

INDIA

The “Anti-Nationals”

Arbitrary Detention and Torture of Terrorism Suspects
in India

HUMAN
RIGHTS
WATCH



**The “Anti-Nationals”
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Terrorism Suspects in India**

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Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



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Map of India



Summary

The policeman said to me, “Please speak to your son. Tell him that he must give us a few names. Then we will let him go.” But my son told me, “I cannot give any names wrongfully.” The police said to me, “Your son’s life will be ruined. Tell him to identify some people.”

—A father whose son was detained after the 2008 Gujarat bombings, Ahmedabad, July 2009.

“You give me a stick and nothing else, no intelligence or forensic training, no education—and then you ask, why are you beating people up?”

—Security analyst Ajai Sahni on why the police torture terrorism suspects, New Delhi, May 2010.

On three separate days in 2008, India was plunged into panic as synchronized bombs struck three major cities, killing 152 people and injuring hundreds of others. An obscure Islamist militant group calling itself the Indian Mujahideen (IM) claimed responsibility. The bombings—first in Jaipur in May, then Ahmedabad in July, and finally New Delhi in September—were heinous crimes, targeting ordinary people in markets, hospitals, and other public places.

The state response was massive. In sweeps across the country, state police brought in scores of Muslim men for questioning and promptly labeled many “anti-national.” The police arbitrarily detained, tortured, and ill-treated many bombing suspects to get them to confess. In several cases, the police themselves appear to have drafted the confessions. Suspects suffered further mistreatment while in jail awaiting trial, and faced unfair proceedings in court.

The spate of 2008 bombings was followed by the November 26, 2008, attack on the entertainment and commercial hub of Mumbai, in which 10 Pakistani gunmen went on a killing spree inside two luxury hotels, a hospital, the main railway station and a Jewish center. The 2½ day assault, later linked to the Pakistan-based group Lashkar-e-Taiba (LeT), killed 166 people and wounded 238 others. Nine of the gunmen died, and the tenth was captured. In contrast to the previous incidents, the Mumbai attack did not result in the mass arrests of Muslims.

There were no attacks by Islamist groups for more than a year. On February 13, 2010, however, 17 people were killed and dozens injured in Pune by a bomb blast, at a restaurant frequented by foreigners and located close to a Jewish center and an internationally known ashram. Indian police suspected IM, acting in collaboration with LeT. In September 2010, IM allegedly warned of further attacks, and the police were investigating the group's claims that it was behind a motorcycle drive-by shooting in New Delhi that month that injured two Taiwanese tourists. An email claiming to be from IM also claimed responsibility for a December 2010 bombing in Varanasi, Hinduism's holiest city and a popular tourist site, which killed two people and injured more than 30 others. There also were no mass arrests of Muslims following these attacks.

Human Rights Watch unequivocally condemns all such attacks on the population and believes that the perpetrators should be appropriately prosecuted. We also understand the need to prevent further attacks, and the great public pressure on the Indian authorities to do so.

Nonetheless, as detailed in this report, the security forces in India, the world's largest democracy, have time and again responded to these horrific attacks by committing numerous, serious human rights violations in their quest to identify and prosecute suspected perpetrators. These abuses are both unlawful under Indian and international law and counterproductive in the fight against terrorism.

This report focuses primarily on torture and other abuses committed by the police against alleged Muslim militants. But the Indian security forces have long applied similar, unlawful methods against members of other groups deemed a security threat. These include Maoist rebels known as Naxalites in much of the central and eastern areas of the country, parties to the conflict in Jammu and Kashmir, and Hindu militants accused by the home minister of "saffron terror" —some of whose cases are documented in this report.

In this report, the term "terrorism suspects" refers to the Indian government's designation of those accused of committing the 2008 bombings and other recent major attacks on civilians. Those implicated in these attacks are alleged members of Islamist and Hindu militant groups; Human Rights Watch has documented attacks by and treatment of other armed groups in India in other publications.

For our research, Human Rights Watch interviewed more than 160 people in India, including the relatives and lawyers of more than 35 suspects in the 2008 bombings, as well as five individuals who were subsequently released. We found that mistreatment of suspects detained in connection with the 2008 bombings occurred at every stage of custody, from

police lockups where many were tortured, to jails where they were beaten, to courthouses where magistrates often ignored their complaints. In a few cases, the relatives of suspects were even taken hostage by law enforcement agencies. Specialized police units were the worst offenders, particularly the Crime Branch of the Gujarat state police; the Maharashtra state Anti-Terrorist Squad (ATS); the Uttar Pradesh state ATS; the Rajasthan state police and the ATS it formed after the bombings; and the Special Cell police in Delhi.

Together, these units rounded up scores of Muslim citizens for questioning after the bombings in Jaipur on May 13, Ahmedabad on July 26, and Delhi on September 13, 2008, as well as smaller blasts in the technology center of Bangalore on July 25, 2008, and the recovery of several unexploded bombs in the port city of Surat a few days later. The police ultimately charged more than 70 alleged IM members or associates from nine states in these attacks. They also issued warrants for more than three dozen others, many of them suspected to be in Pakistan under the protection of LeT and the Bangladesh- and Pakistan-based Harkat ul Jihadi Islami (HuJI)—groups that the Indian authorities described as the planners of the bombings.

At this writing, trials had begun in Delhi and Jaipur. India's Supreme Court stayed proceedings in Gujarat after dozens of suspects filed a petition seeking the transfer of the case to another state on allegations of bias by the police and judiciary that included turning "a blind eye to allegations of torture." Many of those initially arrested were former or alleged members of a banned student group, the Students Islamic Movement of India (SIMI). Indian investigators believe that IM is a militant offshoot of SIMI, but IM has denied this.

Some of the worst abuses documented by Human Rights Watch occurred in a lockup of the Ahmedabad Crime Branch of the Gujarat state police, where many detainees allege they were blindfolded and shackled with their arms crossed over their knees from morning to night. According to one former suspect, who feared reprisals if his name were revealed, the screams from detainees began shortly after midnight, alerting him that it was time for his next round of torture:

We were made to wear dark masks. They always used dark masks. I had to stand with my hands extended horizontally and if they came down, the police would beat me. Whenever they interrogated me and they felt that the answer was improper, they beat me with the wooden stick or the leather belt or whatever they liked.... I was told by the police department, "If you do not cooperate, we will take custody of all of your family...." I was so scared I did not know what would happen and what to do or not to do. I had no hope of coming out.

In some states, police held suspects for days, or even weeks, with the police failing to register their arrest. Many suspects also allege that they were denied proper food and water. A few said they were tortured in secret interrogation centers or subjected to electric shocks. Mumbai attorney Amin Solkar said the signs of abuse were evident when he first visited some of those suspects after their arrests. “I could see the marks on them—abrasions on the arms and back,” he said. “One of them told me he lost his hearing after he was stripped naked, tied to a stick, and beaten.”

The authorities’ main goal appeared to be to coerce suspects into confessing or naming other conspirators. Several suspects alleged that police made them sign blank sheets of paper or woke them up at night to make them repeat a fabricated version of events until they had memorized it. Nisar Ahmed of New Delhi said that his son Saqib Nisar was denied sleep until he memorized the police version of events: “When I asked my son if he was tortured, he said, ‘They are hardly going to treat me with love. They want to build the case. They would not let me sleep. They used to make us memorize a story of the police version of the case. We were not allowed to sleep until we could recite the police version.’”

When relatives and lawyers eventually were able to meet suspects, police in some cases unlawfully remained within earshot, making it difficult for the detainees to reveal abuse or seek counsel. “They did everything they could to make the environment as hostile as possible,” Delhi attorney Jawahar Raja recalled, describing one visit. “A police officer would be sitting right next to us.”

In at least three cases where the police could not find the suspects they were seeking, they took a relative hostage. “The police said that they would release Shakeel only when Raziq comes,” recounted one mother whose younger son was unlawfully detained for a month while police sought his brother. “But ... he had left his wife with our relatives and disappeared.”

Police in Gujarat and Delhi also manipulated criminal procedures to allow them to hold suspects for interrogation well beyond the initial 15-day legal limit after arrest. By filing additional charges against the same men for the same conspiracy every fortnight, the police extended their custody of more than two dozen suspects for three to four months, prolonging the risk of torture and other abuse.

Only after suspects were transferred from police custody to jails did many of them dare to retract confessions or complain of mistreatment. Mohammad Arif, arrested in the Uttar Pradesh capital of Lucknow in September 2008, said in a written submission retracting his

confession that the Uttar Pradesh ATS tortured him into admitting to involvement in a set of 2007 bombings in that state and in the bombings in Gujarat the following year:

I was punched, kicked, beaten very badly. In order to humiliate me and to break me down the ATS made me stand for long hours and hung me upside down. During the police custody, I was denied all basic amenities and was forced to drink water from toilet. Further on, I was subjected to electric shocks by the police officials and made to repeat what they were saying. The interrogators repeatedly used ... name calling, sexually profane abusive language, with me.

Relatives and lawyers claim that many of the suspects did not dare complain to magistrates because they feared retribution once returned to their cell.

Human Rights Watch also has concerns about the so-called Batla House encounter, in which police killed two suspects during a raid on a house in a predominantly Muslim neighborhood six days after the September 2008 Delhi bombings. While this was a violent incident—one or more of the suspects fired at police and one officer was killed and another wounded—suspicious marks on the bodies of the slain suspects, the Delhi police’s refusal to release the victims’ autopsy reports, which when ultimately made public raised additional doubts, and the Delhi government’s failure to order a magisterial investigation into the cause of death have prompted allegations that the suspects were summarily executed.

* * *

Human Rights Watch is keenly aware that India’s state police forces, which have primary responsibility for maintaining law and order in India, face a daunting task. Their counterterrorism units are undertrained, underfunded, and understaffed. While there have been fewer attacks attributed to Islamist groups since the November 2008 assault on Mumbai, the likelihood of future attacks remains. India faces persistent threats from foreign militant organizations, including IM and LeT, which India contends has the continued support of elements within Pakistan’s Inter-Services Intelligence (ISI).

Yet the very real pressures to deter and prevent such attacks do not justify violations of human rights, which undermine efforts to fight terrorism. By relying on forced and sometimes fabricated confessions, the Indian government risks punishing the wrong suspects while perpetrators remain free. Moreover, allegations of abuse create resentment in Muslim communities across India, depriving law enforcement officials of information

sources that could prevent future attacks. Reports of torture may also serve as a recruitment tool among some Muslims in India and abroad to join extremist groups.

For genuine progress to be made, Indian police need to put an end to the ugly assumption, all too common after the 2008 bombings, that virtually any Muslim is a threat to national security. As a young, Muslim professional who was interrogated by the Delhi Special Cell police told Human Rights Watch:

The very first question was: “Why have you people become anti-national? You people are bloody Pakistanis.” They kept on targeting my religion, actually my beliefs, my practices.

In Rajasthan, the state police, suspecting that the Pakistan-based militant Islamist group HuJI was behind the blasts there in May 2008, rounded up hundreds of Bengali-speaking Muslims for questioning. After police released them, state officials nevertheless razed their homes, claiming that their settlement was illegal. Many were forcibly put on trains or buses and expelled to West Bengal state, which borders Bangladesh. The police insisted that they were illegal Bangladeshi immigrants, although many of them said they had documents that proved their Indian citizenship. “Whenever there is trouble, the needle of suspicion points toward the minority,” Mohamed Shafi Qureshi, chairman of India’s National Commission for Minorities, told Human Rights Watch.

Human Rights Watch documented abuses that had clear religious overtones. In Jaipur Central Jail, guards and two senior jail officials were accused of beating a dozen suspects in September 2009 as they were praying to mark Eid al-Fitr, an important Muslim holiday. At Sabarmati Jail in Ahmedabad, 22 detainees, most of them 2008 bombing suspects, said they were praying in an enclosed courtyard when guards and police assaulted them in March 2009; citing an antiquated manual from India’s colonial era, the jail authorities said they used force against the prisoners because they were on a hunger strike, which the manual defines as a form of mutiny.

Lawyers defending Muslim terrorism suspects also came under attack for being unpatriotic. After the 2008 bombings, several such lawyers were physically attacked or threatened by Hindu extremists, many of them fellow lawyers. In the high-profile case of Ajmal Kasab, the lone surviving gunman from the 2008 Mumbai attack, one lawyer was threatened by mobs, another was removed from the board of a prestigious Muslim foundation, and a third received a death threat for representing the defendant. Two lawyers had to defy the local bar association to defend suspects in the 2010 Pune attack. In February 2010, Shahid Azmi, who

was representing a number of IM suspects as well as an Indian co-defendant in the Mumbai attack, was shot dead by gunmen. Police have charged three alleged members of a Hindu criminal gang for the slaying.

Hindus who represented Muslim suspects or protested their abuse also were targeted. In Lucknow, police brutally beat a Hindu human rights activist in a secret detention center because he was demonstrating against the mistreatment of Muslims after the bombings. “The police said ... ‘You should not be seen with these people, these Muslim people again, and if you don’t understand this, the future will be bleak for you,’” recalled the activist, Vinod Kumar Yadav.

Discrimination against minorities is not the only motive behind the mistreatment of terrorism suspects. Human Rights Watch found credible evidence that Hindus arrested for a separate 2008 bombing incident in the city of Malegaon, Maharashtra state, were also subjected to arbitrary detention, torture, and religion-based ill-treatment. One Hindu suspect, a self-styled theologian, alleged that during one torture session, police forced what they said was beef, which is forbidden to Hindus, down his throat.

A key factor contributing to abuse of terrorism suspects has been the failure of domestic mechanisms of accountability.

India’s judiciary, widely esteemed for its independence, has the authority to curb mistreatment by investigating complaints of abuses. In the 2008 bombing cases, however, magistrates in Delhi and Ahmedabad repeatedly extended police custody of bombing suspects, even as defense lawyers warned that the defendants were being returned to the very lockups where they were being abused.

The National Human Rights Commission (NHRC), the Indian government body that is officially mandated to investigate allegations of human rights violations, has been ineffectual in responding to abuses against terrorism suspects. Most glaring was the NHRC investigation into the so-called Batla House encounter case. Ordered by the Delhi High Court to probe the two IM suspects’ deaths, after ignoring its own guidelines that require all police killings to be investigated, the NHRC produced a report that relied almost exclusively on the police version of events. A new and more serious inquiry into the causes of death that includes collection and examination of all relevant evidence is needed.

Only rarely have the authorities credibly investigated abuses. Notably, in 2008, the Andhra Pradesh state government admitted that its police force had unlawfully detained and

brutally tortured 21 Muslim suspects who were being questioned in connection with two bombings the previous year—stripping them, hanging them upside down, beating them, and subjecting them to electric shocks. Too often, such investigations are never even begun, let alone conducted in a rigorous, professional manner.

India's Parliament responded to the 2008 attacks by enacting draconian counterterrorism legislation. In December 2008, following the Mumbai attack, the Parliament passed amendments to the Unlawful Activities (Prevention) Act (UAPA) that contain sweeping, vaguely worded definitions of terrorism, vastly increase police powers of search and arrest, and double the maximum period of pre-charge detention for terrorism suspects to 180 days, well beyond internationally accepted limits. The amendments mirror provisions of the notorious Prevention of Terrorism Act (POTA), a law repealed in 2004 that encouraged abuses and was counterproductive in combating terrorism.

Another law passed in 2008 created a National Investigation Agency that can authorize the use of special courts with broad powers to prosecute national security crimes. Laws enacted at the state level have also facilitated abuse of terrorism suspects. The authorities in Maharashtra are prosecuting dozens of suspects in the 2008 bombings and other attacks under the Maharashtra Control of Organized Crime Act (MCOCA), which permits long pre-trial detention periods in often abusive police custody. The Gujarat state is seeking to enact a MCOCA-style law as well.

The Parliament—in preparation for ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which India signed in 1997—introduced a draft law in 2010 prohibiting the use of torture and other ill-treatment.

* * *

Addressing and eliminating abuses in counterterrorism operations in India demands strong political leadership at the national and state levels. Such leadership has been in evidence following the most recent attacks. After the 2008 Mumbai attack, the authorities largely avoided sweeping generalizations about Muslims in their public rhetoric. Senior politicians reached out to Muslims in an effort to address the feeling that the entire community was being penalized. Religious leaders were encouraged to promote inter-communal harmony. These and other actions reduced the suspicion among different religious communities that had spiraled after previous attacks attributed to IM, helping to prevent a backlash against the Muslim population.

The Indian government also stressed that it would provide a model trial for the surviving Pakistani gunman, Ajmal Kasab, even as some Hindu groups demanded that he be summarily hanged. Home Minister P. Chidambaram said that he was “proud of the fact that we are a country wedded to the rule of law ... regardless of the great pain it suffered.”

Despite some allegations of questionable rulings, Kasab’s trial was not the summary proceeding that critics had feared. The acquittal of two Indian co-defendants for lack of evidence, despite considerable public pressure to find them guilty, was one of several encouraging signs. In May 2010, Kasab was convicted of participation in the Mumbai attack and was sentenced to death; he has appealed his verdict to the High Court.

After the Pune bombing in February 2010, Maharashtra police acted with relative restraint, refraining from mass roundups or abuses of Muslims. Police in Delhi and Varanasi showed similar restraint following the September and December 2010 attacks that were attributed to IM. Moreover, under pressure from civil society groups, Indian investigators stepped up investigations into the role of Hindu extremists in several high-profile bombing cases initially blamed on Muslim groups, and have made several arrests.

The response of Indian authorities to the most recent attacks attributed to Islamist groups has been a positive development. But if India is to achieve long-term success in countering terrorism, it will need to transform individual acts of restraint and respect for the law into institutional changes. That means ensuring that the institutions meting out justice according to law—the police, the courts, and the legislatures—are fully committed to promoting and protecting basic human rights and are held appropriately accountable when they do not. Without that commitment, India will undermine its own efforts to curb militancy and inadvertently bolster the lure of violent groups such as IM.

Recommendations for Immediate Action by the Indian Government

The Indian government should take immediate steps to end torture and other abuses by repealing harsh provisions of the Unlawful Activities Prevention Act (UAPA) including overly broad definitions of terrorism, expanded police powers of search and seizure, the presumption of guilt under certain circumstances, and draconian pre-charge detention periods. It should similarly repeal provisions of the National Investigation Agency Act (NIAA) that grant special courts wide power to conduct closed proceedings with undisclosed witnesses. The government also should enact the Prevention of Torture Bill, but only if it conforms with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

India's president should sign into law criminal procedure amendments, already passed by Parliament, which will require the police to record a formal reason for making a warrantless arrest—thereby closing a glaring legal loophole that fuels impunity. The government also should also codify the full set of guidelines for police officers that are contained in the landmark 1997 Supreme Court case *D.K. Basu*.

These measures should not be seen as substitutes for fully investigating and prosecuting allegations of wrongdoing by police and other officials, professionalizing India's police forces, and updating the country's outmoded police law and jail manuals. Such broader, longer-term reforms are critical to ending the culture of impunity for crimes against terrorism suspects and others in India.

Methodology

Human Rights Watch conducted research for this report in five Indian states in November 2008, June-July 2009, and periodically through December 2010. In all, we interviewed more than 160 people, including the relatives and lawyers of more than 35 suspects in the 2008 bombings as well as five individuals who were subsequently released.

We focused on the treatment of Muslim men detained or questioned in connection with the bombings. We also examined police treatment of other terrorism suspects, including 10 Hindu men and one woman arrested for another 2008 bombing that was initially blamed on Islamist militants, and the surviving Pakistani man charged with the Mumbai attacks of November 26, 2008.

The majority of interviews were conducted in the capital New Delhi; Ahmedabad and Baroda in Gujarat state; Mumbai and Pune in Maharashtra state; Jaipur in Rajasthan state; and Lucknow and several towns in Azamgarh district in Uttar Pradesh state.

In addition, Human Rights Watch interviewed civil society activists, state police officials, former judges, current and former prosecutors, national human rights and minority rights officials, United Nations counterterrorism officials, security and counterterrorism analysts, political analysts, and legal experts. The interviews were conducted in English, Hindi, or local dialects, sometimes using an interpreter. We conducted numerous follow-up interviews via telephone and email through September 2010. No one we interviewed received compensation.

Many individuals spoke to us on condition of anonymity out of fear of reprisals from the police or other authorities. We have referenced all instances in which we withheld identities. We identified individuals who were questioned or detained through media reports, court documents, and interviews with journalists, lawyers, and members of nongovernmental organizations.

Human Rights Watch made repeated interview requests by email, telephone, and fax to India Home Ministry officials entrusted with security and counterterrorism, as well as to top government officials and counterterrorism police authorities in the states we researched. Regrettably, nearly all the officials in question either declined or did not respond to interview requests, or said they were unavailable and did not arrange for surrogates to meet us. The only three officials who responded to our written questions—ranking members of the police departments of Delhi and the states of Maharashtra and Gujarat—denied any abuse and said their forces are well trained in human rights and counterterrorism techniques.

