. Several recommendations were made including the following:

"Whenever female persons are taken to the Police Station for interrogation W.P.Cs [Women Police Constables] may be immediately posted to guard them till they are kept in the police station. Whenever there is allegations of rape during custody in Police Station the victim should be immediately sent for medical examination to find out whether rape has been committed on that person. Whenever allegation of rape is made during custody and the same was found true after investigation, the victims may be provided with adequate compensation and the amount of compensation so provided may be recovered from the culprits."

It also recommended that police personnel against whom there are allegations of rape should be immediately suspended. Six years later in July 1998, a strikingly similar incident occurred in the same state when a woman and her husband were severely tortured and the man died of his injuries, graphically illustrating the state's failure to implement safeguards against custodial violence.

- # **In the prevailing circumstances the arrest or search of women should only take place in the presence of women police officers and should not take place at night.**
- # **Women should be detained separately from men and this should be carefully monitored by independent mechanisms.**
- # **The practice of arresting or detaining innocent relatives, particularly women, against whom there are no charges, as a means of forcing suspects to surrender or provide information about wanted people should be clearly identified as illegal and constituting the offence of "wrongful confinement". Reports of such practices should promptly be investigated and action taken against those responsible.**

Arrest and detention of children

The treatment of "delinquent" and "neglected" children is governed by the Juvenile Justice Act 1986. Amnesty International understands that a new Bill has been drafted in the past year and introduced in parliament but has not seen a copy of the Bill so is unable to comment on its provisions in relation to the torture and ill-treatment of children in detention. However, it has received reports of the ill-treatment of children by police on arrest as well as when in the custody of Remand Homes (Juvenile Homes), particularly of street children. Section 18(2) of the current Juvenile Justice Act specifies that no child can be put in jail or police lock up. Children should be taken immediately before a magistrate who can order their detention in a Remand Home. However, police failure to follow proper procedure when arresting and detaining adults is often perpetuated in their treatment of children leading to severe abuse of children who require special protection. In its hearing of India's initial report under the Convention on the Rights of the Child in January 2000 the Committee on the Rights of the Child recommended that the registration of each child taken to a police station be mandatory, including time, date and reason for detention, and that such detention be subject to frequent mandatory review by a magistrate. The Committee further recommended

that Sections 53 and 54 of the CrPC be amended so that medical examination, including age verification, is mandatory at the time of detention and at regular intervals.

Amnesty International is further concerned that the Juvenile Justice Act 1986 currently defines a juvenile as “a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years”. Amnesty International believes that legislation governing juveniles should be in line with Article 1 of the Convention on the Rights of the Child which defines a child as a human being below the age of 18.

- # **The treatment of children who come into contact with the law must be in line with international standards on the administration of juvenile justice.**
- # **Discussion of a new Juvenile Justice Act must take into account current abusive practices including torture and ill-treatment of children in custody and provide special protection to such children. It should take into account observations made by the Committee on the Rights of the Child in January 2000 and ensure full compliance with the Convention on the Rights of the Child. Adequate resources must be made available to implement its provisions.**

6. Provide adequate safeguards for interrogation

A confession-oriented approach to investigations coupled with public pressure on police to fight crime using any means necessary ensures that the use of torture to coerce confessions is commonplace. Although section 25 of the Indian Evidence Act makes it clear that confessions made to police officers cannot be used in evidence against accused, section 27 of the Act (confessions leading to finding of corroborating evidence) means that confessions are still of use to police. If a crime is 'solved' on the basis of illegal extraction of evidence, that evidence is still admissible. Section 162 of the CrPC prohibits the use of a statement of an accused recorded by a police officer and prohibits the police officer from obtaining the signature of a person on the statement made by the accused. Despite this, it is common practice for police to force detainees to sign statements or blank sheets of paper. Section 164 of the CrPC states that magistrates are required to ensure that a confession is made voluntarily and Sections 330 and 331 of the IPC provide for punishment for "voluntarily causing hurt" or "grievous hurt" to "extort confession or to compel restoration of property" but these provisions are rarely used against police officers. Amnesty International understands from lawyers that Public Prosecutors rarely question the version of events provided by police or the evidence put forward by them making it easy at trial for defence lawyers to refute charges. This is cited as a reason why there are so many acquittals on the basis of insufficient evidence.

The right not to be compelled to testify or confess guilt is set out in article 14(3) of the ICCPR. In addition Principle 21 of the Body of Principles requires the authorities not to take undue advantage of the situation of a detained person during interrogation. Methods of interrogation in India severely question the right to presumption of innocence.

Article 11 of the Convention against Torture obliges States Parties "keep under systematic review interrogation rules, instructions, methods and practices... with a view to preventing any cases of torture." International standards require that records of any interrogation of a detained person must be kept. The records are to contain the duration of each interrogation, the intervals between interrogations and the identities of the officials conducting the interrogation and other persons present. These records should be accessible to the detainee or their counsel [Principle 23 of the Body of Principles]. The Human Rights Committee has also stated that the time and place of all interrogations should be recorded and that this information should be available for judicial or administrative proceedings [HR Committee General Comment 20, para 11]. In India there are few regulations about the conduct of police interrogation - a fact that has recently been acknowledged in an official study of police practice:

"Formal training in the skills of interrogation is hardly imparted to policemen, apart from a few odd lectures during training. As a result, a policeman learns the skills on the job, largely by improvisation and by watching his senior peers successfully extracting confessions by the rough and ready method of torture. Since they have no real

experience of scientific and painstaking interrogation and since time is anyhow at a premium with the police, they tend to gloss over the merits of sustained interrogation in favour of the quick results that torture brings" [Padmanabhiah Committee report].

In January 1995, the Government of India, in correspondence with Amnesty International, referred to a set of undated guidelines issued by the Ministry of Home Affairs to state governments to "curb the use of questionable and coercive methods by police during investigation". The guidelines referred to safeguards within the CrPC and further stated:

"The instructions contained in the Police Manuals of different States regarding prohibiting or restricting the use of force by the police while effecting arrest, interrogating suspects and accused or during any other stage of police inquiry or investigation, should be brought to the notice of all police officers for strict compliance and if necessary, refresher courses may be conducted for the police personnel".

However, it is not clear what status these guidelines hold within police training or disciplinary procedures, or whether there is systematic monitoring by state or central governments of the use in training and implementation of these guidelines and instructions contained in Police Manuals.

An important safeguard against violation of rights during interrogation is the presence of legal counsel. Principle 1 of the Basic Principles on the Role of Lawyers establishes the right to assistance at all stages of the criminal proceedings including interrogations. Principle 17 further requires that a detained person shall be informed of this right promptly after arrest and shall be provided with reasonable facilities for exercising it. The right of detainees to legal counsel has been granted under Article 21 of the Constitution and the Supreme Court -- in *Nandini Satpathy vs. P.L. Dani* (AIR 1978 SC 1025) -- has interpreted that right to mean that detainees have a right to consult a lawyer of choice and that that right includes the right to the presence of a lawyer during interrogation. At the VIII International Symposium on Torture held in New Delhi in September 1999, the Attorney General of India gave a public commitment that the *Nandini Satpathy* judgement would be implemented as a means of ending torture. Amnesty International knows of few cases where detainees have been allowed access to lawyers during interrogation. During a visit to Bombay in January 1994, virtually all those interviewed by Amnesty International suggested that lawyers and relatives were routinely denied access to persons held in police custody and lawyers told the Amnesty International delegation that police practice in Bombay was not to allow lawyers to be present during interrogation.