I. Recent Attacks Attributed to Islamist and Hindu Militant Groups

Each year India suffers numerous bombings and other attacks on civilians conducted by an array of militant groups with religious, separatist, nationalist or other agendas. These include Maoist insurgents known as Naxalites, Punjabi Sikhs, Hindu extremists, and the warring parties in Jammu and Kashmir and in India's northeast. Human Rights Watch has documented abuses by these groups and the Indian security forces.¹ In recent years, attacks on civilians by militant Islamist groups have emerged as a major threat. This chapter provides background on some Islamist and Hindu militant groups that have been implicated in recent attacks.

The rise of Islamist militant groups can be traced to tensions that have persisted since the 1947 partition of British colonial India into the predominantly Muslim state of Pakistan and majority Hindu state of India, and the two nations' competing claims to the Kashmir region wedged between them.

Indian authorities have long blamed attacks within India on extremist organizations based in neighboring Pakistan and Bangladesh. While there is basis for these allegations, it is only part of the story, as many attacks in India are claimed by indigenous Islamist groups citing domestic grievances, such as scarce economic and educational opportunities, rising Hindu nationalism, and anti-Muslim violence. The destruction of the Babri Mosque in Uttar Pradesh state in 1992 and communal riots in Gujarat state a decade later that killed more than 2,000 people, most of them Muslims, have fuelled these resentments.²

¹ See Human Rights Watch, *Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States*, December 2009, <http://www.hrw.org/en/reports/2009/12/09/sabotaged-schooling-o>; Human Rights Watch, *Protecting the Killers: A Policy of Impunity in Punjab, India*, October 17, 2008, <http://www.hrw.org/en/reports/2007/10/17/protecting-killers-o>; Human Rights Watch, *"Being Neutral is Our Biggest Crime": Government, Vigilante, and Naxalite Abuses in India's Chhattisgarh State*, July 14, 2008, <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-o>; Human Rights Watch, *India - "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir*, September 11, 2006, <http://www.hrw.org/en/reports/2006/09/11/everyone-lives-fear-o>; Human Rights Watch, *India - "We Have No Orders To Save You," State Participation and Complicity in Communal Violence in Gujarat*, vol. 14, no. 3(C), April 2002, <http://www.hrw.org/legacy/reports/2002/india/>.

² Human Rights Watch concluded in a 2002 report that the Gujarat police and state officials were complicit in the killings of Muslims during the riots and that state authorities subsequently engineered a massive cover-up. Many of the victims were in Ahmedabad, which was struck in the 2008 blasts. See Human Rights Watch, *India - "We Have No Orders To Save You,"* April 2002, <http://www.hrw.org/legacy/reports/2002/india/>.

For further information on incidents that have fuelled religious polarization, see Luv Puri, "Mitigating the Further Radicalization of India's Muslim Community," *CTC Sentinel*, vol. 3, iss. 10, October 2010, <http://www.ctc.usma.edu/sentinel/CTCSentinel-Vol3Iss10.pdf> (accessed November 20, 2010), pp. 9-11.

Over the past decade, Pakistan-based Islamist militant groups have carried out a number of attacks targeting civilians. These include the assault on the Indian Parliament building on December 13, 2001, which killed six policemen and a worker, and nearly prompted a war between India and Pakistan as both countries moved troops to their shared border.³ Other attacks attributed to Pakistan-based groups were the three synchronized bomb attacks in New Delhi on October 29, 2005, that killed over 60 people and injured 200 others, and the detonation of seven bombs on local commuter trains in Mumbai which killed over 200 people on July 11, 2006.

In 2008, multiple, synchronized blasts in Jaipur in May, Ahmedabad in July, and Delhi in September killed at least 152 people. Those blasts were claimed by the then-obscure Indian Mujahideen (IM), which police describe as a home-grown group fostered by Pakistani Islamist militants. Indian police also alleged that IM may have been involved in eight synchronized blasts that killed two people in Bangalore a day before the Ahmedabad blasts, and the planting of several unexploded bombs that were found in the western port city of Surat a few days later.

The IM blasts were quickly overshadowed by the devastating attack on the commercial and economic hub of Mumbai that began on November 26, 2008, and became known as India's "9/11" in reference to the September 11, 2001, attacks on the United States. Ten heavily armed Pakistani militants entered Mumbai via a hijacked boat by sea and attacked two luxury hotels, a hospital, the main railway station, a Jewish cultural center, and a cafe popular with foreigners. The attack, which only ended two-and-a-half days later with the death of nine of the gunmen, killed at least 166 people and wounded 238 others. India, Pakistan, and the United States attributed the attack to the Pakistan-based Lashkar-e-Taiba (LeT; literally, "Army of the Pure"). LeT is fighting Indian control of Kashmir but also is a proponent of broader anti-western struggles.⁴ Seven suspects are on trial in Pakistan in connection with the attack, but the case was stalled as of this writing and the defendants do not include Hafiz Saeed, the founder of Lashkar-e-Taiba and the man whom many Indian authorities consider the mastermind of the strike.⁵

³ "Pakistan, India 'move missiles' to border," *CNN.com*, December 26, 2001, <http://archives.cnn.com/2001/WORLD/asiapcf/south/12/25/india.pakistan.kashmir.missiles/> (accessed December 28, 2010).

⁴ Stephen Tankel, "Lashkar-e-Taiba in Perspective: An Evolving Threat," New America Foundation Counterterrorism Strategy Initiative Policy Paper, February 2010, <http://www.newamerica.net/sites/newamerica.net/files/policydocs/tankel.pdf> (accessed August 1, 2010); Jayshree Bajoria, "Lashkar-e-Taiba (Army of the Pure)," Council on Foreign Relations Backgrounder, December 2, 2008, <http://www.cfr.org/publication/17882> (accessed September 4, 2009).

⁵ See, for example, "Deadlock over Pakistan's Mumbai suspects," *BBC News*, May 3, 2010, http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/8658038.stm (accessed May 4, 2010).

The Mumbai attack prompted the Indian government to suspend its peace talks with Pakistan for several months and to renew its allegations that the Pakistani military's Inter-Services Intelligence (ISI) has supported LeT and other groups, including IM, which it accuses of attacks inside India. Those accusations gained currency after David Coleman Headley, a Pakistani-American who pleaded guilty in March 2010 to terrorism-related charges, including reconnaissance for the November 26 Mumbai attack, accused ISI members of recruiting disaffected Muslims inside India. In a scheme that Indian intelligence officials call the Karachi Project, Headley reportedly said members of the ISI were training Indian Muslims in Pakistan and sending them home to stage attacks inside India as a new form of proxy war.⁶

After a lull in 2009, India was hit by three more attacks that federal and state authorities attributed to IM. The first was a powerful bomb that exploded on February 14, 2010, in Pune, Maharashtra state, inside a cafe popular with foreigners near a Jewish center and an ashram.⁷ Two arrests had been made as of this writing.⁸ Police also suspect IM in the motorcycle drive-by shooting that wounded two Taiwanese tourists and a failed, nearby car bombing in New Delhi in September 2010.⁹ An email in the name of IM claimed responsibility for a December 2010 bombing along a historic embankment on the River Ganges in Varanasi, Hinduism's holiest city and a popular tourist site, which killed two people, including a one-year-old girl, and injured more than 30 others.¹⁰ While the 2010 attacks were not on the level of 2008 bombings attributed to Islamist militant groups, Indian authorities continued to warn of persistent threats from IM and LeT throughout 2010.¹¹

In the past three years, the authorities also have arrested a number of alleged Hindu militants for attacks on civilians, focusing public attention on what has been controversially

⁶ See Aminesh Roul, "After Pune, Details Emerge on the Karachi Project and its Threat to India," *Combating Terrorism Center Sentinel*, vol. 3, iss. 4, April 10, 2010 <http://www.ctc.usma.edu/sentinel/CTCSentinel-Vol3Iss4.pdf>; "The Karachi Project," *India Today*, February 18, 2010, <http://indiatoday.intoday.in/site/Story/84662/Cover+Story/The+Karachi+project.html?page=0> (both accessed April 11, 2010).

⁷ "Culprits Behind Pune Blast Identified: ATS," *Deccan Herald*, April 7, 2010, <http://www.deccanherald.com/content/62570/culprits-behind-pune-blast-identified.html> (accessed April 22, 2010).

⁸ "Pune blast conspiracy unravelled, two arrested," Indo-Asian News Service, September 8, 2010, <http://sify.com/news/pune-blast-conspiracy-unravelled-two-arrested-news-national-kjirOcbhgje.html> (accessed September 30, 2010).

⁹ "IM behind Delhi firing, reveal police," *Deccan Herald*, September 20, 2010, <http://www.deccanherald.com/content/98103/im-behind-delhi-firing-reveal.html> (accessed September 30, 2010).

¹⁰ "Varanasi blast: Death toll rises to two," *Asia News International*, December 11, 2010, <http://www.24dunia.com/english-news/shownews/o/Varanasi-blast-Death-toll-rises-to-two/8430484.html> (accessed December 15, 2010).

¹¹ See, for example, "Nationwide terror alert over LeT threat," *The Times of India*, August 20, 2010, <http://timesofindia.indiatimes.com/india/Nationwide-terror-alert-over-LeT-threat/articleshow/6349351.cms> (accessed August 26, 2010); "Terror threat to Taj Mahal, Palace on Wheels: Intelligence Bureau," *Hindustan Times*, December 12, 2010 (accessed December 16, 2010).

termed “saffron terror.”¹² Hindu suspects were charged or questioned in late 2010 in connection with bombings at mosques in Hyderabad and Amjer in 2007, of a passenger train linking Pakistan to India in 2007, and of a Muslim cemetery in Malegaon in 2006. Those three attacks, initially blamed on Islamist militants, together killed at least 115 people and injured nearly 350 others.

The Hindu suspects include members of groups such as Abhinav Bharat, which authorities have also linked to a second bombing in Malegaon in 2008 that killed six people. (See Chapter V, “The Malegaon Blasts.”) Abhinav Bharat is allegedly affiliated with Rashtriya Swayamsevak Sangh (RSS), which is widely considered the ideological fountainhead of Hindu nationalist movements. As of this writing, a ranking member of RSS was being questioned in the 2007 bombings.¹³

Indian Mujahideen

Indian federal and state authorities describe the Indian Mujahideen (IM) as a militant splinter faction of the Students Islamic Movement of India (SIMI), an outlawed organization that promotes an Indian Islamic state.¹⁴ Indian authorities depict IM as a mostly indigenous group but also allege that it is under the control of Pakistan’s ISI and has ties to foreign Islamist militant groups, specifically Bangladesh’s Harkat-ul-Jihad-al-Islami (HuJI) and Pakistan’s LeT and Jaish-e-Mohammad (JeM). Some India security experts assert that IM’s top operators received training at LeT camps.¹⁵ In June 2010, the Indian government placed IM on its list of terrorist organizations and said that since 2005, it had conducted more than

¹² “Saffron terror a new phenomenon, says Chidambaram,” *The Times of India*, August 26, 2010, <http://timesofindia.indiatimes.com/india/Saffron-terror-a-new-phenomenon-says-Chidambaram/articleshow/6434972.cms> (accessed August 26, 2010).

¹³ See Vinay Kumar, “CBI grills RSS leader Indresh Kumar,” *The Hindu*, December 24, 2010, <http://www.thehindu.com/news/national/article972714.ece>; “Aseemanand mastermind behind Mecca blast,” *The Times of India*, December 14, 2010, <http://timesofindia.indiatimes.com/city/hyderabad/Aseemanand-mastermind-behind-Mecca-blast/articleshow/7095551.cms> (both accessed December 28, 2010).

¹⁴ “Students Islamic Movement of India (SIMI),” South Asia Terrorism Portal, <http://www.satp.org/satporgtp/countries/india/terroristoutfits/simi.htm> (accessed June 5, 2009).

¹⁵ See “The Karachi Project,” *India Today*, February 18, 2010, <http://indiatoday.intoday.in/site/Story/84662/CoverStory/The+Karachi+project.html?page=0>; “IM has ‘hostels’ in Gulf, Nepal & Bangladesh too,” *The Economic Times*, March 11, 2010, <http://economictimes.indiatimes.com/news/politics/nation/IM-has-hostels-in-Gulf-Nepal--Bangladesh-too/articleshow/5670127.cms> (accessed August 30, 2010).

10 bombings around the country that killed nearly 500 people.¹⁶ However, the group's origins, its ties to SIMI, and its strength remain unclear.¹⁷

In emails sent to media outlets after attacks, IM claimed responsibility for the 2008 bombings in Jaipur, Delhi, and Ahmedabad, in part as revenge for the deaths of Muslims in the 2002 riots in Gujarat.¹⁸ An email believed to be from IM repeated that refrain in claiming responsibility for the December 2010 bombing in Varanasi, which it described as retaliation for the failure of authorities to hold Gujarat's chief minister accountable for the Gujarat riots of 2002 and for the demolition of the Babri Mosque in 1992.¹⁹ The email cast the September 2010 attack on tourists in New Delhi as retaliation for the killings of protesters by police in Indian-administered Jammu and Kashmir.²⁰

According to Indian authorities, IM was started by a group of SIMI organizers who were frustrated by the group's failure to turn its ideology into action.²¹ They allege that IM leaders operate out of Karachi in Pakistan and use various aliases. Investigators have yet to identify all the IM cells that were established in India, but believe that in addition to alliances with groups such as LeT and HUJI, the IM receives support through criminal networks linked to fugitive gang leader Dawood Ibrahim, believed to be residing in Pakistan.²²

Students Islamic Movement of India

The Students Islamic Movement of India (SIMI) was formed in Aligarh, in Uttar Pradesh state, in 1977. Initially SIMI simply attempted to promote morality campaigns and a conservative

¹⁶ See "Indian Mujahideen declared terror outfit," *The Times of India*, June 4, 2010, <http://timesofindia.indiatimes.com/india/Indian-Mujahideen-declared-terror-outfit/articleshow/6011678.cms>; "Indian Mujahideen Declared a Terrorist Organisation," Indian Home Ministry press release, June 4, 2010, <http://pib.nic.in/release/release.asp?relid=62324&kwd> (both accessed August 17, 2010).

¹⁷ C. Christine Fair, "Students Islamic Movement of India and the Indian Mujahideen: An Assessment," *Asia Policy*, no. 9, January 2010, pp. 101-19.

¹⁸ For more on the Gujarat riots, see Human Rights Watch, "*We Have No Orders To Save You*," <http://www.hrw.org/reports/2002/india/>.

¹⁹ "Indian Mujahideen takes responsibility for Varanasi blast," *The Times of India*, December 7, 2010, <http://timesofindia.indiatimes.com/india/Indian-Mujahideen-takes-responsibility-for-Varanasi-blast/articleshow/7061144.cms#ixzz18QXmlduz> (accessed December 17, 2010).

²⁰ Praveen Swami, "These Terrorists Aren't Playing Games," *Foreign Policy*, September 22, 2010, http://www.foreignpolicy.com/articles/2010/09/22/these_terrorists_arent_playing_games (accessed September 22, 2010).

²¹ *Ibid.*

²² See, for example, "Mumbai Arrests cast light on jihadist-mafia nexus," *The Hindu*, March 16, 2010, <http://beta.thehindu.com/news/national/article245973.ece>; "Indian Mujahideen Behind Pune Bombing," Reuters, March 15, 2010, <http://in.reuters.com/article/topNews/idINIndia-46938320100315>; "We are Better Prepared, says Chidambaram," *The Hindu*, November 27, 2009, <http://beta.thehindu.com/news/national/articles6038.ece>; "The Karachi Project," *India Today*, <http://indiatoday.intoday.in/site/Story/84662/Cover%20Story/The+Karachi+project.html> (all accessed August 30, 2010).

Islamic lifestyle that did not emulate the West. As the Hindu revivalist movement led by the Bharatiya Janata Party (BJP) and its affiliate groups gained strength, SIMI attracted increasing support among Muslim youths and, according to Indian authorities, began preaching a more conservative interpretation of Islam and advocating violent “jihad” to protect the rights of Muslims.²³

India’s central government banned SIMI after September 11, 2001, in its first response to the Bush administration’s call for a “Global War on Terror,” prompting numerous legal challenges.²⁴ Some Indian security analysts believe that the banning of SIMI prompted militant members of SIMI to form IM.

Many former SIMI members insist that the group’s aim was to promote social justice and equality for Muslims. Shahid Badar Falahi, SIMI’s national president who was arrested in September 2001, told Human Rights Watch: “Our basic aim was that Muslim youth should have educational awareness; that they be pious but achieve in new professions.”²⁵ Now out on bail, he continues the legal effort to challenge the ban on SIMI.

Indian officials contend that SIMI has continued its operations despite the ban, often through front organizations, and receives funding primarily from sources in the Persian Gulf that support Islamist militancy. They also allege that some SIMI members have received training and instructions from Pakistan-based groups such as LeT and JeM, and have provided safe houses for militants from LeT, JeM, HUJI, and others.

Lashkar-e-Taiba

Lashkar-e-Taiba (LeT) is widely considered to be the most formidable foreign-based militant group targeting India and is viewed with increasing concern by Western governments. It was formed in the early 1990s and initially operated in Indian-administered Kashmir. Its later strikes inside India’s heartland include the November 2008 attack on Mumbai. After LeT was banned by the Pakistani government in January 2002, largely as the result of international pressure, it adopted a new identity as a charity, Jamaat-ud-Daawa (JuD), which was banned by the United Nations after the Mumbai attacks. LeT allegedly has an intimate relationship

²³ Yoginder Sikand, “The SIMI Story,” *Countercurrents.org*, July 15, 2006, <http://www.countercurrents.org/comm-sikand150706.htm> (accessed June 1, 2009).

²⁴ On August 5, 2008, an Indian special tribunal lifted the government’s ban on SIMI, but the Supreme Court has issued repeated stays on the ruling until it holds a hearing on the issue.

²⁵ Human Rights Watch interview with Shahid Badar Falahi, Azamgarh, June 30, 2009. Badar now practices traditional medicine in Azamgarh, a district in the northeast state of Uttar Pradesh that Indian authorities consider a recruiting ground for the IM.

with the Pakistani army and military Inter Services Intelligence (ISI). While Pakistani authorities closed some facilities linked to LeT and JuD following the Mumbai attack, their efforts were limited and raised questions about the government's commitment.²⁶

Indian authorities have long asserted that LeT had been behind a number of attacks across India. However, it was only after the arrest of Lashkar member Ajmal Kasab, a Pakistani national and the lone surviving gunman in the November 26 Mumbai attack, that they had clear evidence.

Abhinav Bharat

Abhinav Bharat is a Hindu nationalist organization that authorities have blamed for the 2008 Malegaon bombing. It is believed to be a fringe group that broke away from the Sangh Parivar, an umbrella group of the RSS.²⁷ Human Rights Watch and other organizations have concluded that the RSS and associated militant groups, such as the Vishwa Hindu Parishad and the Bajrang Dal, played a role in the mass attacks on Muslims in Gujarat in 2002 and the attacks on Christians in Orissa in 2008. The Bharatiya Janata Party, the main opposition political party in India, is also affiliated with the Sangh Parivar.

The RSS publicly distanced itself from Abhinav Bharat after police arrested several members for their suspected role in deadly attacks. There are allegations that Abhinav Bharat plotted

²⁶ See Daniel Markey, "Terrorism and Indo-Pakistani Escalation," Council on Foreign Relations, CPA Contingency Planning Memorandum No. 6, January 2010, http://www.cfr.org/publication/21042/terrorism_and_indopakistani_escalation.html; Ashley J. Tellis, "Bad Company—Lashkar-e-Tayyiba and the Growing Ambition of Islamist Militancy in Pakistan," testimony before the United States House of Representatives, Committee on Foreign Affairs, Subcommittee on the Middle East and South Asia, March 11, 2010, <http://www.internationalrelations.house.gov/111/55399.pdf>; Stephen Tankel, "Lashkar-e-Taiba in Perspective: An Evolving Threat," New America Foundation, February 2010, <http://www.newamerica.net/sites/newamerica.net/files/policydocs/tankel.pdf> (all accessed August 1, 2010).