- # **The role of proper investigation within the policing system should be strengthened to reduce reliance on confession as the lynch-pin of evidence against the accused.**
- # **Detailed guidelines should be drawn up for the interrogation of suspects in consultation with lawyers, Bar Associations, human rights groups and medical**

- professionals. Guidelines should be published and reviewed periodically to ensure they remain an effective mechanism to prevent torture and ill-treatment.**
- # The authorities should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture in line with the Convention against Torture. Those involved in interrogation should receive regular training on how to implement such rules and regulations.**
 - # Lawyers should be present during interrogation of suspects. Detainees should be given the opportunity to contact their lawyer or seek the services of a lawyer through Legal Aid prior to interrogation.**
 - # All officials involved in interrogation should clearly identify themselves to the detainee and their lawyer.**
 - # Female security personnel should be present during the interrogation of women detainees, and should be solely responsible for conducting body searches in accordance with the directions of the Human Rights Committee and reflected in the Supreme Court's judgement in *Sheela Barse vs. State of Maharashtra*(1983 2 SCC 96).**
 - # Sections 330 and 331 of the IPC should be implemented and used against police officers found guilty of using torture as a means of obtaining a confession.**

7. Provide effective independent monitoring mechanisms to ensure implementation of safeguards

Given the acute problem of non-implementation of legal provisions and safeguards in India which allows for widespread use of torture and ill-treatment, Amnesty International believes that effective monitoring mechanisms are absolutely essential to prevent and detect such abuses. Amnesty International remains convinced that human rights violations by police and security forces can be reduced by removing the barriers to scrutiny of police by civil society and allowing a climate of cooperation and trust to be established. Such monitoring should take place at both the national and local level and will be a huge undertaking in a country the size of India requiring the services of a large number of people.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that: "places of detention shall be visited regularly by qualified and experienced persons, appointed by, and responsible to a competent authority distinct from the authority in charge of the administration of the place of detention or imprisonment". Moves are currently underway at the UN to strengthen this safeguard at the international level by adopting an Optional Protocol to the Convention against Torture which would provide for a global system of inspection visits to places of detention as a safeguard against torture.

Amnesty International believes that provision of this safeguard would make a significant contribution to the prevention of torture in India given that laws are often honoured in their breach. Various recommendations have been made in this regard in recent years in relation to visits to police stations as well as prisons: The Supreme Court in *Sanjay Suri vs. Delhi Administration* (1988 Suppl. SCC 160) stated that a "Visitors Board [to monitor jails] should consist of a cross-section of society; people with good background, social activists, people connected with the news media, lady social workers, jurists, retired public officers from the judiciary as also the executive".

In areas of armed conflict, there is an urgent need for regular inspection of places of detention. Amnesty International has welcomed that the International Committee of the Red Cross (ICRC) has been permitted access to places of detention in Jammu and Kashmir since June 1995. While still concerned about continuing torture in that state and the ongoing use of unofficial detention centres to which the ICRC does not have access, Amnesty International believes that access for the ICRC should be extended to all areas of India but particularly to states of the north-east.

In October 1994 a human rights activist Jalil Andrabi filed a petition in the High Court of Jammu and Kashmir alleging a range of human rights violations in jails, sub-jails and interrogation centres in the state. As a result of this petition, the High Court ordered that district committees consisting of judicial, police and medical authorities should make regular visits to all jails, detention centres and police lockups

in the state. As far as Amnesty International is aware, visits were restricted to only one district in the state during December 1994 and have not subsequently taken place. The visits found widespread evidence of illegal detention, torture and ill-treatment.

The NHRC under section 12(c) of its statute is empowered to visit custodial institutions but only under intimation to the state authorities concerned. However, these limitations have been challenged by the NHRC itself which in its Annual Report for 1997-98 reported that "Disturbed by the increasing reports of violence in police lock-ups, the Commission took a decision that its officers would make surprise visits to police lock-ups". A communication to this effect was sent to all state governments and the NHRC indicated that all except the state governments of Arunachal Pradesh, Assam, Jammu and Kashmir and Manipur had responded positively. In furtherance of this process the NHRC has issued check-list to investigating officers carrying out inspections as well as a list of "Dos and Don'ts".

Amnesty International welcomes this initiative taken by the NHRC and hopes that its statute will soon be amended to ensure that this function of the Commission exists in law. However, the size of the country and the necessity of the regular monitoring of places of detention and implementation of legal safeguards for detainees, leads Amnesty International to conclude that more is necessary. The organization believes that in order to have a real impact on the situation on the ground, there is need for further independent mechanisms at state or district level which can carry out specific tasks additional to those carried out by the NHRC or SHRCs, namely: independent monitoring of arrest and detention practices and implementation of safeguards as a means of preventing and detecting torture and ill-treatment. The following principles should guide the formation of such mechanisms:

- Clear independence and impartiality of members;
- Transparent and well-publicised appointment procedures and methods of operation;
- Sufficient powers and resources to carry out monitoring tasks effectively;
- The ability to publish findings without prior government or parliamentary sanction;

The government should ensure that there are in place independent monitoring mechanisms to scrutinize police and security force behaviour in all districts of the country. Their independence should be assured by ensuring that they consist of persons of integrity respected in the local community for their independence of judgement and political impartiality. Their members should be fully aware of international human rights standards and national law as well as any new legal judgements which provide enhanced safeguards for those arrested or detained. Given that human rights organizations and the media play an important role in the detection of cases of torture and other forms of ill treatment, Amnesty International believes that they should play a role in monitoring custodial situations.

Monitoring mechanisms should have adequate powers and resources to undertake their work including powers of unannounced, immediate and unhindered access to all places where people may be held in acknowledged or unacknowledged detention,

access to interview detainees in private and access to judicial processes. They should also have powers to obtain any documentary evidence necessary to check for implementation of legal provisions. Failure by police, security forces or judicial officers to cooperate with these mechanisms should be an offence and the government should take immediate action against any official who fails to cooperate promptly and fully.

- # **Monitoring mechanisms should forward any evidence of non-implementation of safeguards to the SHRC or NHRC and to relevant superior officers requesting further investigation or recommending action to be taken. They should regularly publish the results of their findings including information on specific provisions of law which have most commonly been violated, details of police stations or security force units which have been identified as abusing legal provisions, and information on the background of victims of human rights violations as a means of identifying particularly vulnerable groups in society and identifying the need for special protection.**

8. Ensure investigations into torture

The right of persons alleging torture to full investigation of their allegations is set out in numerous international standards. Article 2(3) of the ICCPR sets out the right to an effective remedy. Article 12 of the Convention against Torture requires that "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction".

In 1999 a Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol) was presented to the High Commissioner for Human Rights, Mary Robinson, by an international expert group which took three years drafting the document. An appendix to the Manual contains "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Principles). These Principles have been endorsed by the UN Special Rapporteur on torture and are included as Appendix II to this document. Crucially, the first principle sets out the purpose of effective investigation and documentation of torture. These purposes are:

- (i) *Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;*
- (ii) *Identification of measures needed to prevent recurrence;*
- (ii) *Facilitating prosecution and/or appropriate disciplinary sanction for those indicated by the investigation as being responsible...*

Amnesty International believes that it is vital that the rationale for proper investigation set out in this document is kept at the forefront of discussions about prohibiting and preventing torture. The second of these purposes in particular is too often forgotten by the authorities in India. The need to look at how an incident of torture took place is vital in ensuring against its recurrence in the future. It is not just a means of vendetta as many police officers and government officials argue but a constructive means of future prevention.

Investigations into deaths in custody are mandatory in India under section 176 of the CrPC. Such inquiries are not always held, and are more likely to take place when a death in custody leads to a public outcry. They can be conducted either by an executive magistrate (appointed by the state government and remaining subject to executive control) or by a judicial magistrate (judicial official, independent of the executive, appointed by the High Court of the state, and who remains under judicial supervision) but the majority are carried out by executive magistrates.

Those magisterial inquiries which are held are often inconclusive, which is inevitable when, as happens in many cases, magistrates depend on the police to investigate allegations of misconduct by their own forces. Inquiries into deaths in custody are often carried out by the Crime Branch of a police force which is not independent from the rest of the force, particularly as there are frequent transfers of officials between the two. The police are often reluctant to bring forward evidence which might implicate their

colleagues and senior officials have been known to participate in routine cover-ups by police of deaths resulting from torture. In the current context, it is also very difficult to establish complicity in torture, even if there are witnesses. Citizens, fearing reprisals, often do not come forward and tender evidence against police. There is no witness protection program existing in India and Amnesty International knows of numerous cases where witnesses have been intimidated and in some cases themselves subjected to torture by law enforcement agents as a means of covering up crimes.

Principle 2 of the Istanbul Principles requires that the investigators should be independent of the suspected perpetrators and the agency they serve and Principle 3 lays down that those potentially implicated in torture or ill-treatment be removed from any position of control or power over complainants, witnesses and their families as well as those conducting the investigation.

The Law Commission of India in its 113th Report advocated that Section 114(B) be inserted in the Indian Evidence Act to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer. Despite several Supreme Court orders and NHRC pursuing the issue, the recommendation has not been granted statutory status.

Significantly, mandatory magisterial inquiries under section 176 CrPC are available only for deaths in police custody. No such requirement exists for deaths in prison custody, or in the custody of armed or paramilitary forces. In addition, there is no requirement in law for a magisterial or any other sort of inquiry into allegations of torture not resulting in death. Victims of abuse at the hands of police or other officials are often unaware of their right to complain and have that complaint investigated. The UN Human Rights Committee in its General Comment (20) on Article 7 of the ICCPR has stated that:

"The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with".

Proposals to amend the CrPC to ensure mandatory judicial inquiries into deaths in police custody, rape and "disappearance" have been pending in parliament as part of the CrPC Amendment Bill 1994 for many years. Amnesty International notes that the NPC on the basis of whose recommendations the 1994 Amendment Bill was drawn up, recommended mandatory judicial inquiries for rape, death or "grievous hurt" and death by police firing. Amnesty International believes that amendments to the CrPC should go further than the 1994 Bill. The organization believes that it is particularly important to ensure that investigations into allegations of rape or sexual abuse involve female investigators and that all investigators are trained in gender sensitive ways in order to deal with such allegations appropriately and sensitively.

Investigations into incidents of torture in areas of armed conflict in India have been extremely rare. While in some cases of death in custody, following investigation by the NHRC, compensation has been awarded, many allegations of torture go uninvestigated. In Jammu and Kashmir Amnesty International has expressed concern for many years about the difficulty for individuals to register complaints of human rights violations with police. The problems of seeking redress for human rights violations in India are compounded in areas of armed conflict by the protections from investigation and prosecution which members of the armed and paramilitary forces enjoy both under special legislation such as the Armed Forces (Special Powers) Act, 1958, and statutory limitations of the NHRC which prohibit it from independently investigating allegations of human rights violations by members of the armed or paramilitary forces. In Manipur, attempts by the State government to institute Commissions of Inquiry into allegations of grave human rights violations including torture have been frustrated by the actions of the central government in arguing that state governments cannot order such inquiries into the activities of the armed forces who are under the control of the central government. In the case of the reported torture and “disappearance” of 15-year-old schoolboy Yumlembam Sanamacha this has meant that inquiries are still pending almost three years since his arrest.

In several cases in Manipur complaints -- known as First Information Reports (FIRs) -- have been filed with police and forwarded to judicial magistrates for investigation to determine whether a trial can commence. Advocates representing the security forces concerned have then filed review petitions challenging the right of magistrates to investigate offences alleged to have been perpetrated by members of the security forces, on the grounds that they do not have the jurisdiction to hear such cases. This has had the effect of stalling the legal process. The review petitions invoke section 197 of the CrPC, under which no court can take cognizance of an offence alleged to have been committed by a public servant or member of the armed forces while acting or purporting to act in the discharge of his official duty except with the previous sanction of the central or state government.

The need for adequate forensic medical resources to investigate torture is explored further below.

In discussions about reform and ways of addressing illegal activities of police, the idea of **independent police complaints mechanisms** at district level has been thrown up on many occasions. Such proposals have clearly acknowledged the limitations of the NHRC and SHRCs in being able to respond to all complaints of police abuse. The volume of such complaints in a country the size of India (in September 2000 the NHRC reported that it receives around 100 allegations of police excesses every day) given the human and financial resources of these bodies as well as their lack of accessibility at the local level mean that often, while making a significant contribution to the human rights situation, they are unable to impact on the day to day reality of police abuses and vitally, to ensure and monitor that appropriate action has been taken against those responsible. In recognition of this the NHRC has itself suggested various additional mechanisms.

In 1998 the NHRC recommended that a non-statutory police complaints mechanism -- a District Police Complaints Authority -- should be set up in each district to examine complaints of “police excesses,

arbitrary arrest and detentions, false implication in criminal cases, custodial violence etc." which would then make appropriate recommendations to the government and SHRC or NHRC. The Commission said that it should be composed of a District Judge as Chair, the District Collector (an executive official), and a Senior Superintendent of Police.

Subsequently in March 1999 the NHRC announced the establishment of Human Rights Cells in police departments of all states to deal with complaints being made against police regarding human rights violations. The Commission issued guidelines on their functioning in August 1999. These cells are apparently headed by senior police officers appointed in consultation with the NHRC and operating under the state government. Amnesty International does not have information on the operation of these cells which it was told by NHRC in April 2000 were now operating in all states of India. However, it has expressed concern to the NHRC about the lack of safeguards to ensure the independent operation of these cells which are situated within police departments and made up entirely of police officers. Announcing this project the then Chair of the NHRC Justice Venkatachaliah was reported as saying that the cells would be "run by the policemen with their own genius, own resources and own consciousness".