²⁷ The Rashtriya Swayamsevak Sangh (National Patriotism Organization, or RSS), was founded in the city of Nagpur in 1925 by Keshav Baliram Hedgewar with the mission of creating a Hindu state. It propagates a militant form of Hindu nationalism that it promotes as the sole basis for national identity in India. According to the RSS, the leaders of India's nationalist movement and those of post-independence India failed to create a nation based on Hindu culture. Western thought and civilization are perceived as enemies of Hindu culture. Religions such as Islam and Christianity are depicted as alien to India, as they are seen as the religions of foreign invaders—the Mughals and the British. The RSS wanted the entire gamut of social life to be designed on the rock bed of Hindu nationalism, "a goal that inspired the creation of RSS political, social, and educational wings that became the Sangh Parivar. Human Rights Watch named RSS as directly involved in the three-day killing spree against Muslims during the Gujarat riots of 2002. RSS denies the allegations. RSS has been banned three times: in 1948 after a former member assassinated Mahatma Gandhi; in 1975 during a government-imposed state of emergency; and in 1992 because of its perceived role in the demolition of the Babri Mosque in Ayodhya. All bans were subsequently lifted. See Human Rights Watch, *"We Have No Orders to Save You": State Participation and Complicity in Communal Violence in Gujarat*, <http://www.hrw.org/legacy/reports/2002/india/>; "RSS aims for a Hindu nation," *BBC News*, March 10, 2003, http://news.bbc.co.uk/2/hi/south_asia/655722.stm (accessed December 27, 2010).

attacks on RSS leaders for not being radical enough in supporting the Hindu cause.²⁸ Serving and retired army officers are also believed to be part of the group, with two men, retired Maj. Ramesh Upadhyay and Lt. Col. S.P. Purohit, implicated in the Malegaon blast of 2008.²⁹ The Abhinav Bharat has also been linked to the 2007 bombing in Ajmer, site of a Sufi shrine. The Rajasthan police have filed charges against three alleged members and are investigating the role of several others.³⁰

Investigators suspect that some members of the RSS may have been involved in these attacks. According to the charges filed by the Rajasthan police in the Ajmer case, a secret meeting where the conspiracy was planned was also allegedly attended by several RSS leaders. A front-organization called Jai Vande Mataram was started by one of the accused, Sunil Joshi, who was later killed.³¹ The Central Bureau of Investigation has also arrested Naba Kumar Sircar, a religious leader who uses the name Swami Aseemanand, in connection with the bombings at the Mecca Masjid in Hyderabad and the Khwaja Moinuddin Chisti shrine in Amjer, and on the Samjhuta Express train, in 2007, as well as blasts in Malegaon and Modasa in 2008, and possibly the mosque blast in Malegaon in 2006.³² Aseemanand, who is also linked to Abhinav Bharat, was apparently a member of the Vanvasi Kalyan Ashram, another organization inspired by the RSS.

²⁸ Stavan Desi, "Blast Accused Wanted to Kill Saffron Leaders," *The Hindustan Times*, November 21, 2008, <http://www.hindustantimes.com/News-Feed/india/Blast-accused-wanted-to-kill-saffron-leaders/Article1-353074.aspx> (accessed January 4, 2011).

²⁹ Yogesh Pawar and Imtiaz Jaleel, "Hindu Group Abhinav Bharat Under Scanner," NDTV, November 7, 2008, <http://www.ndtv.com/convergence/ndtv/story.aspx?id=NEWEN20080071745&ch=11/7/2008%206:03:00%20PM> (accessed January 4, 2011).

³⁰ See "Rajasthan ATS files 806-page chargesheet in 2007 Ajmer blast case," ANI, October 23, 2010, http://www.thaindian.com/newsportal/india-news/rajasthan-ats-files-806-page-chargesheet-in-2007-ajmer-blast-case_100448597.html (accessed January 4, 2011).

³¹ Ibid.

³² Radhika Nagrath and Rajesh Ahuja, "Key ideologue behind Ajmer blast held," November 19, 2010, <http://www.hindustantimes.com/Key-ideologue-behind-Ajmer-blast-held/Article1-628486.aspx> (accessed January 4, 2011); "Aseemanand mastermind behind Mecca blast," *The Times of India*, December 14, 2010, <http://timesofindia.indiatimes.com/city/hyderabad/Aseemanand-mastermind-behind-Mecca-blast/articleshow/7095551.cms> (accessed December 28, 2010).

Major Attacks on Civilians in India Since 2001

New Delhi, December 13, 2001: Five gunmen, one wearing a suicide vest, open fire on India's Parliament after infiltrating the building in a car with government identification stickers. The attack results in the death of a gardener, six security officers and the five attackers, and leads to the 2001-02 India-Pakistan border standoff. Indian authorities blame Pakistan-based LeT and JeM.

Mumbai, July 11, 2006: Seven bombs explode within 11 minutes of each other on suburban railway trains in Mumbai, killing 209 people and injuring more than 700. Police blame LeT, SIMI, and later also accuse IM.

Malegaon, September 8, 2006: Synchronized explosions at a cemetery outside a mosque on an Islamic holy day in the town of Malegaon, Maharashtra state, kill at least 37 people and injure more than 270 others. Most victims are Muslim pilgrims. Maharashtra police charge nine alleged SIMI members but in late 2010 the Central Bureau of Investigation charges alleged members of Hindu nationalist groups including Abhinav Bharat and question a ranking official of RSS.

Panipat, February 19, 2007: Two explosions on the Samjhauta Express connecting India and Pakistan kill 66 people, including Pakistani nationals. Investigators initially suspect LeT, JeM, and other Pakistan-based groups, but in 2010 begin questioning Hindu extremists.

Hyderabad, May 18, 2007: A powerful explosion in the crowded area outside the Mecca Masjid (mosque) kills 9 people and injures over 70. Five others allegedly die as police open fire in responding to the attack. Investigators initially suspect groups including HuJI. In late 2010 the Central Bureau of Investigation names six alleged members of Hindu nationalist groups including Abhinav Bharat and questions a ranking RSS official.

Hyderabad, August 25, 2007: Bombs at an amusement park and at a restaurant kill 44 people. Seven alleged IM members are among those charged.

Amjer, October 11, 2007: An explosion at the Khwaja Moinuddin Chisti, a revered Sufi shrine in Amjer, Rajasthan state, kills three people and injures 15. Police initially suspect groups including HuJI and SIMI, but in late 2010 authorities charge five alleged Hindu nationalists, some of whom are also suspects in the 2007 Hyderabad mosque blast, and question the same ranking RSS member suspected in other attacks as well.

Varanasi, Faizabad, and Lucknow, November 23, 2007: Near-simultaneous blasts targeting lawyers in court premises in three Uttar Pradesh towns kill 15 people. Police later suspect IM.

Jaipur, May 13, 2008: Eight bombings in the space of eight minutes at crowded market areas and Hindu temples kill at least 69 people and wound more than 150. Police charge

four alleged IM members, hold a dozen alleged SIMI members as suspects, and issue warrants for five fugitives.

Bangalore, July 25, 2008: Eight coordinated blasts in areas including a bus stop and a park kill one person and wound seven. Police suspect IM.

Ahmedabad, July 26, 2008: Seventeen explosions kill 57 people and wound at least 156 in markets and buses, and at a hospital where the first blast victims were treated. Five bombs fail to detonate. Several additional bombs fail to explode in the smaller Gujarati city of Surat. Police charge 54 IM suspects and issue warrants for more than three dozen suspects.

Delhi, September 13, 2008: Five synchronized bombings in market places and other congested areas kill at least 26 people and wound more than 130. Police charge 16 suspects and issue warrants for 12 others, two of whom are arrested in 2010. Two other suspects and a police officer are killed in a controversial police raid.

Malegaon, September 29, 2008: A bomb in a Muslim section of Malegaon kills six people. Indian authorities initially blame Islamist extremists but subsequently charge 11 Hindus who are members of the nationalist group Abhinav Bharat, including an army colonel and a nun.

Mumbai, November 26, 2008: A group of heavily armed LeT militants using bombs and small arms attack and seize targets including two luxury hotels, Mumbai's central train station, and a Jewish center, killing at least 166 people and wounding more than 238 others. The dead include 22 foreigners, 20 security forces members, and 9 of 10 attackers. The surviving gunman, Ajmal Kasab of Pakistan, who is captured on video footage aired worldwide during the two-and-a-half day gun-battle, is convicted of charges including murder, conspiracy, and of waging war against India in May 2010.

Pune, February 13, 2010: A bomb rips through Pune's German Bakery, near an ashram and a Jewish center, killing 17 people, including 4 foreigners, and injuring 60 others. The blast takes place on the eve of resumed Pakistan-India peace talks. Police name IM, along with LeT and Pakistan's ISI, as being behind the attack.

New Delhi, September 19, 2010: Two gunmen on a motorcycle open fire with an automatic weapon on a tourism bus outside Jama Masjid, a historic mosque, wounding two Taiwanese tourists. A car explosion nearby causes no injuries. IM claims responsibility.

Varanasi, December 7, 2010: A bomb blows up along an embankment on the River Ganges in Varanasi, Hinduism's holiest site and a popular tourist city, killing two people, one of them a one-year-old girl, and injuring more than 30 others. An email claiming to be from IM takes responsibility.

Past Responses: Abusive and Ineffective

India's security forces have long sought to elicit information, evidence, and confessions for bombings and other militant attacks using torture and other ill-treatment of suspects—which in some cases resulted in deaths. Many security experts believe these abuses stem in part from India's longstanding failure to modernize, expand, and train its police units, which wield enormous authority and are responsible for investigating most terrorism-related incidents. "Much of these human rights violations are caused by a deficit of capacity," said Delhi-based security expert Ajai Sahni. "You give me a stick and nothing else, no intelligence or forensic training, no education—and then you ask, why are you beating people up?"³³

Indian security forces are also responsible for grave human rights abuses during counterinsurgency operations, such as in Jammu and Kashmir, Assam, and Manipur.³⁴ Those subjected to torture and ill-treatment are not just members of militant groups, but include many people whom the security forces falsely claim are involved in militant attacks or are the relatives of suspected militants.

Indian security forces have frequently been implicated in faked "encounter killings"—summary executions of persons in custody who the authorities later claim were killed in gun battles with insurgents.³⁵

This issue was highlighted in a September 2009 report in which a magistrate concluded that members of the Gujarat Crime Branch in Ahmedabad extrajudicially executed four people in 2004 and then falsely claimed they were LeT members killed in a shootout to thwart a plot to kill Gujarat's chief minister.³⁶ According to the inquiry report of Magistrate S.P. Tamang, members of the state's Crime Branch abducted a 19-year-old woman named Ishrat Jahan and the other three suspects on June 12, 2004, and killed them in custody two days later. The

³³ Human Rights Watch telephone interview with Ajai Sahni, executive director of the Institute for Conflict Management, New Delhi, May 4, 2010.

³⁴ See Human Rights Watch, *India – "Everyone Lives in Fear": Patterns of Impunity in Jammu and Kashmir*, September 11, 2006, <http://www.hrw.org/reports/2006/india0906/>; Human Rights Watch, *India – "These Fellows Must Be Eliminated": Relentless Violence and Impunity in Manipur*, September 29, 2008, <http://www.hrw.org/en/reports/2008/09/15/these-fellows-must-be-eliminated>.

³⁵ See Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, August 2009, <http://www.hrw.org/node/84628>.

³⁶ S.P. Tamang, Metropolitan Magistrate Inquiry No. 1/2009, September 7, 2009. Copy on file with Human Rights Watch; Manas Dasgupta, "Ishrat Jahan Killing Also a Fake Encounter: probe report," *The Hindu*, September 8, 2009, <http://www.thehindu.com/2009/09/08/stories/2009090856670100.htm> (accessed December 1, 2009). Gujarat cabinet minister Jay Narayan Vyas described the inquiry report as "bad in law" and said the state would challenge it. The Gujarat government also cited reports from federal intelligence agencies describing the four victims as terrorists. India's Home Minister P. Chidambaram countered that intelligence inputs could not be treated as conclusive evidence and said that would not in any case justify illegal executions.

police then claimed that there was an armed exchange outside Ahmedabad on June 15, in which they killed Muslim militants conspiring to murder Gujarat Chief Minister Narendra Modi, an account that Tamang described as “false and concocted.” According to the magistrate, the police officers were motivated by “personal interest which included to secure their promotion, to maintain their posting, so as to falsely show excellent performance.”³⁷ Despite strong objections from the Gujarat state government, the Gujarat High Court in September 2010 empaneled a special investigative team to further probe the killings.³⁸

The Gujarat Crime Branch in Ahmedabad, which our research found to be one of the worst abusers of suspects held for the 2008 bomb blasts, has been accused of an array of violations in other cases as well. In July 2010, the Central Bureau of Investigation arrested Amit Shah, a minister in the Gujarat state government, for allegedly ordering the extrajudicial execution of an alleged terrorism suspect called Sohrabuddin in November 2005, and for his role in the death of two witnesses, including Sohrabuddin’s wife.³⁹ Several senior police officers, including Abhay Chudasama, deputy commissioner of the Crime Branch, have also been arrested in this case.⁴⁰ In January 2010, the Supreme Court asked the CBI to take over the investigation of the case, saying an independent agency was needed because “high police officials are involved in the said crime.”⁴¹ The Gujarat police also claimed in this case that they killed Sohrabuddin to thwart a plot on Chief Minister Modi.

In another case, the Andhra Pradesh government admitted in 2008 that its police had unlawfully detained and tortured 21 of the 100 Muslims it questioned in connection with two blasts in 2007 in the state capital of Hyderabad. On the basis of findings by the Andhra Pradesh

³⁷ S.P. Tamang, Metropolitan Magistrate Inquiry No. 1/2009, September 7, 2009. The debate continues over whether Jahan was involved with LeT. In a controversial statement, American LeT operative David Headley alleged after his arrest that Ishrat was an LeT member. See “Ishrat, would-be Modi assassin, was an LeT fidayeen: Headley,” *Indian Express*, July 5, 2010, <http://www.indianexpress.com/news/headley-ishrat/642435/> (accessed July 5, 2010). Indian central government officials have declined comment.

³⁸ “Delhi Police officer to head probe team in Ishrat Jahan case,” Indo-Asian News Service, September 24, 2010, <http://sify.com/news/delhi-police-officer-to-head-probe-team-in-ishrat-jahan-case-news-national-kjyvkdgbgfa.html> (accessed September 27, 2010). For more information on state efforts to block the probe, see “Gujarat opposes handing over Ishrat case to CBI,” *Hindustan Times*, July 19, 2010, <http://www.hindustantimes.com/rssfeed/gujarat/Gujarat-opposes-handing-over-Ishrat-case-to-CBI/Article1-574798.aspx>; “Ishrat Jahan encounter probe goes to SIT,” *The Times of India*, August 12, 2010, <http://timesofindia.indiatimes.com/india/Ishrat-Jahan-encounter-probe-goes-to-SIT/articleshow/6298170.cms> (both accessed August 25, 2010).

³⁹ “Sohrabuddin Fake Encounter Case: CBI Arrests Amit Shah,” *The Times of India*, July 25, 2010, <http://timesofindia.indiatimes.com/india/Sohrabuddin-fake-encounter-case-CBI-arrests-Amit-Shah/articleshow/6213768.cms> (accessed August 25, 2010).

⁴⁰ “CBI arrests Gujarat IPS officer in encounter case,” *The Times of India*, April 29, 2010, <http://timesofindia.indiatimes.com/india/CBI-arrests-Gujarat-IPS-officer-in-encounter-case/articleshow/5870506.cms#ixzz19X3DSR4A> (accessed December 29, 2010).

⁴¹ J. Venkatesan, “CBI to probe fake encounter killing of Sohrabuddin,” *The Hindu*, January 12, 2010, <http://www.thehindu.com/news/national/article79245.ece> (accessed August 25, 2010).

Minorities Commission, the government ordered compensation of 30,000 rupees (US\$600) to each of 21 victims. The detainees told the commission that they were subjected to “third-degree” methods that included being stripped, hung upside down, severely beaten, subjected to electric shocks, and threatened with the torture of their relatives, particularly females.⁴²

Courts have intervened in other cases as well. In 2004, at least 14 police officers were found responsible for the custodial killing of Syed Khwaja Yunus, a suspect in a 2002 Mumbai bombing. After the Maharashtra government failed to prosecute several police suspects, and filed charges against only four junior police officers, the Bombay High Court questioned the government’s failure to prosecute higher-ranking police suspects in Yunus’ killing.⁴³

State police abuse has been facilitated by abusive and overbroad counterterrorism laws that were repealed as unconstitutional in 2004, only to be largely reinstated after the November 26 Mumbai attacks. Under the Prevention of Terrorism Act (POTA) of 2002, hundreds of suspects were arrested and subjected to lengthy detention, in which many were physically abused, on vague and open-ended charges.⁴⁴

Many observers have described the shortcomings of state police forces that have resulted in ineffectual investigations and widespread abuses in counterterrorism efforts. Even in routine law enforcement duties, the Indian police have gained a reputation for inefficiency, brutality, and corruption. As Human Rights Watch has detailed elsewhere, this is a consequence both of the impunity with which police too often operate and severe shortcomings in their capacity.⁴⁵ The police continue to be governed by the Police Act of 1861, which was drafted by British colonial administrators with the aim of instilling fear rather than inspiring trust and cooperation.⁴⁶ Junior police officers are underequipped and overworked; the nation’s police-to-population ratio is nearly half the UN-recommended level.⁴⁷ Senior police officers, in turn, complain of political interference from their supervisors.

⁴² “India: Hold Torturers Accountable,” Human Rights Watch news release, November 17, 2008, <http://www.hrw.org/en/news/2008/11/17/india-hold-torturers-accountable>.

⁴³ Hetal Vyas, “Justify Immunity to 10 cops in Khwaja Yunus case: HC to govt,” DNA, December 9, 2009, http://www.dnaindia.com/mumbai/report_justify-immunity-to-10-cops-in-khwaja-yunus-case-hc-to-govt_1321698 (accessed May 14, 2009).

⁴⁴ Anil Kalhan, et al., “Colonial Continuities: Human Rights, Terrorism, and Security Laws in India,” *Columbia Journal of Asian Law*, vol. 20, no. 1, 2006, http://www.abcny.org/pdf/ABCNY_India_Report.pdf (accessed January 3, 2011), ch. 5.

⁴⁵ See Human Rights Watch, *Broken System*, <http://www.hrw.org/node/84628>.

⁴⁶ *Ibid.* Police officers are selected through a national examination process then allotted to various state cadres. State governments also recruit to fill the junior ranks, particularly the primary investigative force at the inspector and police station levels.

⁴⁷ India had 130 police for every 100,000 people in 2009, compared to an international average of 270. See Union Home Minister P. Chidambaram, Intelligence Bureau Centenary Endowment lecture, official transcript, New Delhi, December 23,

Police capacity to collect and analyze forensic evidence is minimal. For instance, there is little training in evidence gathering so that by the time evidence arrives at one of the country's few laboratories, it has often decomposed or been contaminated. Police have almost no training in intelligence gathering and building community support networks to identify suspects and prevent attacks.⁴⁸ As for human rights training, it "is taken as a token, something that has to be imparted," said Mallika Joseph, deputy director of the New Delhi-based Institute of Peace and Conflict Studies. "There is no training on the issue of accountability."⁴⁹

In recent years, many state police forces have created special squads to investigate and respond to terror attacks. Yet with only a few exceptions—notably the Mumbai attack, in which LeT gunman Ajmal Kasab's confession was backed by video evidence of his participation—previous Indian counterterrorism investigations have failed to produce sufficient evidence to allow suspects to be prosecuted.⁵⁰ Many security analysts view even these special counterterrorism units as poorly trained, lacking in resources and technology, and fraught with infighting among states and with central government intelligence agencies.⁵¹ "The Anti-Terrorism Squads are practically dysfunctional," said security expert Sahni. "They are basically a few guys picked up from the regular force and told, 'All right now you just run after terrorists.'"⁵²

In addition, counterterrorism units cannot cross state boundaries. According to Ajit Doval, a former director of India's Intelligence Bureau, they "tend to focus their investigations on where the attack occurred and they stop their investigations where their jurisdiction ends."⁵³ Their lack of mobility can pose serious obstacles to carrying out successful investigations. In many cases, the perpetrators of attacks come from outside states (or countries), plot attacks in one community, obtain financing in another, stage attacks in yet another, and hide in another still.

2009, <http://www.mha.nic.in/pdfs/HM-IB-Endowment231209.pdf> (accessed May 8, 2010). The United Nations' recommended standard is 222 police per 100,000.

⁴⁸ Human Rights Watch telephone interviews with security analysts including C. Christine Fair, assistant professor at the Center for Peace and Security Studies at Georgetown University, May 6, 2010; Praveen Swami, diplomatic editor, the *Daily Telegraph*, at the time associate editor, *The Hindu*, New Delhi, May 7, 2010; and Sanjay Patil, consultant on police reforms with the Commonwealth Human Rights Initiative, May 7-8, 2010.

⁴⁹ Human Rights Watch interview with Mallika Joseph, deputy director of the Institute of Peace and Conflict Studies, New Delhi, June 17, 2009.

⁵⁰ "India's Success Rate Lacks in Terrorist Prosecutions," *The Wall Street Journal*, December 8, 2008, http://online.wsj.com/article/NA_WSJ_PUB:SB122868069511586131.html (accessed July 30, 2010).

⁵¹ Human Rights Watch interview with Ajai Sahni, executive director, Institute for Conflict Management, New Delhi, June 15, 2009.

⁵² Human Rights Watch telephone interview with Sahni, New Delhi, May 4, 2010.