Amnesty International believes that if properly devised the establishment of independent police complaints mechanisms could be a useful means of curbing the pervasive corruption and illegal activity that accompanies custodial situations and which often leads to physical abuse including torture and ill-treatment. However, public confidence in police accountability will only be regained if such a complaints mechanism is seen to be independent, has unfettered access to any information which is considered necessary and has unfettered powers to be able to initiate investigations into any pattern of abuse which is causing concern. Such a complaints mechanism should include a balance of representatives of civil society as well as executive and judicial officers in order for it to maintain its independence. It should not be dependent on the investigative activities of police from the same district.

Amnesty International believes that a useful role that independent complaints mechanisms could play, in addition to providing avenues for redress to victims of abuse, would be to maintain data on the number and type of complaints made against police, data on the profile of complainants to identify patterns of victims and information on how complaints were dealt with as a means of tracking how efficiently the system addresses complaints. This information should be made public at regular intervals.

The government should ensure prompt independent investigations into all allegations of torture or ill-treatment (including rape and death in custody). Investigations of allegations of torture or ill-treatment should incorporate the Istanbul Principles as endorsed by the UN Special Rapporteur on Torture. Those investigating the allegations should be fully independent of the alleged perpetrators and have the necessary powers and expertise required to open prompt criminal investigations wherever there is reasonable ground to believe that an act of torture has been committed. They should have the necessary resources and powers to carry out investigations promptly and effectively, including powers to compel witnesses to

attend and to obtain documentary evidence including powers to commission investigations by medical or other experts.

- # **Public officials suspected of involvement in torture or ill-treatment should not be allowed to be associated with the investigation into the allegation of torture in any manner, and should be removed from any position of influence over alleged victims or witnesses for the duration of the investigation and any trial proceedings. Firm action should be taken against any police officers found to have colluded with colleagues accused of torture or ill-treatment in the cover-up of the crime including harassment of the victim or witnesses.**
- # **Complainants, witnesses and others at risk should be protected from intimidation and reprisals: A witness protection program should be established in every state of the country.**
- # **Police and other officials not promptly or truthfully complying with the orders of judicial or other investigating officers should be subject to immediate disciplinary proceedings.**
- # **Methods and findings of investigations should be made public and the victim or the victim's family must be allowed access to the complete records of the enquiry and be given the right to be represented through a competent legal counsel during the inquiry, if necessary with the help of legal aid.**
- # **An amendment should be made to section 114 of the Indian Evidence Act, as suggested by the Law Commission of India, to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer.**
- # **Impartial investigations should be mandatory for all allegations of torture or ill-treatment, including rape or death in custody by armed and paramilitary forces, not just by police. Legal and administrative provisions which protect members of the armed and paramilitary forces who are accused of such human rights violations from impartial investigation including section 6 of the Armed Forces Special Powers Act and section 19 of the Protection of Human Rights Act should be removed.**
- # **The government should consider setting up effective, adequately resourced and independent police complaints investigation mechanisms at district level, the membership of which should include members of civil society as well as executive and judicial representatives. These bodies should maintain and publish uniform and comprehensive statistics on complaints of torture and ill-treatment by law enforcement personnel.**

9. Ensure adequate procedures for medical examination of torture victims

The role of medical evidence is crucial to the proper investigation of torture or ill-treatment. While increasingly torture is carried out without leaving signs or with signs resolving within days leaving no permanent traces, experienced doctors can nevertheless evaluate testimony, accounts of post-trauma symptoms and physical and mental sequelae and draw conclusions from these.

The Istanbul Protocol provides detailed medical and legal guidelines for the assessment of individual complaints of torture and ill treatment as well as on the reporting of findings of such investigations to the judiciary and other bodies. The Istanbul Principles present a framework for medical investigation of torture allegations.

Given that medical evidence is a crucial part of investigations of torture or ill-treatment, it follows that the role of medical health professionals is also crucial. It is vital that medical health professionals are able to promptly and impartially document and give an assessment of injuries. There is evidence from India that medical health professionals are often unable to do this because of fear, threats and intimidation by law enforcement officials and others who have a vested interest in hiding evidence of torture and ill-treatment. Medical officers who carry out examinations of detainees are effectively subordinate to the police and subject to influence exerted by the police. Often police are present during medical examinations or post-mortems. As a result medical professionals are known to have covered up injuries or given individuals only a cursory examination.

On the basis of a visit to Punjab in 1999, Physicians for Human Rights (Denmark) made the following observation:

"While there are apparently no reports of direct medical participation in torture, most health professionals, especially those working in public or government hospitals, normally refuse to conduct medical examinations or provide treatment for torture survivors. In fact, even the few cases of orders issued from the High Court to conduct medical examinations of torture survivors have often been refused. The examinations conducted tend to be superficial and careless, resulting in mis- or under-reporting. This finding was confirmed both by a member of the Punjab Human Rights Commission and officials of the Forensic Medical Department at the Government Hospital Medical College... According to many of those interviewed [including above officials]...

physicians often willingly prepare 'tailor made forensic reports' for the police and refuse treatment for torture survivors"¹⁶.

In its 1995-96 Annual Report the NHRC commented that "The local doctor succumbs to police pressure which leads to distortion of the facts".

Principle 6(a) of the Istanbul Principles requires that medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards, that the examination must conform to established standards of medical practice and examinations be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The other important factor is the absence of expert medical professionals who can identify injuries inflicted through torture. This is crucial for instances of allegations of rape in custody. Non-governmental organizations have in recent years designed simple and practical methodologies for examining alleged victims of torture. For example CEHAT (Research Centre of Anusandhan Trust), a Mumbai-based health organization from Bombay in the mid-1990s produced a "rape examination kit", and more recently the Commonwealth Human Rights Initiative has developed an autopsy kit or "Last-Aid Kit" designed to demonstrate that very little is needed to improve post-mortem techniques and that torture need not go undetected.

The availability of medical reports is crucial to the pursuit of justice for victims of torture. While in some cases victims and their relatives have challenged medical reports produced by doctors and the courts have indicated their dissatisfaction with the medical examination and ordered further examination, many have not been able to access the relevant medical reports. In June 1996 the Directorate of Health Services in West Bengal issued a direction that in "no circumstances" should post mortem reports be handed over to the "concerned party"... "The Post Mortem reports should be sent to the concerned police authority only and in special circumstances to the courts on demand". This order appears entirely contrary to the requirement set out in Principle 6(c) of the Istanbul Principles that medical reports should be provided to the subject or his or her nominated representative and to the authority responsible for investigating the allegation of torture or ill-treatment.