⁵³ Human Rights Watch telephone interview with Ajit Doval, New Delhi, May 7, 2010.

The central government security apparatus is also outmoded. India still lacks a nationwide crime database, leaving state police stations as “virtually unconnected islands,” the country’s Home Minister, P. Chidambaram, has conceded.⁵⁴ In a country of more than 1.1 billion people, fewer than 500 officials from the National Intelligence Bureau specialize in terrorism, and fewer than 150 Coast Guard boats and aircraft guard 5,000 miles of shoreline.⁵⁵ More than one year after the Mumbai attack, India’s foreign intelligence agency, called the Research and Analysis Wing (R&AW), reportedly had little more than a dozen officer-grade employees with Pakistani language and area expertise.⁵⁶ “Unless you have good intelligence you have nothing. You are just groping in the dark,” said Vikram Sood, former secretary of the R&AW. “You are going to catch the wrong chaps, you are going to alienate the public, and you will create more Indian Mujahideen.”⁵⁷

⁵⁴ P. Chidambaram, “A New Architecture for India’s Security,” <http://www.mha.nic.in/pdfs/HM-IB-Endowment231209.pdf>.

⁵⁵ Human Rights Watch interview with Sahni, June 15, 2009.

⁵⁶ Praveen Swami, “The alphabet soup of internal security,” *The Hindu*, January 11, 2010, <http://www.thehindu.com/2010/01/11/stories/201001115220800.htm> (accessed May 8, 2010).

⁵⁷ Human Rights Watch telephone interview with Vikram Sood, New Delhi, May 7, 2010.

II. Torture and Other Ill-Treatment of Terrorism Suspects

The bombings in Jaipur, Ahmedabad, and Delhi in 2008 killed a total of 152 people, and spread panic across India. Another two people were killed in serial bombings on July 28, 2008, in Bangalore. During a three-day period immediately after the Ahmedabad blasts in July, police defused 23 bombs in the Gujarati port city of Surat.

In response, state police carried out massive sweeps of Muslim communities in those cities, as well as in areas such as Uttar Pradesh state that had suffered attacks in the recent past. Hundreds of Muslim men were brought in for questioning, particularly those who were known or suspected members of the banned student group Students Islamic Movement of India (SIMI). Ultimately, police charged more than 70 suspects with involvement in the attacks and issued arrest warrants for more than three dozen others.

Human Rights Watch has found credible evidence that state police units investigating the attacks engaged in widespread and serious abuses of suspects' rights, such as arbitrary arrest and detention, torture, and other ill-treatment, including threats against suspects and their relatives. Police in Delhi may have deliberately killed two suspects in a staged shootout. These abuses are serious violations of both Indian and international law.

In several cases, plainclothes police picked up suspects and yet, even with eyewitnesses present, did not register them as having been arrested for days or even weeks, putting them at particular risk of mistreatment. Former suspects, relatives of suspects, and lawyers told Human Rights Watch that police held and tortured some detainees in secret interrogation centers. They alleged that detainees were blindfolded and held in stress positions during all their waking hours, beaten, subjected to electric shock, or denied food and water. Many said police forced detainees to make false confessions, at times making them repeat a fabricated version of events until they had memorized it. In several instances reported to Human Rights Watch, the authorities threatened detainees into telling relatives they were guilty, or would deny them access to counsel and relatives. According to defense lawyers, at least a dozen suspects have withdrawn confessions they claim were false and obtained by force.

Abuses against terrorism suspects were carried out by specialized units of state police forces, primarily the Maharashtra Anti-Terrorism Squad (ATS), headquartered in Mumbai; the Uttar Pradesh ATS, headquartered in Lucknow; the Rajasthan ATS, headquartered in Jaipur; and the Ahmedabad Crime Branch of the Gujarat State Police. In Delhi, the abuses were carried out by the Special Cell of the police force. While the worst abuses occurred in police

custody, in Jaipur and Ahmedabad, suspects were also beaten, denied access to relatives and lawyers, and suffered other ill-treatment after they had been transferred to jails, which are under judicial authority.

However, Human Rights Watch did not hear similar allegations of abuse from suspects held by regular police following the Pune blast on February 13, 2010, even though Indian authorities quickly named Indian Mujahideen (IM), assisted by Pakistani-American David Headley and Lashkar-e-Taiba (LeT), as the most likely suspects.⁵⁸ According to rights defenders who monitored the investigations, the police in this instance did not arbitrarily round up Muslims. “No young Muslims were detained or ill treated,” said Kishore Jagtap, a Pune-based activist who had previously met with authorities to warn against arbitrary round-ups.⁵⁹

Human Rights Watch sent repeated requests for comment on our findings to central Home Ministry officials, as well as to ranking government and police officials in the states we investigated.⁶⁰ Only three officials responded—a police director from Maharashtra state, the police commissioner from the city of Baroda in Gujarat, and a ranking Delhi police official who spoke on condition of anonymity. All three police officials denied any abuse or illegal activity of any kind.

“Whatever allegations are made were afterthought and tutored by their attorneys with a view to frustrate the investigation,” K.P. Raghuvanshi, the additional director general of police for law and order in Maharashtra, stated in a written response to Human Rights Watch. Raghuvanshi was chief of the state’s Anti-Terrorism Squad when much of the abuse allegedly occurred. “Therefore all the charges of beating, unlawful detention, secret interrogation center etc. are false and baseless.”⁶¹

According to the Baroda police commissioner, Rakesh Asthaana, in a response to Human Rights Watch, Indian police generally abide by the law and are subjected to “effective

⁵⁸ Headley pleaded guilty in the United States in March 2010 to terrorism-related acts including reconnaissance for LeT at the sites that were attacked in Mumbai on November 26, 2008. In his guilty plea, Headley said he had conducted surveillance for LeT in various cities in India in 2008-09. Numerous media reports quote Indian or US authorities as saying those cities included Pune. See, for example, “Pune blast, Headley’s recce linked, says home secretary,” *Hindustan Times*, February 15, 2010, <http://www.hindustantimes.com/newdelhi/Pune-blast-Headley-s-recce-linked-says-home-secretary/509188/H1-Article1-509172.aspx> (accessed March 1, 2010); Jane Perlez, “American Terror Suspect Traveled Unimpeded,” *The New York Times*, March 26, 2010, <http://www.nytimes.com/2010/03/26/world/asia/26pstan.html> (accessed March 26, 2010).

⁵⁹ Human Rights Watch interview with Kishore Jagtap, Pune, April 28, 2010.

⁶⁰ Copies of correspondence on file with Human Rights Watch.

⁶¹ Letter from K.P. Raghuvanshi, additional director general of police for law and order in Maharashtra, to Human Rights Watch, August 2, 2010.

frameworks/checks and balances.” He added that should supervisors learn of an alleged abuse, “immediate, appropriate action, as per the law, is taken against the guilty.”⁶²

Torture in Police Custody

Human Rights Watch received numerous credible accounts of police torture and other ill-treatment of suspects detained for the 2008 bombings. Methods included both physical and mental abuses such as beatings, electric shocks, stress positions, denial of food and water, sensory deprivation, and threats against suspects and their families. The level of abuse varied by the police force involved and how swiftly investigators were able to secure confessions or other incriminating information.

In some cases, the police not only relied on torture to force suspects into incriminating themselves and others, they also fabricated confessions that they made the suspects sign and memorize, to repeat later in front of a magistrate. They also used confessions to persuade magistrates to extend police custody of suspects for continued questioning.⁶³

In all types of criminal cases in India, police routinely use torture to extract confessions. Many investigating officers admit they consider torture and other forceful methods essential tools of police work.⁶⁴ In the 2008 bombing cases, those tendencies appeared to have been exacerbated by the tremendous public pressure to find and punish the perpetrators. “There is a good deal of torture, particularly in terrorist cases.... The police are under terrible pressure to come up with quick fixes,” Kadayam S. Subramanian, a retired senior police officer, told Human Rights Watch. He also explained that, lacking adequate training on

⁶² Letter from Rakesh Asthaana, police commissioner of Baroda, to Human Rights Watch, June 7, 2010.

⁶³ For example, in seeking further custody of two suspects, Mohammad Saif and Zeeshan Ahmed, the police made a submission that said, “During investigation accused Mohammad Saif confessed that he belongs to terrorist outfit ‘Indian Mujahideen,’ and their Delhi organization.... The arrested accused Zeeshan also corroborated the facts and confessed his involvement.... The investigation of the case is at a very crucial stage and the custodial interrogation of the accused will lead to unearthing of the entire module of the Indian Mujahideen who have their network in various parts of the country.” Submission by Assistant Commissioner of Police Sanjeev Kr. Yadav in the Tiz Hazari Courts, Delhi, October 4, 2008. Copy on file with Human Rights Watch. This practice has prompted widespread criticism, not least because it is said to have led to increased pressures on police to extract confessions before seeking extended custody. “Some conventions and practices have developed in several states for the magistrates not to grant police custody unless the investigating officer pleads that the accused has already made a confession and his continued custody is necessary to recover the property, [evidence],” wrote D.P. Khanna, “Reform Areas in Criminal Law” in P. J. Alexander, ed., *Policing India in the New Millennium* (New Delhi: Allied Publishers, 2002).

⁶⁴ See Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, August 2009, <http://www.hrw.org/node/84628>, pp. 81-86. In 2008, the nongovernmental organization People’s Watch extrapolated from its research in several Indian states that police torture about 1.8 million people every year in India. The Supreme Court highlighted the problem in its 1997 landmark *D.K. Basu* decision, noting: “Worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture.” *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

interrogation and evidence gathering, “a large percentage of the police feel they would totally fail if they were to strictly adhere to the rule of law.”⁶⁵

Precisely because of the high risk of torture, confessions made to the police are generally not admissible as proof of guilt in an Indian court of law. For a confession to be used as evidence, a suspect must repeat the confession before a magistrate.⁶⁶ However, a suspect’s statements to police are admissible as corroboration of other evidence, creating a “back door” for them to enter into court proceedings.⁶⁷

Much of the worst abuse in the 2008 bombing investigations was committed by the Gujarat Crime Branch police at their Gaekwad Haveli lockup in Ahmedabad. Vikas Padora, a Delhi attorney, recounted the experience of a suspect who had alleged abuse in Delhi Special Police custody and was subsequently transferred to Ahmedabad. The man pleaded with him, “Gujarat police are even worse, kindly keep me in Delhi.”⁶⁸

According to I.M. Munshi, a lawyer for many of the Gujarati accused, suspects at the Gaekwad Haveli lockup were forced to sit facing a wall, their hands cuffed and their eyes covered, for 18 to 20 hours a day, and often were taken for interrogation late at night. A former suspect held in Ahmedabad gave a similar account, emphasizing that suspects were made to wear dark masks and that beatings in the lockup usually began after midnight. “The screaming lasted all night,” the former detainee said. His interrogators usually came for him at 1 or 2 a.m.:

I was beaten with a wooden stick and a leather belt. I had to stand with my hands extended horizontally and if they came down, the police would beat me.

⁶⁵ Human Rights Watch interview with K.S. Subramanian, former director general of police for Tripura state, intelligence chief, and research and policy director of India’s Home Ministry, New Delhi, July 6, 2009.

⁶⁶ India’s Evidence Act of 1872, secs. 24-26. Section 24 states that: “A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise.” Indian Evidence Act of 1872, <http://www.vakilno1.com/bareacts/indianevidenceact/indianevidenceact.htm>.

⁶⁷ *Ibid.*, sec. 27. According to the Indian Supreme Court, “The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information.” *Bodh Raj v. State of J&K*, (2002) 8 SCC 45. See also Law Commission of India, “185th Report on the Evidence Act,” 2003, <http://lawcommissionofindia.nic.in/reports.htm> (accessed September 9, 2010), pp. 152-156.

For example, if a suspected thief reveals the location of stolen property, the police can seize the property and use it as evidence—including against the accused, should the stolen property implicate him or her. In addition, even in the case of a coerced confession, the evidence recovered as a result is admissible, despite the potential for abuse. That is contrary to the law in other common law jurisdictions, such as the United States, where the courts’ exclusion of such evidence (the “fruit of the poisonous tree” doctrine) in the 20th century gradually reduced police use of torture and ill-treatment in interrogations, although non-physical police coercion remains a significant problem.

⁶⁸ Human Rights Watch interview with Vikas Padora, New Delhi, July 4, 2009.

My physical condition was such that I could not stand it for more than ten minutes. Whenever they interrogated me and they felt that the answer was improper, they beat me with the wooden stick or the leather belt or whatever they liked. I was told by the police department, “If you do not cooperate, we will take custody of all of your family. We will not allow your [relative] to study. We will not allow your [relative] to work.” I was so scared I did not know what would happen and what to do or not to do. I had no hope of coming out.⁶⁹

Much of the torture involved techniques that did not leave obvious marks. In Gujarat, according to some former suspects, relatives, and lawyers, police used a method called the “T,” which involved pulling a suspect’s legs apart while beating the bottoms of his feet. A relative of one detainee said:

He told me, “I was beaten very badly with the T. They tied ropes on both feet and they stretched them to 180 degrees and in that situation I went totally unconscious. After 10 minutes, I regained consciousness, and the pain I felt was unbearable by any man.”⁷⁰

Not all torture is carried out in a manner to cover up the abuse. As a mother of a detainee in Gujarat recounted:

My son had a big beard. But we saw that large tufts had been pulled out of his face. But when I asked him, the policeman said, “Tell your mother that the police are very nice.” Later, once he went to jail, he told me that they had pulled his beard and beaten him. He said they even beat him with a belt.⁷¹

In Mumbai, lawyer Shahid Azmi said that one of his clients was tortured so badly by the Maharashtra ATS during a month of arbitrary detention that when he saw him in October 2008, two months after he was first taken into custody, he still had trouble walking:

He was still limping, almost unable to walk, in a deep depression and almost unable to say “yes” or “no”.... About six months after his arrest he told me

⁶⁹ Human Rights Watch interview, 2009. Name, exact date and location withheld to protect interviewee from possible retaliation.

⁷⁰ Human Rights Watch interview, 2009. Name, exact date and location withheld to protect interviewee and suspect from possible retaliation.

⁷¹ Human Rights Watch interview, 2009. Name, exact date and location withheld to protect interviewee and suspect from possible retaliation.

that he was kept naked for several days, that he was beaten badly with sticks on the soles of his feet ... and with belts.⁷²

Several relatives said police deprived suspects of food or water. A father of a suspect told Human Rights Watch, “[My son] said, ‘We were kept hungry for three days at a time, we were not allowed to sleep.’”⁷³

Mohammad Arif, arrested in the Uttar Pradesh capital of Lucknow in September 2008, retracted his statement of involvement in the bombings in that state and in Gujarat, saying that the Uttar Pradesh ATS used torture to make him confess:

I was punched, kicked, beaten very badly. In order to humiliate me and to break me down the ATS made me stand for long hours and hung me upside down. During the police custody, I was denied all basic amenities and was forced to drink water from toilet. Further on, I was subjected to electric shocks by the police officials and made to repeat what they were saying. The interrogators repeatedly used ... name calling, sexually profane abusive language, with me.”⁷⁴

Forced Confessions in Police Lockups

Relatives and lawyers of suspects told Human Rights Watch that detainees were made to sign blank papers or to memorize confessions handed to them by police. Twenty-two-year-old suspect Saqib Nisar, an alleged IM member, was detained at the Delhi Special Cell lockup in October 2009. According to Nisar’s father, Nisar Ahmed, his son was denied sleep until he memorized a police-concocted narrative of the Delhi bombings. The father said his son’s face was swathed in cloth when he was first allowed to visit him in October 2009:

I unwrapped my son's face and saw the wounds.... When I asked my son if he was tortured, he said, “They are hardly going to treat me with love. They want to build the case.... They used to make us memorize a story of the police

⁷² Human Rights Watch interview with Shadid Azmi, Mumbai, June 25, 2009. Azmi was killed in February 2010; see chapter titled *Attacks on Lawyers*.

⁷³ Human Rights Watch interview, 2009. Name, exact date and location withheld to protect interviewee and suspect from possible retaliation.

⁷⁴ “Retraction of Statements Made under Duress,” Court of Judicial Magistrate, Lucknow, February 13, 2009. Copy on file with Human Rights Watch.

version of the case. We were not allowed to sleep until we could recite the police version.”⁷⁵

In some cases reported to Human Rights Watch, former suspects alleged that police tortured or threatened them with the aim of making them provide confessions that would implicate others. One man told us he was released in return for agreeing to provide false testimony for the prosecution.⁷⁶ “Testimony was given by the [police] department to me to learn by heart and I had to recite the statement in front of all of them [in court],” he told Human Rights Watch. “It was a totally false description. On this condition they released me.”⁷⁷

In cases where suspects have filed complaints of such abuse, the police units in question denied any ill-treatment, saying in court papers that, for example, they “meticulously followed” laws regarding custody and that suspects fabricated wrongdoing to dodge prosecution.⁷⁸ One ranking Delhi police official, speaking to Human Rights Watch on condition of anonymity, contended that his unit did not have to torture:

We did not have to use what we police call “rough treatment” because they all admitted to their crimes immediately. The words just flowed out of them. These are very young boys and they were extremely frightened. Some of them were crying. We felt sorry for them because they had been trapped.⁷⁹

Lawyers and relatives counter that the suspects were too frightened to complain about torture because they were being returned to extended custody of the very police who were perpetrating the abuse.

Human Rights Watch also received complaints of police holding individuals in secret interrogation centers for one or more days. Three suspects and one human rights activist

⁷⁵ Human Rights Watch interview with Nisar Ahmed, New Delhi, June 14, 2009.

⁷⁶ Police consider such confessions valuable because the Indian Evidence Act allows the use of a confession that affects the person and another jointly on trial for the same offense. Sec. 30 states: “When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.” Indian Evidence Act, <http://www.vakilno1.com/bareacts/indianevidenceact/CHAPTER2/S30.html>.

⁷⁷ Human Rights Watch interview, 2009. Name, exact date and location withheld to protect interviewee from possible retaliation.

⁷⁸ See, for example, *Peoples Union for Democratic Rights v. Union of India*, Reply Affidavit of Respondent No. 3, Writ Petition No. 7272 (Civil) of 2008. Copy on file with Human Rights Watch.

⁷⁹ Human Rights Watch interview with ranking Delhi police official, July 2009, New Delhi. The interviewee’s identity and the exact date of interview are being withheld as the official was not authorized to speak on the record.

said that they were beaten and held in secret police interrogation centers in Maharashtra, Gujarat, and Uttar Pradesh. Two of the suspects were Hindu.⁸⁰

In Baroda, a city in Gujarat that was one of the flashpoints of Hindu-Muslim riots in 2002, police from a unit called the Special Operations Group allegedly took a group of young Muslim men to a secret interrogation center at a farmhouse outside the city in August 2008 and beat them all night while questioning them about the Ahmedabad bombings and the Surat bombing attempts, according to two relatives of a member of the group. One relative said the victim later told him the abuse included electric shocks:

The torture continued from about midnight or one o'clock until morning.... They were grabbed by the collars and their heads were bashed against the walls. They were given electric shocks and threatened that “either you confess to your crimes or we will harass your family members or ruin your business or kill you in an encounter—take you outside and kill you.”⁸¹

State police and other security forces deny the existence of secret interrogation centers, but there have been persistent allegations that they exist.⁸²

Beatings in Jail

Suspects in India are generally considered to be safe from abuse once they are transferred from police station lockups to jails, which are under judicial custody. However, Human Rights Watch heard credible allegations from relatives and lawyers that suspects in the 2008 blasts were abused in such facilities in Jaipur, Ahmedabad, and Delhi. The alleged

⁸⁰ For more information on the Hindu cases, see Chapter IV, “Religious and Ethnic Discrimination,” and Chapter V, “The Malegaon Blast: Hindu Suspects Allege Abuse.”

⁸¹ Human Rights Watch interview, 2009. Name, exact date and location withheld to protect interviewee and suspect from possible retaliation. In September 2009, Indian human rights groups including Anhad and a former deputy mayor of Baroda held a news conference to denounce a similar incident earlier that month in which five Baroda Muslim youths were taken to a farmhouse and tortured outside of Baroda. Immediately afterwards, unknown assailants attacked the former deputy mayor. See “Gujarat: Brutal attack on former mayor of Vadodara,” Anhad press release, October 11, 2009, <http://www.anhadin.net/article91.html> (accessed November 18, 2009).