In response to the poor quality of post mortem reports received by the NHRC in custodial death cases it issued instructions to all state governments that all post mortems in custodial death cases should be videoed and the cassettes sent to the Commission. It further issued guidelines for how post mortems should be videoed. Doctors who are expert in forensic medicine have commented to Amnesty International that using video to assess the accuracy and impartiality of post-mortems is unrealistic. They point in

¹⁶ *Eyes Wide Shut: Torture in Punjab Prevails*, Report of a Mission to Punjab, India, Physicians for Human Rights, Denmark, August 1999.

particular to the practical problems of showing detail of injuries using video equipment which distorts colour and image and which is often operated in conditions of insufficient lighting etc.

The NHRC has also devised a Model Autopsy Form and guidelines for its use as well as suggesting forensic science seminars to include their investigative staff. Amnesty International does not know to what extent these procedures and suggestions have been implemented.

In cases of alleged rape or sexual abuse of women, it is essential that victims should have immediate access preferably to a female doctor. Long delays between the crime taking place and medical examination are common, leading in many cases to inconclusive medical evidence of sexual abuse in custody. The CrPC Amendment Bill 1994 proposed inserting the requirement (section 164A) for a rape victim to be examined by a medical practitioner "without delay" and set out what the medical practitioner should record. Amnesty International believes that this should be extended not just to victims of rape but victims of all forms of sexual abuse.

- # Those who allege torture or ill-treatment including rape and other forms of sexual abuse should be immediately examined by an independent medical practitioner. Police should not be present during the examination and detailed records of the examination should be kept in accordance with Principle 6(b) of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles).**
- # Steps should be taken to protect medical professionals carrying out post mortems and medical examinations of alleged torture victims from police pressure. As a step towards this, police officials should not be present during post mortems or the medical examination of detainees. In addition, the victims' relatives or their representatives should have the right to request any registered doctor of their own choice to be physically present while a post-mortem is actually being conducted.**
- # Training of medical professionals should incorporate medical ethics and in particular the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Firm action should be taken against any medical professionals found to have participated in the cover-up or facilitation of torture.**

10. Bring to justice those responsible for torture

Impunity sends the message to torturers that they will get away with it. Bringing the culprits to justice not only deters them from repeating their crimes, it also makes clear to others that torture and ill-treatment will not be tolerated. However, when the institutions responsible for upholding the law routinely flout it when dealing with their own members, they undermine the whole criminal justice system. Combatting impunity means striking at the very heart of this institutional corruption.

Sections 45 and 197 of the CrPC provide protection from prosecution to members of the armed forces and public servants for anything done or purported to be done by them in the discharge of their official duties except after obtaining the consent of the Government. In the case of section 45, this immunity can be extended to any forces charged with the maintenance of public order if a state government so desires. The CrPC Amendment Bill 1994 which has been reintroduced to Parliament by the present government proposes to widen the scope of immunity offered by section 45 of the CrPC. It also proposes amending section 197 to ensure that all "public servants" charged with the maintenance of public order rather than just "members of the Forces" should be protected by ensuring that no court should take cognizance of any offence committed while acting or purporting to act in the discharge of official duty, except with the previous sanction of the Central Government.

The immunity provided in sections of the CrPC is reflected in state legislation governing police actions, often in the guise of limitations of the time within which complaints may be brought against police. For example, Section 53 of the Tamil Nadu Police Act 1869 reads: "All actions and prosecutions against any persons which may be lawfully brought for anything done or intended to be done, under the provisions of this Act, or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months after the act complained of shall have been committed and not otherwise". The requirement for sanction in several laws has been employed in many cases in which allegations of torture in custody have been brought despite strong protests which argue that torture can never be to be part of 'official duty'. Acts of torture or ill-treatment should never be considered part of the "official duty" of law enforcement officials and therefore the requirement of prior sanction of the government for prosecution of public officials accused of torture or ill-treatment should never be invoked. Barriers to prosecution facilitate impunity and ending impunity is a vital step in preventing torture.

The Supreme Court in *S.P. Vaithianathan vs. K. Shanmuganathan* (1994 4 SCC 569) found that acts such as beating and illegal confinement by police could not be said to have been actions taken under provisions of the Tamil Nadu Police Act and therefore were not subject to this limitation. This position was reiterated more recently in September 2000 by the Supreme Court when it dismissed an appeal from two policemen who argued immunity under section 64(3) of the Kerala Police Act which sets a period of six months from the date of commission of an offence. Criminal proceedings had been initiated against them for the illegal detention and torture of a shopkeeper in 1995.

In February 1996 the Uttar Pradesh High Court declared that the Central Bureau of Investigation (CBI), which had found evidence of illegal detention and torture, including rape, by members of the Provincial Armed Constabulary against activists travelling to a rally in Delhi, did not require the state government's sanction for prosecution of the police officers "who had gone berserk ostensibly to satisfy their political bosses". However, in a judgement on several petitions filed in appeal by the accused as well as the Union and Uttar Pradesh state governments, the Supreme Court in May 1999 termed the High Court decision on the waiving of sanction and the granting of compensation "unsustainable" and overturned it.¹⁷ The case is ongoing.

Further immunity from prosecution is provided for in provisions requiring government sanction for prosecution under special legislation in force in areas of armed conflict including the Armed Forces Special Powers Act and the PSA as well as the proposed Prevention of Terrorism Bill. Amnesty International believes that the requirement of the consent of the central or state government for the prosecution of officials prevents full redress for violations, and reinforces the climate of impunity for the security forces. The NHRC has acknowledged this in its support for the recommendation of the Law Commission in 1985, that section 197 CrPC be amended to obviate the necessity for sanction. The UN Human Rights Committee has also recommended that requirement for sanction be removed from all legislation.

Amnesty International has been extremely concerned to note the comments of the Padmanabhaiah Committee which indicate a belief that police operating in areas of armed conflict should be given legal protection against prosecution for human rights violations. In a reference to the situation in Punjab, the Committee indicated its support for legal provisions which ensure the requirement for sanction for prosecution but also urged that governments should make funding arrangements for defending cases against police and that a time limit should be prescribed by law within which cases against police actions can be filed¹⁸. In the 1980s and early 1990s hundreds of people were tortured, extra-judicially executed or "disappeared" in Punjab during a conflict between armed opposition groups fighting for secession from India and the Indian security forces. Both sides indulged in grave human rights abuses. Many of those who "disappeared" are believed to have been extrajudicially executed by police after torture. Punjab police officials have admitted using "extra-legal" methods in fighting members of armed opposition groups and in several cases judicial inquiries have found evidence of torture and other human rights violations. A senior Punjab police officer was quoted as saying in 1994: "Abnormal situations needed an abnormal approach to handle it. So, why put us in the dock. Moreover, whatever the police did, they had the sanction of the state. We operated within the framework of the state's policy for which we are individually being

¹⁷ *A K Singh and others vs. Uttarakhand Jan Morcha and others* (AIR 1999, SC 2193).

¹⁸ Amnesty International notes that almost concurrently with the release of the report in which these comments were made, the Supreme Court of India ruled that there should be no time bar for prosecution in cases of torture.

asked to pay"¹⁹. There have been persistent calls by Punjab police, with the active support of state and central government officials for amnesties for police officers responsible for human rights violations including torture despite the fact that this would be a violation of international law.

Trials of military personnel by military courts for ordinary crimes and human rights violations have often not been impartial and have resulted in impunity for the offender. While Amnesty International has welcomed several cases in which members of the security forces have been prosecuted for perpetrating rape in armed conflict situations, it is concerned at the continued insistence of the armed forces that these crimes should be tried by court martial and not under the ordinary criminal law. Court martial proceedings are not conducted in public, nor are their judgements always made public. The fact that court martial proceedings are held within army camps increases the pressure on and fear felt by victims and witnesses, particularly in cases of rape and other forms of sexual abuse. The UN Human Rights Committee has recommended that such offences be tried in ordinary courts. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions expressed concern about "trials of members of the security forces before military courts where, it is alleged, they evade punishment because of an ill-conceived esprit de corps, which generally results in impunity"²⁰.

- # **The authorities should bring to justice anyone involved in acts of torture. The definition of those responsible should include those who may have given orders as well as those who carried out the actions. Officials who are found to have ordered or tolerated torture by those under their command should be held criminally responsible for their acts. An order from a superior officer or a public authority must never be invoked as a justification for taking part in torture. All officials must be made aware that they have a duty to disobey a manifestly illegal order and will themselves face criminal prosecution for such acts. There should be no amnesties for public officials found guilty of torture.**
- # **Trials of members of the security forces accused of torture (including rape) should be held in ordinary criminal courts and not by court martial.**
- # **Any public official indicted for infliction of or complicity in torture or ill-treatment should be suspended from duty and not permitted to occupy any public position with responsibility for people in detention.**
- # **All legal provisions which require government sanction for the prosecution of police or armed forces personnel should be removed.**

¹⁹ Times of India, 14 November 1994.

²⁰ Report of the SR, UN Doc.A/51/457, at para 125, 7 October 1996.

Those found guilty of torture or ill-treatment must be punished in a way commensurate with the seriousness of the offence, but excluding the death penalty, which is itself a human rights violation.

11. Provide reparation to victims of torture

In its 1992 report on torture, rape and death in custody in India, Amnesty International expressed concern that very few courts had granted compensation to the relatives of people tortured to death by the police and pointed out that its survey of 415 cases of death in custody showed that compensation was ordered in only 12 cases. Amnesty International welcomes the fact that the situation has improved somewhat since the writing of that report. In a number of instances, monetary compensation has been granted to victims of torture and the relatives of those who have died in custody in India by the courts but more commonly in recent years by the NHRC using its powers under section 18(3) of its statute. The Commission has taken a leading role in calling for victims and their relatives to be provided promptly with monetary compensation, commonly recommending "interim" payment of Rs.2 lakh [\$US4,300] in custodial death cases and in several cases pursuing its recommendations with state governments who fail to implement them in this regard.

The NHRC has reportedly called for an amendment to the law so that cases relating to violations of human rights and compensation could be tried together in one court with one set of evidence so that victims would not have to endure two separate cases and wait considerable lengths of time for final compensation: the need to file separate civil proceedings in the courts to ensure compensation in civil cases deters many from seeking this form of redress. In January 1999 the NHRC argued that a strong *prima facie* case of torture was sufficient for the grant of interim relief. The then Chair of the NHRC Justice Venkatachaliah stated that "the very nature of the concept of immediate interim relief and the purposes for which it is intended would be defeated if this remedy is interwound with the fortunes of a criminal trial and this is a fit case for award of immediate interim relief". The case related to the death in police custody of a member of a 'denotified tribe' (see above) in Maharashtra where the Maharashtra government had said that it would pay compensation in accordance with the directions given by the court. The NHRC considered that this would cause unnecessary delay.

In October 1995 the NHRC suggested that monetary compensation for victims of police abuse should be taken from those responsible. State governments have reportedly accepted this proposal. Amnesty International is concerned at this development which in its view implies that the state is not responsible for the illegal actions of individual law enforcement officials and appears to reiterate the Indian state's long-held claim of "sovereign immunity". During the examination of Sri Lanka's third report in 1995 one member of the UN Human Rights Committee questioned the practice in that country of making individual officers held responsible by the Supreme Court pay compensation to the victims -- as opposed to the state paying the compensation -- as well as making officers retain their own lawyers -- as opposed to the Attorney General appearing on their behalf. He referred to article 2 of the ICCPR which puts the obligation on the state to pay compensation. He also stated that the granting of compensation should not be made dependent on the capacity of the perpetrator to pay the money²¹.

²¹ See CCPR/C/SR. 1437, para. 72.

During a visit to West Bengal in June 1999, Amnesty International delegates were told of an incident in which police paid the mother of a man who died in their custody not to file a complaint. Although she accepted the money and did not file a complaint, a human rights organization filed a complaint about the death in custody with the West Bengal Human Rights Commission (WBHRC). Following an investigation the WBHRC found police officials guilty and awarded compensation to the relatives of the victim requesting the police to pay. The police's reported response was that they had already paid money to the relatives and so they did not need to do this a second time.

While Amnesty International welcomes efforts to compensate victims, it is concerned that redress should not merely take the form of monetary awards -- it should include the prosecution of those found responsible in accordance with law and full reparation. Acknowledging the role that the NHRC has played in providing compensation to victims and relatives, Amnesty International believes that equal efforts should be made to ensure that they pursue prosecution of officials and other aspects of reparation for victims. Adequate and effective reparation for victims should in Amnesty International's view incorporate the following²²:

1. *Restitution*: steps should be taken to restore the victim to the situation they were in before the violation occurred, including restoration of their legal rights, social status, family life, place of residence, property and employment;
2. *Compensation*: steps should be taken to compensate for any economically assessable damage resulting from violations including physical or mental harm, emotional distress, lost educational opportunities, loss of earnings, legal and/or medical costs
3. *Rehabilitation*: steps should be taken to ensure medical and psychological care if necessary as well as legal and social services.
4. *Satisfaction and guarantees of non-repetition*: steps should be taken to ensure cessation of continuing violations, public disclosure of truth behind violations, official declaration of responsibility and/or apologies, public acknowledgement of violations, as well as judicial or administrative sanctions, and preventive measures including human rights training.

There are only two known specialist centres operating in India to provide care to victims of torture. These have been established with the help of the International Rehabilitation Council for Torture Victims (IRCT). Their existence has not been publicised and therefore Amnesty International is concerned at the accessibility of the specialist services that these centres provide to victims of human rights violations in need of care throughout the country.

Amnesty International believes that specialist care should be ensured by the state including training and resources to allow doctors to carry out this work.

²² These points are based on the Draft Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law which are currently under discussion at the UN.

- # **The right to compensation should be made an enforceable statutory right for cases of torture and other forms of ill treatment.**
- # **Verification mechanisms should be put in place to ensure that orders for compensation are implemented promptly by the authorities and that they are paid directly to the awardee.**
- # **Medical care and rehabilitation should be provided through institutions established with state support.**

12. Strengthen and support the National Human Rights Commission and other statutory bodies

The National Human Rights Commission (NHRC), established under the Protection of Human Rights Act in 1993, has played an important role in monitoring and investigating human rights violations in India, in advising the government on human rights issues and in furthering human rights awareness. In particular, Amnesty International acknowledges the important role the NHRC has played since it was set up in addressing the issue of custodial violence. SHRCs have now been set up in 11 states and have similarly been taking up cases of torture and deaths in custody and a broad range of other human rights issues.