⁸² In one of many such allegations, the Indian news magazine *The Week* reported the existence of 15 secret interrogation centers. See “India's secret torture chambers,” *The Week*, July 12, 2009, <http://indianvanguard.wordpress.com/2009/07/22/india%E2%80%99s-secret-torture-chambers-a-book-and-an-essay> (accessed December 29, 2010). Indian security experts and a former ranking police intelligence official, Kadayam S. Subramanian, also told Human Rights Watch that they believe the centers exist.

perpetrators include jail authorities, the police, and fellow inmates. In two jails, guards and police beat suspects while they knelt in prayer.⁸³

In August 2010, Mohammed Salman, a 17-year-old held in Delhi's Tihar Jail in connection with bomb blasts in the capital, appeared in court with his head bandaged. Salman told the judge that two inmates had repeatedly slashed his face with a razor blade earlier that month. He said jail authorities "did nothing" to prevent the incident—international law prohibits the incarceration of children under 18 with adults⁸⁴—although he had twice requested transfer because he feared for his safety, and also took no action against the attackers.⁸⁵ He also accused guards of laughing and saying: "He is a terrorist and this is what should happen to him, anyway."

Salman received 22 stitches three days after the attack and was moved to another cell. The judge ordered an internal investigation that had not been made public as of this writing. In Jaipur Central Jail, guards allegedly beat about a dozen prisoners on September 21, 2009, after they requested permission to leave their cells for extra hours and pray with other inmates to mark Eid al-Fitr, an important Islamic holiday. A few hours after the request, while the prisoners were kneeling in afternoon prayer, a group of police officers, prisoners, and jail authorities dragged them from their cells and struck them with batons and sticks, according to complaints lodged by two inmates and a Muslim delegation of activists, lawyers, and relatives.⁸⁶

⁸³ See International Covenant on Civil and Political Rights, art. 10(1), "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person," discussed below. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <http://www2.ohchr.org/english/law/ccpr.htm> (accessed December 29, 2010). The UN Standard Minimum Rules for the Treatment of Prisoners, secs. 6 and 42, respectively, set out the prohibition against religious discrimination against prisoners and guarantee prisoners' right to practice their faith. UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (accessed November 2, 2009). The beatings during prayer are part of a broader pattern against the 2008 bombing suspects that is described in Chapter IV, "Religious and Ethnic Discrimination."

⁸⁴ See ICCPR, <http://www2.ohchr.org/english/law/ccpr.htm>, art. 10(2)(b); Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force, September 2, 1990, <http://www2.ohchr.org/english/law/crc.htm> (accessed December 29, 2010), art. 37(c).

⁸⁵ The account of this incident is based on Human Rights Watch telephone and email exchanges with Manisha Sethi of the Jamia Teachers' Solidarity Association at Jamia Millia Islamia University in New Delhi, who was serving as a spokesperson for Salman's lawyers, September 1-3, 2010, and on media clips including "Explanation sought from Tihar authorities about attack on Indian Muhahideen man," *Daily News and Analysis*, September 6, 2010, http://www.dnaindia.com/india/report_explanation-sought-from-tihar-authorities-about-attack-on-indian-mujahideen-man_1434327; "Suspected terrorist attacked in Tihar Jail," *The Times of India*, August 31, 2010, <http://timesofindia.indiatimes.com/city/delhi/Suspected-terrorist-attacked-in-Tihar-Jail/articleshow/6469316.cms> (both accessed September 13, 2010).

⁸⁶ *Complaints by Rajasthan Muslim Forum Report on Jaipur Central Jail Beatings*, issued by the Rajasthan Muslim Forum, September 26, 2009, and statements from Jaipur Central Jail prisoners Munawwar Hussain and Nazakat, September 24, 2009, copies on file with Human Rights Watch.

“Some of them were dragged out exactly in the position of prayer,” said a report from the Rajasthan Muslim Forum that was based on interviews with three beaten prisoners in the presence of the Jaipur Central Jail superintendent.⁸⁷ “We saw scars on their bodies from the beatings,” said Salim Engineer, who led the group.⁸⁸ The inmates said they had been subjected to similar beatings on Eid al-Fitr in October 2008, the Rajasthan Muslim Forum report said.⁸⁹ The state government has ordered an inquiry and transferred the warden and his deputy.⁹⁰

A similar incident had occurred at Sabarmati Jail in Ahmedabad, Gujarat, on March 27, 2009. There, 22 prisoners alleged they were kneeling in afternoon prayer when prison guards and police assaulted them with batons and pieces of furniture. The prisoners, all of them terrorism suspects, the vast majority of whom were accused in the 2008 bombings, were among 300 prisoners staging a hunger strike to protest conditions including the denial of outside medical treatment. The attack left three men unconscious, which went unconfirmed “for so long as to start rumors in the city that they had died,” according to a report from a coalition of national human rights groups.⁹¹

Word of the assault on the detainees quickly spread via relatives who had visited regular inmates.⁹² A crowd of nearly 200 relatives and friends gathered outside the jail, demanding to see the injured. But for three days, jail authorities denied both relatives and lawyers access to the beaten prisoners. They also refused to take the inmates to a hospital, instead treating them with jail doctors.⁹³ Relatives and lawyers told Human Rights Watch that when they were finally allowed in, they saw that the beating victims were injured. The brother of one prisoner described the scene:

You could see that most of the prisoners were badly beaten and they were wounded and had bandages. My brother’s eyes were swollen and there were

⁸⁷ Complaints by Rajasthan Muslim Forum Report on Jaipur Central Jail Beatings, September 26, 2009.

⁸⁸ Human Rights Watch telephone interview with Salim Engineer, Rajasthan state president of Jamaat-e-Islami Hind, Jaipur, September 28, 2009.

⁸⁹ Complaints by Rajasthan Muslim Forum Report on Jaipur Central Jail Beatings, September 26, 2009.

⁹⁰ See “Jaipur Blasts Accused Tortured on Eid,” *Central Chronicle*, September 27, 2009. <http://www.centralchronicle.com/viewnews.asp?articleID=15623> (accessed September 28, 2009). Local activists and relatives called the measures insufficient and demanded an independent investigation.

⁹¹ PUCL, et al., Independent Committee on Incidents of 26-27th March in Sabarmati Jail, Ahmedabad, Gujarat, April 16, 2009. Copy on file with Human Rights Watch.

⁹² Human Rights Watch interviews in Gujarat, Uttar Pradesh, and New Delhi with more than a half-dozen relatives of the beating victims, June-July, 2009. Identities and exact dates withheld to protect interviewees and suspects from possible retaliation.

⁹³ PUCL, et al., Independent Committee on Incidents of 26-27th March in Sabarmati Jail, Ahmedabad, Gujarat.

black marks near the eyes. One prisoner was lifted and carried by four guards to see his female relatives because both of his legs were fractured.⁹⁴

Relatives said they obtained information in snippets as guards moved around the visiting room, trying to stop them from discussing the beating. The wife of one Ahmedabad suspect told Human Rights Watch:

My husband said he was beaten with a belt on the back and had marks on his hands and feet. He tried to show them to us but the guards did not allow us to see them. The guards were standing behind the prisoners. They would stand very close and if the prisoners talked about the torture they would tap them on the shoulder and say, “Don’t talk about that.”⁹⁵

The Sabarmati police precinct refused to register relatives’ complaints about the beatings, and instead submitted its own version of events, which acknowledged that guards had beaten the prisoners but admitted no wrongdoing. In a lower court hearing in Ahmedabad on the incident, jail officials argued that the beatings were legal under the colonial-era Bombay Jail Manual of 1935, which remains in force in the state of Gujarat. The manual states that hunger strikes—a form of protest used in the 1930s by Mahatma Gandhi—constitute “mutiny” and can be quashed with whippings.⁹⁶ Section 46 of the Colonial Prisons Act also allows corporal punishment in cases where a prison offense has been committed.⁹⁷

On April 6, 2009, Special Magistrate G.M. Patel ruled that the jail authorities had acted lawfully under the Jail Manual guidelines. He ordered additional food and medical treatment for the detainees but conducted no further investigation into the beatings.⁹⁸ On May 6, 2009, the High Court dismissed a petition from an Indian human rights group to transfer the jail superintendent.⁹⁹

⁹⁴ Human Rights Watch interview with brother of a jailed suspect, Gujarat, June 2009. Name, exact date, and exact location withheld to protect interviewee and suspect from possible retaliation.

⁹⁵ Human Rights Watch interview with the wife of a jailed suspect, June 2009. Name, exact date, and location withheld to protect interviewee and her husband from possible retaliation.

⁹⁶ Bombay Jail Manual of 1935, Rule 703.

⁹⁷ India Prisons Act 1894, sec. 46, clause 12, http://www.mha.nic.in/pdfs/Prisons_act1894.pdf (accessed August 31, 2010).

⁹⁸ “Archaic law comes in handy for jail officials,” *The Times of India*, April 7, 2009, <http://timesofindia.indiatimes.com/NEWS/City/Ahmedabad/Archaic-law-comes-in-handy-for-jail-officials/articleshow/4367560.cms> (accessed June 8, 2009).

⁹⁹ “PIL in Sabarmati jail beating up case dismissed,” *Indian Express*, May 6, 2009, <http://www.indianexpress.com/news/pil-in-sabarmati-jail-beating-up-case-dismis/455133/> (accessed June 8, 2009).

In another case, relatives said three terrorism suspects, Saif-ur-Rahman, Mohammad Sarwar, and Shahbaz Ahmed, were beaten in a Jaipur courthouse holding area in June 2009 by some fellow inmates and a group of Hindu supporters while waiting to appear before a magistrate. “There are so many policemen in the court, but no one wanted to help,” said Shahbaz Ahmed’s father-in-law.¹⁰⁰ Mohammad Sarwar told relatives that there were slogans on the door of the alleged IM members’ jail cells, identifying them as bombers. “He told me, ‘The guards and some of the Hindu inmates are calling us Pakistanis and terrorists,’” said Sarwar’s uncle, Mohammad Hasim. “He begged me to keep visiting him often so the guards and other inmates would not consider him vulnerable.”¹⁰¹

The beatings and other abuses in judicial custody violate Indian and international law and underscore the urgent need for jail reform.¹⁰² Reformers have unsuccessfully sought to overhaul India’s outmoded jail laws and manuals since the 1978 Supreme Court ruling of *Sunil Batra v. Delhi Administration*, in which Justice V.R. Krishna Iyer, writing for the majority, observed that:

Jail manuals are largely a hangover of the past, still retailing anachronistic provisions like whipping.... Barbaric treatment of a prisoner from the point of view of his rehabilitation and acceptance and retention in the mainstream of social life, becomes counterproductive in the long run.¹⁰³

The All India Committee on Jail Reforms, which served from 1980-83, urged the creation of a national jail manual, observing that existing state laws contained punishments that were “not in conformity with standards of humanitarian treatment of offenders.” The National Human Rights Commission followed up in 1996 by circulating a draft bill to states that contained core recommendations for reform. But states have largely ignored the recommendations, perceiving them to be an intrusion on their sovereignty over detention and other law-and-order matters.¹⁰⁴

¹⁰⁰ Human Rights Watch telephone interview with Abdul Moid, father-in-law of Shahbaz Ahmed, Jaipur, July 8, 2009.

¹⁰¹ Human Rights Watch interview with Mohammad Hasim, uncle of Mohammad Sarwar, Azamgarh, July 1, 2009. Mohammad Hasim said the beating occurred June 20, 2009.

¹⁰² See, for example, South Asia Human Rights Documentation Centre, “Corporal Punishment in Prison: The Indian Position,” HRF/142/06, May 24, 2006, <http://www.hrdc.net/sahrdc/hrfeatures/HRF142.htm> (accessed July 20, 2009).

¹⁰³ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409 at 511, <http://www.indiankanoon.org/doc/162242/> (accessed September 10, 2010).

¹⁰⁴ South Asia Human Rights Documentation Centre, “Corporal Punishment in Prison,” <http://www.hrdc.net/sahrdc/hrfeatures/HRF142.htm>.

In one positive development, the Bombay High Court sent a strong message to jail authorities in a case in which terrorism suspects were beaten by jail staff in 2006. Describing the abusers as traitors, the court ruled in July 2009 that disciplinary action and, if need be, criminal action should be initiated against those responsible. As the court's opinion pointed out:

It has to be remembered that the convicts or the under-trials are human beings and they have to be treated like human beings. The jail authorities who have custody over them have [a] special responsibility to protect their rights and in fact they are their custodian, reformer and counselor.¹⁰⁵

Protections against Torture and Other Ill-Treatment

The use of torture violates numerous international, constitutional, and statutory protections, and has been repeatedly condemned by India's Supreme Court and the National Human Rights Commission (NHRC).¹⁰⁶ To protect persons in police custody from abuse, the Supreme Court has laid down specific rules that police must follow while making arrests, such as informing relatives of an arrest or detention, recording the arrest in a diary, and having the detainee medically examined every 48 hours.¹⁰⁷ These guidelines are regularly flouted.¹⁰⁸

In 1997, the UN Human Rights Committee expressed its concern "about the incidence of custodial deaths, rape and torture, and at the failure of the Government of India to receive the United Nations Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment."¹⁰⁹ Yet 14 years later, India continues to rebuff repeated requests from the rapporteur's office to visit.

¹⁰⁵ Ajit Sahi, "Walls Not a Prison Make," *Tehelka* magazine, vol. 6, iss. 35, September 5, 2009, http://www.tehelka.com/story_main42.asp?filename=Neo50909walls_not.asp# (accessed October 2, 2009).

¹⁰⁶ In a 1981 judgment, the Supreme Court of India said "[n]othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights." *Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625 at 999, <http://www.indiankanoon.org/doc/1308143/> (accessed January 4, 2011).

¹⁰⁷ Supreme Court, *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹⁰⁸ Asian Centre for Human Rights, *Torture in India 2009*, April 2010, <http://www.achrweb.org/reports/india/torture2010.pdf> (accessed April 22, 2010). From 2001 to 2009, the NHRC received information about 1,345 persons killed in police custody; human rights experts believe the real number is much higher.

¹⁰⁹ Human Rights Committee, "Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, India," CCPR/C/79/Add.81, August 4, 1997, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument) (accessed September 21, 2009). The Human Rights Committee monitors state compliance with the International Covenant on Civil and Political Rights, to which India is a party.

India's practice of torture violates its international legal obligations, including the International Covenant on Civil and Political Rights (ICCPR), to which it is a party. Article 7 of the ICCPR states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 10 provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."¹¹⁰

In 1997, India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture").¹¹¹ Although the country is one of nine signatories that have yet to ratify the treaty, international law binds India to respect the Convention against Torture's absolute prohibition on torture and other ill-treatment. In an effort to ensure ratification, India has now drafted the Prevention of Torture Bill.¹¹²

Suspicious Killings: The Batla House Encounter

Human Rights Watch is concerned that authorities have failed to fully investigate whether the Delhi Special Cell police killed two bombing suspects on September 19, 2008, in a "fake encounter"—that is, an incident in which police deliberately kill suspects but claim that they shot them in self-defense. In the incident, police raided Batla House, a housing complex in the Muslim neighborhood of Jamia Nagar, six days after the Delhi bombings. One police official, Inspector M.C. Sharma, and two Muslim youths, Mohammad Atif Ameen and Mohammad Sajid, whom authorities subsequently described as IM leaders, were killed. Another police official, Head Constable Balwant Singh, was injured. Police seized a third suspect inside the apartment and said two others escaped.

The police have given contradictory statements about the shootings. Initially, for

¹¹⁰ ICCPR, <http://www2.ohchr.org/english/law/ccpr.htm>, arts. 7, 10 (1). The Human Rights Committee has found that acts of corporal punishment such as beatings amount to violations under articles 7 and 10. In further guidelines, Principle 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibits the use of torture or cruel, inhuman or degrading treatment or punishment on any person under detention or imprisonment under any circumstances. Principle 33 (1) states that a detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), <http://www.un.org/documents/ga/res/43/a43r173.htm> (accessed October 7, 2010).

¹¹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, <http://www.hrweb.org/legal/cat.html> (accessed January 4, 2011).

¹¹² Prevention of Torture Bill, 2010, Bill No. 58 of 2010, <http://www.prsindia.org/uploads/media/Torture/prevention%20of%20torture%20bill%202010.pdf> (accessed August 25, 2010).

example, they said Atif and Sajid opened fire, fatally wounding Sharma, and that they returned fire in self-defense, killing both of them. However, after the arrest of two more persons related to the Batla House incident in early 2010, the police claimed that one of those arrested, Shahzad Ahmed, had killed Inspector Sharma.¹¹³

More significantly, suspicious markings were found on the bodies of the two IM suspects when they were returned to their families for burial. Photographs of the corpses show four bullet wounds in the top of Sajid's head, suggesting he may have been forced to kneel while he was shot, while the skin on Atif's back appeared burned and peeled.¹¹⁴ The autopsy reports of the two slain militants—which human rights activists obtained in early 2010 only after filing a half-dozen requests through the Right to Information Act—note injuries from blunt objects and other details that raise further questions about how they died.¹¹⁵

The police refused to conduct a legally required magisterial inquiry into the deaths, and were backed in that move by the Delhi lieutenant governor, who declared that a probe “would weaken the resolve of the police officers to fight against terrorists.”¹¹⁶ Indian courts rebuffed human rights groups' repeated demands that they order an independent investigation.¹¹⁷

Human Rights Watch does not have sufficient information to determine whether the police's fatal shootings inside Batla House were legitimate acts of self-defense. However, we believe such incidents should be thoroughly and independently investigated without

¹¹³ Neeraj Chauhan, “Chargesheet Ready in Batla House Encounter,” *Indian Express*, April 12, 2010, <http://www.indianexpress.com/news/chargesheet-ready-in-batla-house-encounter/604936/> (accessed April 27, 2010). See also Jamia Teachers' Solidarity Association, “Shahzad's Arrest and Goebbels' Lies,” February 10, 2010. Copy on file with Human Rights Watch.

¹¹⁴ Human Rights Watch's description of the Batla House encounter is based on the report *'Encounter' at Batla House, Unanswered Questions*, Jamia Teachers' Solidarity Association, February 2009, copy on file with Human Rights Watch, as well as interviews in New Delhi with lawyers and human rights activists who investigated the incident including Delhi Supreme Court attorney Prashant Bhushan, and Jamia Teachers' Solidarity Association coordinator Manisha Sethi, in June and July, 2009. Human Rights Watch also read numerous media accounts and court documents related to the incidents.

¹¹⁵ Jamia Teachers' Solidarity Association, “Postmortem Reports of Atif and Sajid Call the Bluff of NHRC and Delhi Police,” March 18, 2010. Copy on file with Human Rights Watch.

¹¹⁶ National Human Rights Commission, *Report on Batla House Encounter*, 2811/30/8/08-09-FE, July 20, 2009, p. 15. Copy on file with Human Rights Watch.

¹¹⁷ For more on the Batla House deaths, see the National Human Rights Commission section of Chapter VII, “Failure of Accountability.” Another suspect, believed to have escaped from the scene, was subsequently arrested and charged with Inspector Sharma's death.

exception, particularly given the broad pattern of fake encounters that Human Rights Watch and Indian human rights organizations have documented in many areas of India.¹¹⁸

Fake encounter killings amount to extrajudicial executions in violation of the prohibitions against arbitrary deprivations of life under both the Indian Constitution and international law.¹¹⁹ Regrettably, India's Code of Criminal Procedure authorizes police to use all "necessary" force to effect arrest, without regard to whether a suspect is armed.¹²⁰

¹¹⁸ Human Rights Watch has previously reported on fake encounters by military forces in Jammu and Kashmir, as well as by armed reserve police forces and special police officers in Chhattisgarh. See Human Rights Watch, *India - Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir*, <http://www.hrw.org/en/reports/2006/09/11/everyone-lives-fear>, pp. 64-86; Human Rights Watch, *India - Being Neutral Is Our Biggest Crime*, July 14, 2008, <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-o>, pp. 64-67. We have also reported on extrajudicial killings by police in Punjab and paramilitary forces in Manipur. See Human Rights Watch and Ensaaf, *India - Protecting the Killers: A Policy of Impunity in Punjab, India*, October 17, 2007, <http://www.hrw.org/en/reports/2007/10/17/protecting-killers-o>, pp. 52-91; Human Rights Watch, *India - These Fellows Must Be Eliminated: Relentless Violence and Impunity in Manipur*, September 2008, <http://www.hrw.org/reports/2008/india0908/>, pp. 25-47. See also Asian Centre for Human Rights (ACHR), "India Human Rights Report 2009," <http://www.achrweb.org/reports/india/AR09/AR2009.pdf>.

¹¹⁹ Indian Constitution, <http://lawmin.nic.in/coi/coiason29julyo8.pdf>, art. 21, and ICCPR, art. 6(1), <http://www2.ohchr.org/english/law/ccpr.htm>.

¹²⁰ Indian Code of Criminal Procedure, 1973, sec. 46, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm> (accessed December 29, 2010).