One of the NHRC's first actions was to request that it be informed of death or rape in police custody within 24 hours of occurrence. The statistics gathered by the NHRC in this regard have been useful in identifying patterns of abuse and there is no doubt that they have provided an important mechanism for redress for many victims of human rights violations. However, there have been many problems in implementation of NHRC recommendations. The Commission's September 2000 Newsletter carried a report of a meeting of Director Generals and Inspector Generals of Police of all states and Union Territories with the NHRC at which the Chair of the NHRC expressed concern on several fronts: reports requested from states by the NHRC were frequently delayed; and reporting of custodial deaths and rapes within 24 hours, implementation of the direction to video-film post mortems in cases of custodial deaths and the model autopsy form and observance of the NHRC's guidelines regarding arrest were described as "erratic".

The NHRC and SHRCs have also been criticised by police and security forces for their actions. In West Bengal members of the police force have repeatedly denounced the WBHRC, saying that it has contributed to a rise in crime. Such sentiments have been echoed in Rajasthan where in October 1998 the then Deputy Chief Minister of Rajasthan was reported as saying that the NHRC "is in the habit of offering protection to criminals and terrorists instead of victims" as a reason for not establishing a SHRC²³. In Uttar Pradesh the state government has for several years resisted pressure to establish a SHRC despite High Court orders that one be established following the filing of a petition by the Peoples Union for Civil Liberties.

There have been a number of legal challenges to the powers of the NHRC, not least in connection with its attempts to investigate human rights violations in Punjab where the government challenged the

²³ Although a Commission has now been set up in Rajasthan, in August 2000 it was reported that the Chair, Justice Kanta Bhatnagar had resigned over the failure of the government to provide resources to the Commission.

power of the NHRC to investigate past violations at the direction of the Supreme Court as well as attempts by the Punjab Human Rights Commission to amend its statute to allow it to investigate past human rights violations. In September 2000 it was reported that the Delhi High Court had challenged the right of the NHRC to issue executive orders -- in this case guidelines for use of lie detector tests. This brings into question the legality of other orders of the NHRC concerning custodial violence including in relation to the carrying out of post mortems etc. Attempts by the NHRC to investigate the shooting of 37 people in Bijbehara, Jammu and Kashmir by members of the Border Security Forces in October 1993 have been thwarted by security forces. In August 1999 the NHRC was forced to file a petition in the Supreme Court asking it to order the authorities to hand over certain files relating to the incident which it was refusing to do. Also in 1999 the Jammu and Kashmir State Human Rights Commission announced its intention to approach the High Court concerning non-consideration of its investigative reports and recommendations by the state government. In Karnataka police officials with the apparent backing of state government officials filed a petition in the High Court challenging the powers of a Committee established by the NHRC to look into allegations of systematic human rights violations, including torture, against local people by members of the Special Task Forces of the Karnataka and Tamil Nadu police in the course of their operations. Amnesty International is aware of further challenges to the powers of SHRCs. In West Bengal, police officers have challenged the procedures of the WBHRC in recommending the initiating of criminal proceedings against them arguing that under the WBHRC's procedures they are not given sufficient opportunity to defend themselves. The Calcutta High Court in orders on two similar challenges has held that the WBHRC is a recommendatory body and that therefore opportunity to present a defence is provided at the trial stage in the event that criminal proceedings are initiated.

Amnesty International believes that these challenges underline the need to strengthen the statutory powers and procedures of the NHRC and SHRCs and to clearly set these powers out in law rather than relying on the *de facto* ability of the Commissions to look into certain issues if authorities choose to tolerate such actions. Principle 2 of the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles)²⁴ states that "A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence".

In June 1998 an Advisory Committee (the Ahmadi Committee) was appointed by the NHRC to review the Protection of Human Rights Act, 1993. In setting up this Committee, the NHRC indicated that "appropriate changes in the Act are required to make it a more effective instrument for the protection and promotion of human rights" and highlighted several areas of the Act which it believed placed unacceptable limitations on the work of the Commission. Several human rights organizations, including Amnesty International, submitted suggestions to the Committee for amendments to ensure greater effectiveness of the Commission. The Committee submitted its recommendations to the NHRC in November 1999. The NHRC has indicated that it sent proposed amendments to the PHRA to the Home Ministry in the first

²⁴ Adopted by the UN General Assembly in resolution 48/134 of 20 December 1993.

week of March 2000. Neither the Committee's recommendations nor the NHRC's proposals for amendments have been made public.

- # **The Ahmadi Committee's recommendations and the NHRC's subsequent proposals to the Government of India should be made public in the interests of transparency.**
- # **The Government of India should consider at the earliest the recommendations for amendments to the PHRA made by the NHRC in the light of the work of the Ahmadi Committee.**
- # **At a bare minimum the following amendments to the PHRA should be made in order to strengthen the powers of the NHRC and SHRCs to prevent and investigate incidents and patterns of torture:**
 - **The NHRC and SHRCs should be given the power to investigate allegations of human rights violations which took place over one year previously (amend section 36(2) of the PHRA);**
 - **The NHRC and SHRCs should be given the power to visit custodial institutions without having to previously notify state officials (amend section 12(c) of the PHRA);**
 - **The NHRC and SHRCs should be given the power to investigate allegations of human rights violations by members of the armed and paramilitary forces (amend section 19 of the PHRA);**
 - **NHRC recommendations should be promptly complied with. As a means to this, it should be given explicitly powers to refer cases in which it has found sufficient evidence to merit prosecution for a human rights violation directly to the prosecuting authorities so that appropriate action can be taken against individuals concerned (amend section 18 of the PHRA).**
- # **The Central and State governments should demonstrate respect for the role of the NHRC and SHRCs. There should be immediate official condemnation of statements made by government and police officials who attack the work of the NHRC and SHRCs and undermine their work.**
- # **The NHRC and SHRCs should monitor, record and publish the numbers of complaints of torture and ill-treatment which are brought to them, including a breakdown of the profile of victims by gender and social background in order to provide information on patterns of torture.**
- # **Methods of investigation set out in the Istanbul Principles should be incorporated into the methodology and training of officials of the NHRC and SHRCs to ensure professional and impartial investigation.**

Other statutory bodies established for the protection of Women, Children, Minorities and Scheduled Castes and Scheduled Tribes should be consulted on ways to protect these groups from torture and ill-treatment and their powers and resources strengthened to ensure that they can address problems of torture and ill-treatment of these groups adequately.

13. Provide effective human rights training to police and security forces

Article 10 of the Convention against Torture requires States Parties to "ensure that education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment". It further requires that the prohibition is included in any rules or instructions issued to such persons. The UN Human Rights Committee in its General Comment (20) on Article 7 of the ICCPR indicated that "Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons".