III. Arbitrary Detention

While the majority of individuals who were questioned in connection with the 2008 bombings were released within a day or two, police wrongfully detained scores of others in violation of their due process rights under Indian and international law. Suspects were not brought before a magistrate within 24 hours of arrest as required by Indian law,¹²¹ and held for up to a month before the authorities either released them or formally acknowledged their arrest. Police in some cases delayed suspects' access to relatives and lawyers, and held them incommunicado in undisclosed locations. The failure of the authorities to disclose the fate or whereabouts of someone in custody is considered an enforced disappearance in violation of international law.¹²²

Many of those questioned or detained were former or suspected members of SIMI, some of whom had been picked up numerous times in previous police raids but never charged. Several relatives said the former SIMI members had become "the usual suspects" in Indian counterterrorism cases—rounded up, beaten in an attempt to make them name other suspects, and then discharged.

"As soon as there is an incident, promptly HuJI [the militant, Bangladeshi-based group] or SIMI are named," said Mohammad Sajid, a former SIMI member who was detained for more than three weeks after the Jaipur bombings but never brought before a magistrate.¹²³ He continued:

On the night of May 17-18, the police came for me. I was expecting it because my name was already in the media after the blast. I simply asked them, "Why at night?" They said that some officers wanted to question me.... For 23 days, different styles, different methods, I was interrogated ... I was immediately described as a mastermind.... There was no physical torture but they kept saying, "Confess to these crimes." I said, "I am

¹²¹ Indian Constitution, art. 22; Code of Criminal Procedure, sec. 151(2), <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

¹²² See International Convention for the Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, G.A. Res. 61/177, U.N. Doc. A/RES/61/177 (2006), entered into force Dec. 23, 2010, <http://www2.ohchr.org/english/law/disappearance-convention.htm#1> (accessed December 29, 2010), arts. 1, 2. India signed the convention in 2007.

¹²³ Human Rights Watch interview with Mohammad Sajid, Jaipur, November 7, 2008. See also "Suspected SIMI Activist Detained For Jaipur Bombings," India Abroad News Service, May 17, 2008, <http://www.ndtv.com/convergence/ndtv/mumbaiterrorstrike/Story.aspx?ID=NEWEN20080050130&type=News> (accessed September 10, 2009).

against these crimes that I am being blamed for.” But they said, “Give us names of people who might be involved.”¹²⁴

Many of these wrongful detentions took place in Gujarat. Human Rights Watch met with relatives or lawyers of 16 suspects detained in that state. Almost all said that the suspects were held secretly for a week or two after the July 26 bombings before their detentions were made public. The police announced their formal arrests on August 15 and produced them before a magistrate the following day. By then, the police were already declaring that the suspects had confessed and that the bombings were linked to SIMI.¹²⁵

Among the first to be picked up was Mohammad Zahid Kutubuddin Shaikh, who was brought on July 31 to a lockup at the police Crime Branch office in Ahmedabad called the Gaekwad Haveli. Although Zahid managed to call his wife and inform her of his detention, the family had no news of him for five days, despite making repeated visits to the Crime Branch. According to his mother, Badrunissa Kutubbidin Shaikh:

On the sixth day, my husband and I went to the Crime Branch and met Officer Tarun Barot. He called us to his room and said, “Your son is with us. We are checking a few things. I will bring him home after that.” We asked, “When can we see our son?” Barot said, “Bring him lunch. We will sit and eat together.” We were happy and we went away. When we came back, they brought my son. When he saw us, he sat down on the floor and wept. He said, “Mother, they are really treating me badly.”¹²⁶

Several relatives said that Crime Branch officials, particularly Barot, promised that the suspects would be released soon, and encouraged them not to seek legal aid to get them out. For this reason, few missing person complaints or petitions for the writ of habeas corpus were filed challenging the detentions in Gujarat. Said one mother: “Tarun Barot gave so much reassurance. We believed him. He is such a big officer. We thought that he would not lie to us.”¹²⁷ Another relative of a suspect still in custody said, “We did not complain because we thought it might anger the police and make things bad for the boys. The police said to

¹²⁴ Human Rights Watch interview with Sajid, November 7, 2008.

¹²⁵ “Ahmedabad Blasts Case Cracked, SIMI Did It,” *The Indian Express*, August 16, 2008
<http://www.indianexpress.com/news/ahmedabad-blasts-case-cracked-simi-did-it-cops/349758/0> (accessed September 20, 2009).

¹²⁶ Human Rights Watch interview with Badrunissa Kutubuddin Shaikh, Ahmedabad, June 19, 2009.

¹²⁷ Human Rights Watch interview, Ahmedabad, June 2009. Name and exact date withheld to protect interviewee and suspect from possible retaliation.

me: ‘Don’t go to anyone. If people come offering help, or suggesting that you need a lawyer, your money will be wasted. Don’t listen to them. We will let him go.’”¹²⁸

The mother of Ayaz Razzaqmiya Saiyed, 25, claimed that after her son was picked up from his house, Barot held her at bay for three days before formally acknowledging the arrest. She said that Barot reassured her by promising, “Your son is your treasure which is in my keeping. I will return your treasure to you. Don’t worry about lawyers.”¹²⁹

Three or four Ahmedabad Crime Branch police arrested Gyasuddin Abdul Salim Ansari on August 9, 2008, as the family was sleeping, said his mother, Sanjeed Begum Abdul Alim. He was held for a week before his arrest was formally acknowledged, the day that he was produced before a magistrate:

The men said they were from Crime Branch and pushed my husband aside to enter the house. Two days later, we were allowed to meet my son. My son was crying and we were crying. We asked the police what was going on. The policeman said, “Don’t worry. We will release him soon.” We waited and waited, but they did not let him go.¹³⁰

In cases where police decided to formally arrest suspects after detaining them unlawfully, they often falsified the dates and sometimes the locations of their initial arrest.

Mohammad Arif, an Azamgarh resident studying in Lucknow, was arrested by the Uttar Pradesh ATS on September 24, 2008. He remained in unacknowledged detention, unable to inform his relatives of his arrest or seek legal counsel, until police announced his arrest on September 29 and said he had confessed. Even then, he wrote in a subsequent complaint to a Lucknow magistrate, police only allowed him to speak with his family after he promised to “say exactly what they asked me to say on the phone.”¹³¹ In his complaint, Arif retracted his confession, saying police tortured and coerced him to make false statements against other individuals and to sign blank papers or written documents that he was not allowed to read.¹³²

¹²⁸ Human Rights Watch interview, Ahmedabad, June 2009. Name and exact date withheld to protect interviewee and suspect from possible retaliation.

¹²⁹ Human Rights Watch interview with Ashrunnisha Razzaqmiya, Ahmedabad, June 19, 2009.

¹³⁰ Human Rights Watch interview with Sanjeed Begum Abdul Alim, Ahmedabad, June 19, 2009.

¹³¹ “Retraction of Statements Made under Duress,” Court of Judicial Magistrate, Lucknow, February 13, 2009. Copy on file with Human Rights Watch.

¹³² Ibid.

In the case of Mohammad Sarwar, another former Azamgarh resident accused in the Jaipur blasts, there is strong evidence that police picked him up in one city but alleged that he was arrested two days later in another city in another state. An engineer who had excelled in school, Sarwar was recruited by a prominent firm and began work at its branch in Ujjain, a city in Madhya Pradesh state, on January 16, 2009. On the evening of January 19, he called relatives to tell them that he had settled in. The next morning, the family found his mobile phone switched off. Several hours later, according to his brother Mohammad Qausar, Sarwar's employers called to say he had not turned up for work. The employers sent someone to check Sarwar's house and were told that five people in plainclothes had taken him the previous evening:

They had sent someone to check in Sarwar's house. There is a teashop nearby, and they told the company people that five people had arrived and pushed Sarwar into a car. He was shouting for help.... Our world had changed.... On January 21, we heard that they were flashing Sarwar's arrest on television.¹³³

Sarwar's employers lodged a complaint with Madhya Pradesh police in reporting his abduction from Ujjain. The Uttar Pradesh police, however, insisted that Sarwar had been arrested in Lucknow.¹³⁴ At a minimum, the circumstances of his arrest indicate the need for an investigation. If in fact Sarwar was first detained in Ujjain, registering him as having been arrested in Lucknow would have allowed police to hold him incommunicado for 48 hours and avoid having to request a legal transfer from Madhya Pradesh to Uttar Pradesh.

Arrests of Relatives to Coerce Surrenders or Obtain Information

In some cases, police detained suspects' relatives as a form of collective punishment and at times used them as hostages in an effort to bring in fugitives.

In August 2008, the Gujarat police were unable to locate suspect Abdul Raziq, and instead picked up his young brother Shakeel and held him for about a month.¹³⁵ Noorjahan, their mother, told Human Rights Watch:

¹³³ Human Rights Watch interview with Mohammad Qausar, Azamgarh, July 1, 2009.

¹³⁴ "Jaipur Blast Accused Arrested," *Indian Express*, January 22, 2009, <http://www.expressindia.com/latest-news/jaipur-blast-accused-arrested/413780/> (accessed August 31, 2010).

¹³⁵ Human Rights Watch interview with Noorjahan, Ahmedabad, June 19, 2009.

The police said that they would release Shakeel only when Raziq comes. We called Raziq at our relative's house to tell him about Shakeel. But he ... had left his wife with our relatives and disappeared. We went and told the police that Raziq had run away. They took my husband and questioned all our relatives.... My son-in-law was kept at the police station all night.... My son Shakeel was released only after a month or so.¹³⁶

In one case, police were seeking a man because he was the distant cousin of a suspect. Not finding that man at home, plainclothes police grabbed his 19-year-old brother, Mohammad Saquib, gagged him before he could speak with his mother, and dragged him, barefoot and in his pajamas, into a waiting car. Police handcuffed and held the younger brother for questioning, threatening to free him only if his brother surrendered, until lawyers arrived and secured his release.¹³⁷

Abdul Rahman, the father of a suspect in the September 2008 Delhi bombings and the caretaker of the Batla House apartment where police staged a deadly raid, was held for 45 days in what he suspects was an effort to pressure him or his son, who was also arrested, into confessing. When Rahman heard the address of the apartment on television news, he immediately went to the police to provide information about the student tenants, who he had found through his son Zia-ur-Rahman. When he returned to the police station voluntarily a day later, he and the apartment's landlord, his boss, were kept in police custody all night. "I began to suspect they were trying to build a case against me," Rahman said.

Rahman's boss was released after filing a police complaint saying Rahman had forged the signature, changed the month on the lease and stole one month's rent. "I think [my boss] was under pressure from the police," Rahman said. "He told me later that, 'The circumstances were such that I couldn't do otherwise.'"¹³⁸ Rahman was free on bail at the time of this writing; his son Zia ur-Rahman had been charged in the bombings.

Abu Bashir has been described by the police as one of the IM "masterminds" behind the 2008 bombings. In August 2008, officials in plain clothes abducted him from his home in Azamgarh. They entered his house claiming to bring a marriage proposal for one of his brothers, tricked him into stepping outside, pushed him into a vehicle, and drove away. Abu

¹³⁶ Ibid.

¹³⁷ Human Rights Watch interview with Methab Alam, professor at Jamia Millia Islamia University and member of the Jamia Teachers' Solidarity Association, June 16, 2009, and Jamia Teachers' Solidarity Association, *'Encounter' at Batla House, Unanswered Questions*.

¹³⁸ Human Rights Watch interview with Abdul Rahman, New Delhi, June 14, 2009.

Bashar was transferred to the custody of Gujarat police, who held him for four months in Ahmedabad before he was transferred to a local jail. Abu Bashar's brothers told Human Rights Watch that they had been worried that they, too, might be arrested. In January 2009, when Abu Bashar's brother Abu Zafar visited him in jail, their fears were realized:

That evening, I was returning to Mumbai from Ahmedabad. It is an overnight train. At about 1 a.m., three men came to me in the train and asked for my documents. They asked, "Are you the brother of Abu Bashar? We are from the crime branch. We want to ask you some questions." When the train stopped in Surat, they asked me to step off.¹³⁹

For the next two days, Abu Zafar said, police held him incommunicado as they drove him to three different destinations in Gujarat state, questioning and threatening him. The first stop was the town of Naroda.

They asked every detail of my life.... Then they asked me for email and password. And they took away my cell phone. At about 1 p.m., they brought me to Ahmedabad. There I met with the ATS people. They asked, "What did your brother say to you?" They also asked many more questions, about our family and our house.... Then some of the police began to threaten me. They said, "If you don't tell us everything you will end up where your brother is." At about 3 p.m., I was taken to the ATS headquarters. They had the printout of all the phone calls I had made or received. They asked me questions about the calls to UP [Uttar Pradesh] or Gujarat. Some numbers I recognized and could explain. Others I could not. I am a journalist. There are many phone conversations. I cannot remember everything.... Then they asked me to sign some blank papers. I refused to sign until I knew what had been written. So then they wrote it out and gave them back to me to sign, but since it was all in Gujarati, I did not understand it.¹⁴⁰

When night fell, police drove Zafar to the isolated town of Gandhinagar, and the questioning resumed again.

It was a jungle area, only one street and the police station and nothing, not any buildings or housing.... They were much rougher in their language.... They told

¹³⁹ Human Rights Watch interview with Abu Zafar, New Delhi, June 14, 2009.

¹⁴⁰ Ibid.

me all of the citizens of Azamgahr are terrorists. I was very afraid. They had taken all of my documents. No one knew where I was.... Sometimes I thought, “They will kill me and no one will know what happened. Or they will plant my documents as evidence and say I am the new mastermind of the bombings.”¹⁴¹

When police finally released him, Zafar said, they bought him a return train ticket to Mumbai and returned most of his belongings, but kept his identity card.

In one case in Delhi, Special Cell Police conceded in court papers that there were times that lawyers and “so-called human rights activists” could not immediately see the IM suspects held in the 2008 bombings in the capital. They said the reason was that “the accused persons were not available,” without explaining how the detained men could be unavailable for days at a time.¹⁴²

Extended Police Custody

Police counterterrorism investigators, particularly in Ahmedabad and Delhi, routinely manipulated Indian law in order to detain 2008 bombing suspects well beyond the 15-day legal limit for police custody provided under Indian law—in some cases for three to four months.¹⁴³ This practice not only violated the right to liberty, it also vastly increased the risk of custodial torture and coerced confessions. “The most worrisome, the most vulnerable period is when suspects are in police custody,” said Mukul Sinha, a Gujarat High Court attorney who handles high-profile human rights cases. “When the law tells you 15 days you can’t artificially prolong it to 150 days.”¹⁴⁴

In most cases, suspects subjected to prolonged police custody were still presented to a magistrate every 15 days as required by law. That procedure was emphasized by police officials who responded to our concerns about abuse in police custody. K.P. Raghuvanshi, additional director general of police for law and order in Maharashtra, stated in a letter to Human Rights Watch: “Had there been any forced confession, the suspect could have

¹⁴¹ Additional Human Rights Watch interview with Abu Zafar, Azamgarh, June 30, 2009.

¹⁴² Affidavit of Delhi Joint Commissioner of Police, Special Cell, filed in response to *People’s Union for Democratic Rights v. Union of India*, October 15, 2008, W.P. (C) 7272 of 2008. Copy on file with Human Rights Watch.

¹⁴³ Code of Criminal Procedure, 1973, sec. 167, provides that an arrested person can be kept in police custody for no more than 15 days. While pre-charge detention may extend to 90 days for serious crimes, any additional time must be “otherwise than in the custody of the police,” <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

¹⁴⁴ Human Rights Watch interview with Mukul Sinha, Ahmedabad, June 17, 2009.

complained to the Judicial Magistrate. But the very fact that none of them complained to the Judicial Magistrate, shows that they were voluntarily given and were not false.”¹⁴⁵

According to relatives and lawyers, however, many suspects were too frightened to tell magistrates of police abuse because they knew they would almost certainly be returned to police custody rather than be sent to jail or released on bail. One mother told us that when she asked her son why he did not complain to the magistrate about being tortured by police, he replied, “We have to go back to the police. We have to live here.”¹⁴⁶ A lawyer explained that he did not file a direct complaint in court of the torture his client had endured because there was no physical evidence of the abuse and because his client had instructed him against it, warning him, “If you trouble them, they will trouble me.”¹⁴⁷ Another lawyer said that his client was under severe police intimidation and had told him: “We have all been tortured and beaten. They have threatened us that if we reveal any of this we will never get out.”¹⁴⁸

Indian law prior to the passage of amendments after the November 2008 Mumbai attack, permitted authorities in most states to detain suspects for up to 90 days without charge, of which no more than 15 days could be in police custody.¹⁴⁹ To circumvent that limit, police investigators in Ahmedabad and Delhi treated each of the coordinated bomb blasts that occurred on the same day in the same city as a separate criminal incident. Instead of filing multiple complaints simultaneously against each suspect for all the bombings, the police lodged a new complaint against each accused every 15 days in connection with a different blast. Each new filing of a complaint—called a First Information Report (FIR)—allowed them to extend police custody of a suspect for an additional 15 days.

With rare exceptions, magistrates authorized the repeated returns to police custody over the objections of defense counsel, who noted that the police had from the start described each city’s coordinated bomb blasts as a single conspiracy rather than a series of separate offenses. Defense lawyers also argued that police applications for remand lacked sufficient

¹⁴⁵ Letter from Raghuvanshi to Human Rights Watch, August 2, 2010.

¹⁴⁶ Human Rights Watch interview with suspect’s mother, Gujarat, June 2009. Name, exact date, and location withheld to protect interviewee and suspect from possible retaliation.

¹⁴⁷ Human Rights Watch interview with a lawyer for a suspect in Gujarat, 2009. Name of lawyer, exact date, and location withheld to protect suspect from possible retaliation.

¹⁴⁸ Human Rights Watch interview with a lawyer for a suspect in Gujarat, 2009. Name of lawyer, exact date, and location withheld to protect suspect from possible retaliation.

¹⁴⁹ The December 2008 amendments to the Unlawful Activities (Prevention) Act, passed in response to the so-called IM bombings and the Mumbai attack of November 26, 2008, increased the pre-trial detention period for terrorism suspects to a maximum of 180 days, of which 30 days may be in police custody. However, those late 2008 provisions could not be applied retroactively to the IM suspects who were already arrested. For more on the 2008 laws, see Chapter VIII, “Draconian Counterterrorism Laws.”

details to justify continued custody. In some cases, magistrates granted the remand applications even if the suspects or their lawyers complained that they had been abused in the very police lockups to which they were being returned.

By filing additional FIRs every 15 days, the Special Cell of the Delhi police kept five suspects in their custody for nearly six weeks in late 2008. During that time, according to court papers filed by one defense lawyer, they were “extensively interrogated by various state police ... and were also taken to various [other] states for interrogation and investigation.”¹⁵⁰ A Delhi judge then transferred the five suspects to the custody of Gujarat, where a judge in Ahmedabad granted additional FIRs periodically to keep them in Ahmedabad Crime Branch custody for another five weeks.¹⁵¹

The Special Cell repeated the pattern in 2010, holding two suspects it had arrested in February and March 2010 for more than one month. One of the suspects was a minor, whose name and photographs were released to the media in violation of Indian law. The teenager was to turn 18 in October 2010.¹⁵² The Ahmedabad Crime Branch held several other suspects for nearly four months in 2008-09 through multiple FIRs.¹⁵³

In Maharashtra state, 21 bombing suspects were charged under a special organized crime law that allows police custody for 30 days rather than 15. Even with that extraordinarily long period at their disposal, state counterterrorism police contrived to keep at least a dozen suspects in their custody for more than a month by charging them with additional offenses related to the bombings as soon as the first 30-day period expired.¹⁵⁴

India’s Supreme Court ruled in 1992 that separate FIRs may not be lodged against the same suspect to prolong police custody beyond the 15-day cap if the offenses of which he or she

¹⁵⁰ “Written Submission on Behalf of Saqib Nisar,” *State v. Saqib Nisar*, Tiz Hazari Courts, New Delhi, December 10, 2008. Copy on file with Human Rights Watch.

¹⁵¹ *Ibid.* This point was also made during interviews with Human Rights Watch by defense lawyers including Nitya Ramakrishnan, Ahmedabad, June 22, 2009; Somnath Vatsa, Ahmedabad, June 19, 2009; Jawahar Raja and Mayur Sureh, New Delhi, July 4, 2009; and Vikas Padora, New Delhi, July 4, 2009. The five suspects were Mohammed Saif, Zeeshan Ahmad, Mohammed Shakeel, Zia-ur-Rehman, and Saqib Nisar.

¹⁵² See “Cops get time in Delhi blasts case,” *The Times of India*, April 18, 2010, <http://timesofindia.indiatimes.com/city/delhi/Cops-get-time-in-Delhi-blasts-case/articleshow/5826851.cms> (accessed April 27, 2010). Indian human rights activists were as of this writing petitioning to have the minor, Mohammad Salman, transferred to juvenile court. A copy of Salman’s school certificate listing his birth date as October 3, 1992, is on file with Human Rights Watch. See also Deepu Sebastian Edmund, “Delhi Blast’s Suspect a Minor, says Jamia Teacher’s Front,” *Indian Express*, March 14, 2010, <http://www.indianexpress.com/news/delhi-blast-suspect-a-minor-says-jamia-teac/590537/> (accessed April 22, 2010).