Amnesty International's 10 Basic Human Rights Standards for Good Conduct by Law Enforcement Officials (December 1998, AI Index: POL 30/04/98) have been prepared by Amnesty International in association with police officials and experts from different countries. Based on UN law enforcement, criminal justice and human rights standards, they are intended to raise awareness of some fundamental standards which should be part of any police training and police practice.

While human rights training for police and security forces has been developed in recent years with the help of the NHRC, National Law School of India, as well as international organizations including the ICRC and foreign governments, Amnesty International is concerned that this has not had a practical effect on the ground situation. Its concerns about police training are compounded by the recognized need for reform of the police system and the fear that training of police within an inherently faulty system will never achieve the required results in the long-term.

Once again, monitoring of performance following training would be crucial but has not been part of training programs as far as Amnesty International is aware. The organization believes that those who have undergone training not only need monitoring and further in-service training at regular intervals, but that they should also be given support to shield them from influences within the police service and outside who attempt to persuade them to carry out illegal acts.

Amnesty International believes that authorities should ensure that current police officers, as well as recruits should be properly trained to respect the human rights of the communities they serve so that they carry out their duties effectively and professionally, in accordance with internationally accepted human rights standards governing the conduct of the police. Human rights training, which should include practice in actual policing situations, should aim to make human rights a part of daily police practice, ingrained in officers' personal ethics and the culture of policing. This training should be fully integrated into

training programs that are provided to all ranks, and not treated as an additional class separated from the full curriculum of training. Other sectors of the criminal justice system, including members of the prosecution service as well as the judiciary should also receive training in the principles and standards relevant to their work.

Given that medical professionals also have an important role to play in detecting, preventing and reporting cases of torture, they should be provided with training in detection and medical ethics.

- # **Training programs for law enforcement officials and others should include practical methods to prevent torture and not just theoretical teaching of legal provisions and human rights standards. Human rights education or ethics training should be integrated into training focussed upon increasing the professionalism of the police. Training should acknowledge the context in which violence has become accepted as a way of "solving" problems and that this situation increases the use of torture.**
- # **Training should include the issue of sensitivity towards groups already discriminated against.**
- # **In selecting and training of law enforcement personnel, the qualification of respect and sensitivity to human rights protection should be a prerequisite, kept under review and counted toward assessment of their performance and future prospects.**
- # **Human rights training including gender sensitive training should be provided to police, the security forces, judiciary and medical professionals, in addition to programs already undertaken. The training should be provided to all ranks from the highest to the lowest and should be given at periodic intervals, not just at the start of the job.**
- # **The absolute prohibition against torture and ill-treatment should be reflected in the training and all orders given to officials involved in arrest and custody. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in torture.**
- # **Training manuals should incorporate the following international standards:**
 - UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - UN Code of Conduct for Law Enforcement Officials;
 - UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
 - UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
 - UN Convention against Torture, and Other Cruel Inhuman or Degrading Treatment or Punishment.
 - UN Declaration on the Protection of All Persons from Enforced Disappearance.

14. Increase cooperation with national and international bodies in the fight to end torture

Amnesty International welcomes that India has ratified several international human rights treaties which incorporate prohibition against torture including the ICCPR, the UN Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. While welcoming that India became a signatory to the Convention against Torture in October 1997, Amnesty International is concerned that positive steps have not yet been taken towards ratification of the Convention. Implementing the above recommendations, Amnesty International believes, would go some way to ensuring that India is in a position to ratify the Convention.

Amnesty International notes repeated statements by officials of the Government of India that India intends to ratify the Convention, including a pledge made by the Attorney General of India at an International Symposium on torture held in New Delhi in September 1999 that India would ratify the Convention "as a new years gift". Amnesty International understands that enabling legislation must be enacted prior to ratification and believes that ratification should demonstrate a solid commitment to end torture. The organization's over-riding concern in making these recommendations is that India's international commitments should be reflected in the reality of the situation on the ground in India.

Amnesty International is concerned to note indications that India intends to make a reservation to the Convention on ratification under Article 20 and not to make declarations under Articles 21 and 22. Amnesty International believes that this will have the effect of limiting the effectiveness of the Convention.

- # **The Government of India should recognise the crucial role that many human rights organizations play in detecting and publicising incidents and patterns of torture, pursuing justice for victims and their relatives and identifying problems in the system which facilitate torture or prevent justice. It should effectively respond to the observations and recommendations made by various organizations in India and include them in discussions on how to prevent torture.**
- # **Indian legislation should be promptly brought in line with the UN Convention against Torture in order to prepare for ratification.**
- # **Ratification of the Convention against Torture should preclude reservations under Article 20 and include declarations under Articles 21 and 22 which strengthen the role of the Committee against Torture in examining information about torture including the Committee's ability to consider individual complaints of torture.**

- # Once ratification has taken place the Government of India should submit its first report on time within one year of ratification and all reports thereafter in a timely manner.
- # The UN Special Rapporteur on Torture should be invited to India and granted full access to all areas of the country to investigate patterns of torture and ill-treatment.
- # The Government of India should ratify the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women at the earliest opportunity to enable individuals to bring complaints to the Committee on the Elimination of All Forms of Discrimination against Women about violations of their rights under the Women's Convention once they have exhausted national remedies.
- # The Government of India should play a role in pressing for speedy adoption by the UN of the strongest possible Optional Protocol to the UN Convention against Torture, providing for a global system of inspection visits to places of detention as a safeguard against torture.
- # The Government of India should make the worldwide eradication of torture a matter of foreign policy. It should instruct its missions in other countries to monitor the incidence of torture, to intercede with the authorities in individual cases and to press for the necessary changes in legislation and practice.
- # The Government of India should ensure that no one is forcibly returned to another country where he or she risks being tortured.
- # The Government of India should ensure that transfers of equipment and training for military, security or police use do not facilitate torture.
- # The Government of India should ratify the Rome Statute of the International Criminal Court and enact the necessary national legislation to implement it effectively.
- # The Government of India should encourage the holding of expert meetings of human rights activists, lawyers, medical professionals and others including international experts, on torture and other human rights issues.

APPENDIX I

Extracts from *D.K. Basu vs. State of West Bengal* WP 539 of 1986, (AIR 1997 SC 610) order dated 18/12/96, paras 36-40

"We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention, till legal provisions are made in that behalf, as preventive measures:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Ilaqa Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

Failure to comply with the requirements herein above mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter".

APPENDIX II

PRINCIPLES ON THE EFFECTIVE INVESTIGATION AND DOCUMENTATION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter torture or other ill-treatment) include the following:
 - (i) Clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families;
 - (ii) Identification of measures needed to prevent recurrence;
 - (iii) Facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.
2. States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.
3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.
3. (b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.
4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.
5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected.

5. (b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

6. (b) The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(i) Circumstances of the interview: name of the subject and names and affiliations of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;

(ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should be given;

(v) Authorship: the report should clearly identify those carrying out the examination and should be signed.

6. (c) The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.