¹⁵³ Human Rights Watch interviews with lawyers Somnath Vatsa, Ahmedabad, June 19, 2009, and I.M. Munshi, Ahmedabad, June 20, 2009. The remands to police custody were also widely reported in Gujarat media.

¹⁵⁴ Human Rights Watch interviews with defense attorneys in Maharashtra including Shahid Azmi and I.M. Munshi, both on June 25, 2009, and review of court papers in Maharashtra cases.

was accused were part of a single transaction. Instead, the Supreme Court held, multiple FIRs allowing numerous remands can only be lodged for separate offenses.¹⁵⁵ In late 2008, human rights lawyers appealed the multiple remands to the Delhi and Gujarat High Courts, arguing that they violated the Supreme Court ruling because state prosecutors had charged the suspects with participating in a single conspiracy. As Nitya Ramakrishnan, one of the Delhi-based attorneys, said: “If a criminal drops multiple bombs from an airplane during a single flyover, the act is a single conspiracy.”¹⁵⁶

The High Court did not agree. In rejecting the appeal on December 17, 2008, the judge held: “Sometimes it is not known how many layers exist in any conspiracy and up to which layer of conspiracy the culprits apprehended had access.” His opinion took issue with anyone who would question police authority “when national security was at stake.”¹⁵⁷

Police questioning is not limited to the period suspects are in police custody. Indian law grants police the right to continue questioning suspects while they are in judicial custody, provided they notify defense counsel. The Delhi High Court ruled that this was not sufficient grounds to reject multiple remands to police custody, but in the context of widespread and credible allegations of torture and other mistreatment in Indian police lockups, its decision could constitute an invitation to abuse.

Mass Arrests for Questioning

During the initial roundups after the 2008 bombings, police detained hundreds of Muslim men for questioning. In many cases they forcibly entered homes or work places, sometimes in civilian clothes, and picked up individuals for custodial interrogation without identifying themselves properly or providing arrest warrants. The Indian Code of Criminal Procedure allows police to summon individuals for questioning.¹⁵⁸ However, the police have no authority to involuntarily detain anyone for questioning prior to placing them under arrest.

¹⁵⁵ *C.B.I. v. Anupam J. Kulkarni*, (1992) 3 SCC 141, <http://www.lawyersclubindia.com/sc/CENTRAL-BUREAU-OF-INVESTIGATION-SPECIALINVESTIGATION-CELL-Vs-ANUPAM-J-KULKARNI-674.asp> (accessed August 31, 2010).

¹⁵⁶ Human Rights Watch interview with Nitya Ramakrishnan, Ahmedabad, June 22, 2009.

¹⁵⁷ *Mohammad Shakeel v. State* (NCT of Delhi), CrI. M.C. 3374-75, 2008. The Delhi High Court Rules, a set of binding regulations for the Delhi High Court and lower courts, note that magistrates should be cautious in granting even the first 15 days of remand after a suspect is presented to a court within 24 hours of arrest: “Magistrate should discourage tendency of police to take remand to extort confession. The police are too often desirous of retaining the accused in their custody for the longer period than twenty-four hours merely in the hope of extracting some admission of guilt from him. This is contrary to ... [the] Code of Criminal Procedure.” Delhi High Court Rules Part 3, Chapter 11, Part B, Rules 3-6, <http://delhihighcourt.nic.in/rules/Vol.3/Part3Chapter11.html> (accessed August 31, 2010).

¹⁵⁸ Code of Criminal Procedure, 1973, sec. 175, <http://www.vakilno1.com/bareacts/CrPc/s175.htm>.

Nor can police force persons to answer questions that might be self-incriminating.¹⁵⁹ The law also requires that police issue summonses in writing, a formality usually ignored by the police even in cases that do not involve national security.¹⁶⁰

In the days following the Delhi bombings in September 2008, Delhi police took into custody many Muslims in and around the Batla House apartment complex, the site of the police raid described in Chapter II above. The police took five minors from Batla House and held them without their parents for several hours, releasing them at 10 p.m. that evening.¹⁶¹

Following the July 2008 bombings in Ahmedabad and the attempted bombings in Surat, Gujarat police questioned about 400 Muslims statewide, according to lawyers and human rights activists. “Hundreds of Muslims were picked up for questioning. My sense is they were randomly picking up people without a clue as to who did what,” said Ahmedabad human rights activist Hanif Lakadwala, whose organization interviewed many of the men whom police questioned. Lakadwala said that of the 8 to 10 men he personally interviewed, “all of them said they had been beaten [during questioning].”¹⁶²

In the Gujarati city of Baroda, police summoned about 70 Muslims. These included Yusuf Shaikh, a local human rights leader, who was organizing responses to the roundups and assisting residents seeking information on relatives in custody. The police detained Shaikh for questioning for three consecutive days, releasing him only in the evenings and holding him one night until 2 a.m. Shaikh suspects the motive was to keep him from the office so that he could not assist the suspects’ relatives.¹⁶³

In some cases, police leaked the names of those they brought in for questioning to the media, damaging their reputation, even though they were never charged. In Jaipur, police picked up Anwar Hussain, a physician at a local hospital, because his name had come up during police investigations of a suspect. Hussain told Human Rights Watch: “They did not ask me anything

¹⁵⁹ Code of Criminal Procedure, sec. 175(1), states that a police officer, “by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and very person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which have a tendency to expose him to a criminal charge or to a forfeiture.” <http://www.vakilno1.com/bareacts/CrPc/s175.htm>.

¹⁶⁰ Asian Centre for Human Rights, “Torture in India 2009,” June 2009, <http://www.achrweb.org/reports/india/torture2009.pdf> (accessed September 1, 2009), p. 4.

¹⁶¹ Jamia Teachers’ Solidarity Association, *‘Encounter’ at Batla House, Unanswered Questions*, February 2009,. Human Rights Watch also interviewed lawyers and activists in Delhi in June-July 2009 who had spoken with the children’s families.

¹⁶² Human Rights Watch interview with Hanif Lakadwala, an activist with the human rights organization Sanchetna, Ahmedabad, June 20, 2009.

¹⁶³ Human Rights Watch interview with Yusuf Shaikh, activist with human rights groups including PUCL, Baroda, June 21, 2009.

about the bomb blast, only how I knew this person. I explained and they were satisfied. But the newspapers reported that there was there was a terrorist in the hospital.”¹⁶⁴

Another physician in Jaipur, Abrar Ali, said local media labeled him “Dr. Terror” and “Dr. Death” and claimed he had supplied ammonium nitrate for making the bombs after he was picked up for questioning.¹⁶⁵

When I applied for a post-graduate program, my college refused to sign my application and instead set up a disciplinary committee. Even though there was nothing against me, and I had not even been arrested, the principal said to me, “We don’t allow such activities.”¹⁶⁶

Rasheed Hussein believes he lost his job with an Indian software company because Rajasthan police questioned him for nine days in June 2008 in connection with the Jaipur blasts.¹⁶⁷ Hussein was a member of SIMI before it was banned and said the organization as he knew it “was not associated with violence.”¹⁶⁸ After the Jaipur bombings, he organized relief operations and blood drives for survivors. During police questioning, he said, “I was not tortured. They were just asking for names of people who might be involved.”¹⁶⁹ Soon after his release, Rasheed was dismissed by his company.

Denial of Access to Lawyers and Family Members

The likelihood of coerced confessions and other unlawfully obtained statements is vastly increased during incommunicado detention.¹⁷⁰ Indian law grants arrested persons the right

¹⁶⁴ Human Rights Watch interview with Anwar Hussein, Jaipur, November 7, 2008.

¹⁶⁵ “Ex-AIMS Doc Part of Jaipur Cell?” *The Times of India*, August 19, 2008, <http://timesofindia.indiatimes.com/India/Ex-AIMS-doc-part-of-Jaipur-terror-cell/articleshow/3375528.cms> (accessed September 21, 2009).

¹⁶⁶ Human Rights Watch interview with Abrar Ali, Jaipur, November 7, 2008.

¹⁶⁷ Human Rights Watch interview with Rasheed Hussein, Jaipur, November 7, 2008. See also “Jaipur Blasts: Cleared by Police Infosys Techie Now Wants Job Back,” *Indian Express*, August 19, 2008, <http://www.indianexpress.com/news/jaipur-blasts-cleared-by-police-infosys%5C-t/350483/> (accessed September 21, 2009).

¹⁶⁸ Human Rights Watch interview with Hussein, November 7, 2008.

¹⁶⁹ *Ibid.*

¹⁷⁰ The UN Human Rights Committee has observed that “[p]rovisions should also be made against incommunicado detention” as effective means of preventing cases of torture and ill-treatment. See Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.1 at 30 (1994), <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm> (accessed October 7, 2010), para. 11. As the UN Commission on Human Rights observed, “Prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture.” See UN Commission on Human Rights, “Torture and other cruel, inhuman or degrading treatment or punishment,” Resolution 2003/32, adopted in the 57th meeting on April 23, 2003, chap. XI. E/CN.4/2003/L.11/Add.4, <http://www.unhcr.org/refworld/docid/43f313310.html> (accessed January 4, 2011). See also the UN Committee against Torture,

to legal consultation. Among other requirements, police must allow a suspect to meet with a lawyer and inform relatives of a suspect's arrest.¹⁷¹ Although the police can keep suspects in view, they must be out of earshot during consultations with lawyers.¹⁷² The International Covenant on Civil and Political Rights requires that all those in criminal proceedings have the right to communicate with legal counsel of their own choosing.¹⁷³ The UN Standard Minimum Rules for the Treatment of Prisoners provides that detainees have the right to regular visits with legal counsel during which they can exchange confidential information out of earshot of police or other authorities. They also have the right to "regular" contact with family and friends.¹⁷⁴

In several cases, police unlawfully denied suspects the right to meet with their legal counsel or family members for days or weeks. The police also in many cases unlawfully monitored suspects' conversations with lawyers when their attorneys were finally allowed to visit. "Because the men are accused of terrorism-related offenses, access to lawyers ... has been extremely minimal, in violation in of the Constitution," said Ahmedabad defense attorney Somnath Vatsa.¹⁷⁵

One released suspect said he was tortured and intimidated into not requesting a lawyer.

"Summary record of the 251st meeting: China," CAT/C/SR.251, May 3, 1996, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.SR.251.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.SR.251.En?Opendocument) (accessed January 4, 2011), para.18.

¹⁷¹ See *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

¹⁷² India's courts have issued numerous judgments upholding a suspect's right to confidential consultation with an attorney. In the landmark case of *Joginder Kumar v. State Of Uttar Pradesh* (1994) INSC 259, the Supreme Court held in para. 20 that "the right to have someone informed... and consult a lawyer in private... is inherent" in Article 22(1) of the Indian Constitution. See <http://www.indiankanoon.org/doc/768175/>. Article 22(1) states that: "No person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice." See Indian Constitution, <http://lawmin.nic.in/coi/coiason29julyo8.pdf>. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981) 2 SCR 516, the Supreme Court held that jail or other custodial officials "may, if thought necessary, watch the interview but not as to be within hearing distance of the detenu and the legal adviser." See <http://www.indiankanoon.org/doc/78536/>. These rights are further stipulated for suspects during court proceedings. India's Evidence Act of 1972, sec. 129, refers specifically to a suspect's right to "confidential communication with Legal Advisors." Sec. 126 of the Evidence Act further emphasizes that an attorney must not disclose confidential documents or communication from his client without the client's consent. See Evidence Act, <http://www.vakilno1.com/bareacts/indianevidenceact/indianevidenceact.htm> (all accessed December 29, 2010).

¹⁷³ ICCPR, art. 14(3)(b), <http://www2.ohchr.org/english/law/ccpr.htm#art14>. See, for example, Human Rights Committee, *Kelly v. Jamaica*, Communication No. 537/1993 (1993), CCPR/C/57/D/537/199, July 17, 2996, http://www.bayefsky.com/pdf/202_jamaicao06.pdf (accessed January 4, 2011), sec. 9.2 (accused not able to communicate with lawyer for five days after arrest).

¹⁷⁴ UN Standard Minimum Rules for the Treatment of Prisoners, sec. 37, authorizes access to family and friends at regular intervals. Sec. 93 grants prisoners access to a lawyer and says that: "Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official." UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977. <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (accessed November 2, 2009).

¹⁷⁵ Human Rights Watch interview with Somnath Vatsa, Ahmedabad, June 19, 2009.

We were told by the police department that if we got a lawyer, we would face many problems. And before our families came to visit, they [told] us to not say anything about what is going on inside [the police lockup] or that the officers are bad.¹⁷⁶

Once they gained access, lawyers frequently were unable to speak privately with clients. The lawyer of one suspect in Delhi complained to a magistrate that, “Throughout the meeting the officers of the Special Cell remained in the same room in close proximity of the accused and his lawyers thereby denying them confidentiality.”¹⁷⁷ Another Delhi attorney, Jawahar Raja, had to petition the High Court to gain access to his client, but still was unable to speak with him privately until he vigorously protested to Special Cell police. He said, “Since we had a court order they couldn’t refuse us, but they did everything they could to make the environment as hostile as possible. A police officer would be sitting right next to us.”¹⁷⁸ Khalid Sheikh, legal counsel for Abu Bashar, said: “We insisted on a private meeting out of earshot but the guard stood very close.... For two to three months we were not allowed to meet our client out of earshot.”¹⁷⁹

Many relatives also alleged that they were not allowed to meet with suspects. Twice, Abdur Rahman Ansari of Azamgarh traveled 460 miles—a 24-hour journey by bus and train—to meet his son, Saif-ur-Rahman, a suspect in the Jaipur bombings, and both times, the police turned him away. Mohammad Hasim, the uncle of Mohammad Sarwar, whose case is described earlier in this chapter, was twice denied access in January 2009 after making the same journey, and only met him two weeks later after obtaining a court order. In Gujarat, a woman said that in refusing to let her meet with her husband, the police “were angry and rude. They told me he is a terrorist who was part of the blasts.”¹⁸⁰

Some relatives suspected they were kept away while suspects were beaten. Nasim Bano Shahbuddin Sheikh said her son Shamsuddin Shahbuddin Sheikh was repeatedly summoned for questioning after the July 26, 2008, bomb attacks in Ahmedabad. On August 8, her son was summoned once again, but this time he did not return. He was not allowed to meet with his family members for three days. “We went repeatedly to the Crime Branch, we

¹⁷⁶ Human Rights Watch interview, 2009. Name, exact date, and location withheld to protect interviewee from possible retaliation.

¹⁷⁷ Court of Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi, *State v. Saqib Nisar*, “Application for Directions,” October 10, 2008. Copy on file with Human Rights Watch.

¹⁷⁸ Human Rights Watch interview with Jawahar Raja, New Delhi, July 4, 2009.

¹⁷⁹ Human Rights Watch interview with Khalid Sheikh, Ahmedabad, June 21, 2009.

¹⁸⁰ Human Rights Watch interview, details withheld.

took food and clothes, but they would not let us meet. On August 11, they finally let us meet him. They were holding him, he could barely walk.... [An officer] said, ‘Tell your mother that we are not beating you.’ I asked my son to change his shirt. His back was blue with wounds.”¹⁸¹

In other cases, police finally let relatives in hoping they would help persuade loved ones to provide evidence. Gujarat police picked up Mohammad Zaid Quttubuddin on July 31, 2008, but his family members were not allowed to meet him for six days. Eventually, after repeated appeals, his parents were allowed to meet him in the presence of Officer Barot who they said told them, “Your son is refusing to give information. That is all we need. Why is he refusing?”¹⁸²

In Maharashtra, many relatives of 2008 bombing suspects complained that they were not allowed to meet detainees for weeks or months after they were placed in judicial custody. Some lawyers made similar complaints, although they said access was generally better at jails than in police lockups.

Shakira Mozam Ali Khan was anxious to see her son, Mubin Kadar Sheikh, after she received a letter saying that he was punished with solitary confinement for arguing with jail staff. His jailers had also placed him in a cell for about three weeks with several inmates suffering acute psychiatric disorders.¹⁸³ Sheikh, 24, had written to his mother saying that he was in trouble.

Don’t panic please. It’s nothing very serious. But I need your help. I have been shifted to another Yard in here. The Superintendent is harassing me and I don’t know why.... I want you to come here as soon as you can along with the lawyer or at least consult a lawyer as to what I should do.¹⁸⁴

When Khan went to Amravati Central Jail, the authorities refused to let her see her son for two months, insisting she obtain a clearance certificate from police investigators—a tactic

¹⁸¹ Human Rights Watch interview with Nasim Bano Shahbuddin Sheikh, Ahmedabad, June 19, 2009.

¹⁸² Human Rights Watch interview with Badriunissa Qutubuddin Sheikh, Ahmedabad, June 19, 2009.

¹⁸³ Human Rights Watch interview with Azmi, June 25, 2009.

¹⁸⁴ Letter from Mubin Kadar Shaikh to his mother, Shakera Mozam Ali Khan, May 12, 2009. A magistrate in Mumbai allowed Mubin, a graduate student, to temporarily leave custody to take a university examination in the Maharashtra city of Pune, but only after requiring relatives to pay 25,000 Rupees (\$534) for his armed escorts, an amount they could ill afford. See “Application Seeking Transfer of Under-trial Prisoner Mubin Kadar Shaikh Currently Lodged in Amravati Central Prison,” Letter to the Inspect General Police from suspect’s mother, Shakera Mozam Ali Khan, June 10, 2009. Copies of both letters on file with Human Rights Watch.

Sheikh's lawyer called a "cumbersome exercise and unwarranted by law."¹⁸⁵ During her visits with Sheikh, "I am not able to talk to him alone, without the guards," the mother said.¹⁸⁶

Protections against Arbitrary Detention

Police in India have broad authority to arrest any individual without a warrant if they have a "reasonable suspicion" of the person's connection to serious criminal offenses.¹⁸⁷ Police can also arrest without a warrant any individual they know is planning to commit certain types of offenses.¹⁸⁸ Amendments passed in 2010 to the Code of Criminal Procedure that would curb police authority to make warrantless arrests have not yet been signed into law.¹⁸⁹

Nevertheless, India's Constitution and Supreme Court judgments set procedural obligations for police arrests. Arbitrary detentions are also barred under international law.

The Indian Constitution establishes the right to life and personal liberty.¹⁹⁰ The Supreme Court has held that these rights inherently limit the police's expansive arrest authority: Police can make an arrest only if, based on an investigation, they have "reasonable belief" in "the person's complicity" and "the need to effect arrest."¹⁹¹

The Constitution also mandates that when police make an arrest without a warrant, they must inform the accused of the grounds for the arrest and the right to bail. Police must produce an arrested person before the nearest magistrate without delay and at most within

¹⁸⁵ MCOCA Special Court for Greater Mumbai, *Mubin Kader Sheikh v. The State of Maharashtra*, "Application on Behalf of the Accused," May 19, 2009. Copy on file with Human Rights Watch.

¹⁸⁶ Human Rights Watch telephone interview with Shakira Mozam Ali Khan, Mumbai, October 23, 2009.

¹⁸⁷ Code of Criminal Procedure, 1973, sec. 41, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

¹⁸⁸ *Ibid.*, sec. 151.

¹⁸⁹ The Indian Parliament passed amendments in 2010 that aim to curtail abuses under section 41 of the Code of Criminal Procedure by requiring the police to specify in writing the reasons for making an arrest without warrant for serious offenses. However, as of this writing, the amendments had not been signed into law by the president. See the Code of Criminal Procedure (Amendment) Act, 2010, <http://www.prsindia.org/uploads/media/CRPC/The%20Code%20of%20Criminal%20Procedure%20Amendment%20Bill%202010.pdf>, and the Code of Criminal Procedure (Amendment) Act, 2008, Sec. 5, http://www.voice4india.org/wp-content/uploads/2010/03/THE-CODE-OF-CRIMINAL-PROCEDURE-AMENDMENT_ACT-2008.pdf (both accessed September 13, 2010).

¹⁹⁰ Constitution of India, art. 21, <http://lawmin.nic.in/coi/coiason29july08.pdf> (accessed August December 29, 2010).

¹⁹¹ See *Joginder Kumar v. State of Uttar Pradesh*, 1994 AIR 1349, 1994 SCC (4) 260.

24 hours.¹⁹² Moreover, in the landmark 1997 case of *D.K. Basu v. West Bengal*, the Supreme Court established additional mandatory procedures for police detention.¹⁹³

The ICCPR's prohibition on arbitrary arrest and detention prohibits arrests and detentions that are carried out unlawfully, or are manifestly disproportionate, unjust, discriminatory, random, or capricious. At the time of arrest, the ICCPR states, the accused has the right be informed of the reasons for the arrest and the charges.¹⁹⁴

Arbitrary detentions have been challenged, sometimes successfully, in Indian courts or at the national or state human rights commissions.¹⁹⁵ The NHRC has repeatedly ordered prosecutions and compensation in such cases and said: "It is important to understand that a person in custody is under the care of the State and it is the responsibility of the State to ensure protection of his or her basic human rights. It should not be confused as advocacy for rights of criminals and terrorists."¹⁹⁶ However, only in some cases have the courts pressed for accountability for such violations. And even if there is acknowledgement of violations, the government prefers to pay compensation only and not prosecute those responsible.¹⁹⁷

¹⁹² Indian Constitution art. 22; see also Code of Criminal Procedure, sec. 57, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>. The National Human Rights Commission (NHRC) has also established guidelines for arrest and detention. See NHRC, "NHRC Guidelines for Arrest," November 22, 1999, <http://nhrc.nic.in/Documents/sec-3.pdf> (accessed February 17, 2009).

¹⁹³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416. The ruling requires police to bear accurate, visible, and clear identification, prepare a memo of arrest that is signed by a relative or other witnesses at the time and place that a person is taken into custody, inform a relative or friend as soon as possible of the arrest or detention, and make the arrested person aware of that right. Police also must document an arrest in a diary entry and a memo that states the time and place of arrest, which is attested by a witness, and is counter-signed by the arrested person. Police stations must post arrest information and send copies of related documents to the area magistrate. Basu also gives arrested persons the right to legal consultation during interrogation. Amendments approved by Parliament that as of this writing awaited the president's signature would add key Basu mandates to the criminal code. See Code of Criminal Procedure (Amendment) Act, 2008, sec. 6, <http://www.voice4india.org/wp-content/uploads/2010/03/THE-CODE-OF-CRIMINAL-PROCEDURE-AMENDMENT-ACT-2008.pdf>.

¹⁹⁴ The ICCPR in article 9 states that "No one shall be subjected to arbitrary arrest or detention [or] be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." Article 9(1) states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." See also Manfred Nowak, *U.N. Covenant on Civil and Political Rights: ICCPR Commentary*, 2nd ed. (Kehl am Rhein: Engel, 2005), pp. 224-25.

¹⁹⁵ Shibu Thomas, "HC Orders Cops to Pay for Illegal Detention," *The Times of India*, April 18, 2009, <http://timesofindia.indiatimes.com/news/city/mumbai/Hc-orders-cops-to-pay-for-illegal-detention/articleshow/4416360.cms> (accessed September 21, 2009); "Cops Guilty of Illegal Detention," *The Deccan Herald*, September 10, 2009 <http://www.deccanherald.com/content/24520/cops-guilty-illegal-detention.html> (accessed September 21, 2009).

¹⁹⁶ National Human Rights Commission, "Recommendations of NHRC on Detention," October 2008 <http://nhrc.nic.in/dispatchive.asp?fno=1682> (accessed September 21, 2009).

¹⁹⁷ See Human Rights Watch and Ensaaf, "*Protecting the Killers; A Policy of Impunity in Punjab, India*, vol. 19, no. 14(C), October 2007, <http://www.hrw.org/en/reports/2007/10/17/protecting-killers-0>; "India: Hold Torturers Accountable," Human Rights Watch news release, November 17, 2008, <http://www.hrw.org/en/news/2008/11/17/india-hold-torturers-accountable>.

IV. Religious and Ethnic Discrimination

India is a secular state that at its highest levels has always emphasized that it does not associate terrorism with any single creed. Nevertheless, the country has suffered frequent episodes of communal violence, much of it involving clashes between Muslims and Hindus such as the riots in Gujarat state that killed up to 2,000 people, most of them Muslims, in 2002.¹⁹⁸

Home Minister P. Chidambaram took an important step toward preventing a backlash following the 2008 bombings by telling Parliament that the “government maintains zero tolerance for terrorism inspired by religion, may it be Islam or may it be Hindu,” prompting sharp objections from the opposition Hindu-nationalist Bharatiya Janata Party.¹⁹⁹ Human Rights Watch nevertheless received numerous, credible allegations of religious harassment and ethnic stereotyping in the aftermath of the 2008 attacks, particularly of Muslims, but also of some Hindus, by law enforcement officials, employers, landlords, and the media.

A brother of Abu Bashar, named as a primary conspirator in the 2008 bombings, was fired from both of his jobs in Mumbai once word spread of his sibling’s alleged involvement.²⁰⁰ A father of a suspect in Gujarat said that his boss fired him the day after his son’s arrest was announced: “When they saw my son’s name in the paper, they gave me my dues and asked me to leave. They said, ‘Your son is a terrorist. It is in the newspaper.’”²⁰¹

The government’s failure to address these practices has fueled a belief among Muslims that the authorities, despite their official nondiscrimination policy, are all too quick to blame Muslims first.

A number of Muslims described discrimination by the authorities. One young Muslim professional whom Delhi police detained for questioning in late 2008 because they were seeking one of his relatives said interrogators made repeated slights to his religion: “The very first question was, ‘Why have you people become anti-national? You people are bloody Pakistanis.’”²⁰²

¹⁹⁸ For more on the treatment of Hindu suspects see Chapter V, “The Malegaon Blast: Hindu Suspects Allege Abuse.”

¹⁹⁹ Nistula Hebbar, “Chidu’s Hindu Terror Remark Causes Uproar,” *Daily News and Analysis*, December 3, 2009, http://www.dnaindia.com/india/report_chidu-s-hindu-terror-remark-causes-uproar_1319466 (accessed December 4, 2009).

²⁰⁰ Human Rights Watch interview with Abu Zafar, brother of Abu Bashir, New Delhi, June 14, 2009.

²⁰¹ Human Rights Watch interview, Gujarat, June 2009. Name, exact date, and location withheld at interviewee’s request.

²⁰² Human Rights Watch interview, details withheld, June-July, 2009.

Vinod Kumar Yadav, a Hindu human rights activist in Uttar Pradesh, said he was taken by state police to a secret detention center in Lucknow in October 2008 and repeatedly beaten for two days for participating in rallies against abuse of Muslim suspects in the bombings:

They were constantly saying ... you are a Hindu and you are questioning the statements we make about Muslim boys and that is not good.... You should not be seen with these Muslim people again, and if you don't understand this, the future will be bleak for you.... I was forced to lie flat, my hands and legs were wrapped many times with cable wire. They beat me with fists, with shoes, with bamboo sticks.... At one point I lost consciousness and when I came to, they beat me again.²⁰³

In some cases, authorities targeted entire communities. In Jaipur, the government razed a migrant camp for thousands of Bengali speakers and deported many inhabitants to the border of Bangladesh after initially accusing residents of involvement in the May 2008 bombing in the city.²⁰⁴ Mohammad Mujib-ur-Rahman, who used to run a small teashop in Jaipur, has several government-issued identity documents. Originally from West Bengal, his family has lived in Jaipur for over 25 years. Yet the police demanded that he and his family go back to West Bengal state to secure evidence of their Indian origin. "How are we expected to do this?" he said. "Our parents are dead, and so are our immediate uncles or aunts. We haven't seen our cousins or other relatives in decades."²⁰⁵

There were several reports of discrimination against Muslim residents of Azamgarh, the Uttar Pradesh district where about two dozen bombing suspects grew up. In one small but telling incident in November 2008, Government Railway Police accused three Muslim teenagers who were members of a local field hockey team of being "terrorists." The police seized their pocket money when the teenagers went to retrieve a bag they had left on a train en route to a game and the police learned they came from Azamgarh.²⁰⁶

²⁰³ Human Rights Watch interview with Vinod Kumar Yadav, Azamgarh, July 1, 2009.

²⁰⁴ PUCL Rajasthan, "The Jaipur Terror Scapegoat; The Poor Bengali Muslim Migrant," May 23, 2008, www.pucl.org/Topics/Religion-communalism/2008/jaipur-blasts.pdf (accessed October 2, 2009).

²⁰⁵ Human Rights Watch interview with Mohammad Mujib-ur-Rahman, Jaipur, November 6, 2008.

²⁰⁶ Human Rights Watch interview with Azamgarh Hockey Association players and coach Abu Lais Khan, Azamgarh, July 1, 2009. One player, Samiullah Usmani, 17, recalled the November 2008 incident in an interview with Human Rights Watch in Azamgarh on July 1, 2009: "We realized we had left a kit bag on the train and ran back to get it. A GRP [Government Railway Police official] called after us and asked what we were doing and where we were from. When we told them, he said, "You are from Azamgarh? You are terrorists." The police searched our pockets. I had 200 rupees. They took them away from me. The second boy had 700 rupees and they took them away from him. The third boy, he only had one rupee. They called him 'beggar.'"

Ehsan Ahmed, a college teacher in Azamgarh whose son, Zeeshan Ahmed, is charged in the Delhi blasts, is among many parents who are afraid to send other children out of town for further studies for fear they would be picked up simply because of their home address.

Sensationalist media labeled Azamgarh a “terrorist nursery.” One prominent Indian weekly stated: “It is a place where martyrdom can be booked in advance—or victimhood is a constant anticipation. It is where those who hear the call of the Book buy their one-way ticket to paradise from the nearest travel agent.”²⁰⁷

Discrimination on the basis of religion violates the rights of Muslims and other minorities under India’s Constitution. The charter declares that all citizens have equal rights to freedom of expression, faith, worship, and opportunity. Part III of the Constitution spells out the fundamental rights to equal protection under the law, prohibition of discrimination on the basis of religion or race, and the right to freely express and practice religion.²⁰⁸ Part IV of the Constitution also directs the state to “endeavor to eliminate inequalities in status, facilities and opportunities” of “the weaker sections of the people.”²⁰⁹

Many Muslims in India view the abuses of suspects in the 2008 bombings as part of a broader pattern of discrimination against the Muslim population. While India is remarkably pluralistic and many Muslims have enjoyed social and economic success, the majority of Muslims are marginalized. According to the landmark 2006 “Sachar Committee Report” commissioned by the central government, Indian Muslims are poorer and have lower rates of literacy than the majority Hindu population.²¹⁰ The Sachar report recommended measures such as expanded access to education, credit, and public-sector jobs to improve socio-economic conditions for Muslims in India, but to date, few have been implemented. “The

²⁰⁷ S. Prasannarajan, “The Ancestry of Hate,” *India Today*, October 2, 2008, http://indiatoday.intoday.in/index.php?option=com_content&task=view&issueid=73&id=16655&Itemid=1§ionid=&completeview=1 (accessed June 8, 2009).

²⁰⁸ Constitution of India, Part III, arts. 14, 15 (1) and (2); arts. 16(1) &(2); arts. 25- 28, <http://indiacode.nic.in/coiweb/welcome.html> (accessed August 1, 2009).

²⁰⁹ Constitution of India, “Directive Principles of State Policy,” Part IV, arts. 38 (2) and 46, <http://indiacode.nic.in/coiweb/welcome.html>.

²¹⁰ *Social, Economic and Educational Status of the Muslim Community of India*, Prime Minister’s High Level Committee Cabinet Secretariat headed by retired Chief Justice of Delhi High Court Rajindar Sachar, Government of India, November 2006, http://minorityaffairs.gov.in/newsite/sachar/sachar_comm.pdf (accessed June 1, 2009). Although Muslims comprise nearly 14 percent of India’s population, they hold fewer than 5 percent of government posts and account for just 4 percent of students in India’s elite universities.

feeling among Muslims is that their concerns are not being heard,” said Mohamed Shafi Qureshi, chairman of India’s National Commission for Minorities.²¹¹

Reports of discrimination spread through mosques, the internet, or religious meetings, and find currency among disaffected Muslims. This, in turn, risks increasing Muslim youths’ vulnerability to recruitment by violent militant groups. The ability of groups such as LeT to recruit in India “will be enormously linked to India’s perceived lack of redress for Muslims,” said US-based security analyst C. Christine Fair.²¹²

In December 2010, Indian investigators took an important step towards reversing perceptions of anti-Muslim bias by charging three people allegedly affiliated with the Hindu extremist group Rashtiya Swayamsevak Sangh and identifying other Hindu suspects in deadly bombings at three Muslim holy sites. Officials with the Central Bureau of Investigation said the suspects, including a religious leader, were behind the bombings of an important Sufi Muslim shrine in Amjer, a town in Rajasthan, and of a mosque in Hyderabad, both in 2007, as well as of a Muslim cemetery in Malegaon in 2006.²¹³ Investigators also charged alleged members of Abhinav Bharat, another Hindu extremist group, in a 2008 bombing in Malegaon that police had initially attributed to Muslims, a case detailed in the next chapter.

²¹¹ Human Rights Watch interview with Mohamed Shafi Qureshi, chairman of India’s National Commission for Minorities, June 15, 2009.

²¹² Human Rights Watch telephone interview with Fair, assistant professor at the Center for Peace and Security Studies at Georgetown University, May 6, 2010.

²¹³ “Third suspect in Ajmer blast arrested,” *The Hindu*, May 3, 2010, <http://www.hindu.com/2010/05/03/stories/2010050360581200.htm>(accessed May 3, 2010).

V. The Malegaon Blast: Hindu Suspects Allege Abuse

The Maharashtra ATS initially blamed Islamist militants for the bombing on September 29, 2008, in the predominantly Muslim city of Malegaon, which killed seven people. However, they soon after arrested 11 alleged members of the Hindu ultra-nationalist group Abhinav Bharat. The suspects included a decorated army colonel—the first serving officer since Indian independence to be accused in a terrorism case—as well as a retired army major, a Hindu nun and a self-styled Hindu seer.

At least five of those arrested have alleged mistreatment by the Maharashtra ATS, including unlawful detention, torture, religious harassment, verbal abuse, and denial of access to family and lawyers.²¹⁴ Pragyan Singh Thakur, a *sadhvi* (Hindu nun), alleges that ATS police detained her for nearly two weeks before announcing her arrest on October 10, 2008. For at least two days of the unlawful custody, she said, she was repeatedly beaten and threatened to the point where she became ill, prompting the ATS to admit her to two Mumbai hospitals for treatment—covering her face with a black cloth to conceal her identity as they carried her in on a stretcher. In a detailed affidavit filed with the criminal court in Nasik on November 17, 2008, Thakur alleged the police also beat her disciple until he agreed to beat her as well:

Being my disciple, he exerted the very minimum of force on me. He was then pushed aside by a member of the ATS ... who then himself commenced beating me severely with a belt on my hands, forearms, palms, feet, soles, causing me bruises, swelling and contusions in these areas.... In addition I was subject to vulgar abuse and obscene language by members of the ATS team interrogating me.... My chastity was questioned. I was physically and verbally traumatized to the extent that I wanted to commit suicide.²¹⁵

Thakur said her interrogators also checked her into a hotel in Mumbai—she named the hotel and room numbers—and made her call acquaintances from two mobile phones and say that she was “hale and hearty and doing fine.” She also alleged she was denied any access to her family or a lawyer until she was presented to a magistrate on October 24. Thakur’s

²¹⁴ The Maharashtra ATS chief and the joint commissioner of police for Mumbai did not respond to repeated written and telephone requests for interviews with Human Rights Watch. In November 2008, then-Joint Commissioner of Police for the ATS, Hemant Karkare, denied any Hindu suspects had been tortured. Karkare was killed in the 2008 Mumbai attack.

²¹⁵ The following account is based on the affidavit of Sadhvi Pragyan Singh Thakur, filed November 17, 2008, in criminal court in the city of Nasik, which has jurisdiction over Malegaon [C.R. I - 130/08].

lawyer, Ganesh Sovani, said he was not allowed to meet her privately for more than five minutes at a time until November 14.²¹⁶

According to his relatives and lawyer, Lt. Col. P.S. Purohit, a veteran of the conflict in Jammu and Kashmir, was tortured and unlawfully held for one week by members of the Maharashtra ATS before they announced his arrest on November 5, 2008. He alleges that his mistreatment began in a safe-house in the central Maharashtra hill station of Khandala, and continued in Mumbai until November 18, when he was transferred to judicial custody. Said his wife, Aparna Purohit:

He was made to hang upside down, and he was severely beaten with a thick stick on his palms and soles. He was also beaten with a thick stick on his back. And they had tied his hands and tied his legs, and then they started pulling his legs apart ... to more than 120 degrees. He kept on telling those people that he has an implant in his knee, which was actually a battle casualty.... But they just did not, you know, they were just not ready to listen to him, and finally there was some kind of sound in his right knee and it started swelling.... They were saying, just confess that you have done this and we'll stop all this.²¹⁷

After repeated requests from Purohit's lawyer, a court ordered an independent medical examination, which found that Purohit had suffered damage to his right knee and ligament. Purohit did not tell a court about the torture until November 21 because his interrogators threatened to "do certain things" to his female relatives and kill him in a fake "encounter," his wife said. If police were willing to torture someone of her husband's rank, Aparna Purohit asked, "What more grave things could they do with the commoner? They could just pick up anyone on the street, torture them and get away with it."²¹⁸

Ret. Army Maj. Ramesh Upadhyay also alleged he was unlawfully detained for four days before the ATS announced his arrest on October 28, 2008. During that time, he said, he was extensively tortured. "The marks of ATS beating are still fresh on my body," Upadhyay told a

²¹⁶ Human Rights Watch interview with Ganesh Sovani, June 23, 2009.

²¹⁷ Rights Watch interview with Aparna Purohit, Mumbai, June 26, 2009. The details were reiterated in a Human Rights Watch interview with Purohit's lawyer, Shrikant Shivade, Pune, July 8, 2009.

²¹⁸ Ibid.

magistrate in a Nasik court the day after his arrest.²¹⁹ The magistrate transferred Upadhyay and four other suspects to judicial custody but did not order an independent investigation into the allegations. Upadhyay's son, Vishay Upadhyay, said he saw marks of abuse when police finally allowed him to visit in a Mumbai lockup one week later:

He was looking very weak and had dark circles around the eyes and was sweating quite a lot.... He had lost a lot of weight... You could see marks on his body that he had been tortured—black marks on his hands.²²⁰

Another suspect, Dayanand Pandey, who is a self-styled *shankaracharya*—a revered Hindu theologian—alleged in an open letter to followers that ATS police both tortured him and subjected him to religious harassment after he was arrested in the state of Uttar Pradesh and sent to Mumbai on November 13, 2008.

My saffron robes were removed, I was stripped naked and wet in an air-conditioned room for three days and given electric shocks.... [My] religious books ... were trampled upon and thrown in a gutter. Three men would stand upon my legs and hit me with belts on the soles of my feet, until I fell unconscious. Meat was pushed into my mouth and I was told that it was cow-flesh [beef]. I was forced to read certain scripts, and then my voice dubbed, and audio-video tapes produced. I was threatened that pornographic CDs would be made about me.²²¹

The ATS in November 2008 filed charges against the Malegaon suspects under the Maharashtra Control of Organised Crime Act (MCOCA) and their cases were sent to a special court in Mumbai. Among other measures that encourage abuse, MCOCA allows suspects to be temporarily returned to police custody even after they have been moved to a judicially supervised jail. Suspect Ajay Rahirkar, whom the ATS unlawfully detained for eight days before he was produced in Nasik court on November 2, 2008, was returned to the ATS for three days on December 17, 2008. During those three days, “the worst pressure was placed

²¹⁹ “Ex-army officer Upadhyay alleges torture by ATS,” *Thaindian News*, October 29, 2008, http://www.thaindian.com/newsportal/world-news/ex-army-officer-upadhyay-alleges-torture-by-ats_100112851.html (accessed September 1, 2010).

²²⁰ Human Rights Watch interview with Vishay Upadhyay, Pune, July 8, 2009.

²²¹ Translation of Hindi written statement from Pandey to his followers on December 25, 2008, provided to Human Rights Watch by Shivade, Pune, July 8, 2009. Hinduism considers cows sacred and forbids their killing or eating.

on him,” according to a relative. “They threatened Ajay that they would beat his brother and father in front of him.”²²²

As of this writing, the 11 Malegaon bombing suspects were being held without bail pending appeal of the MCOCA charges before the Supreme Court.²²³

²²² Human Rights Watch interview with Rahirkar’s relative, details withheld, 2009.

²²³ “SC declines bail to Purohit in Malegaon blast case,” *Deccan Herald*, October 4, 2010, <http://www.deccanherald.com/content/101924/sc-declines-bail-purohit-malegaon.html> (accessed December 17, 2010).

VI. Attacks on Lawyers

Lawyers who represent Muslims suspected of terrorism-related crimes operate in a climate of overt hostility. In the wake of the 2008 attacks, at least seven bar associations in four states issued official or unofficial resolutions instructing members not to represent terrorism suspects. They include the state bar association of Rajasthan, the local bar associations of Lucknow and Faizabad in the state of Uttar Pradesh, and Bhopal in the state of Madhya Pradesh. They also include the associations of Nagpur and Pune, as well as the prestigious Mumbai Metropolitan Magistrate Court Bar Association, all in Maharashtra state.²²⁴

In December 2010, the Supreme Court criticized bar associations for passing resolutions forbidding the defense of certain persons, stating: “The action of any bar association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or that he is a suspected terrorist, rapist, mass murderer ... is against all norms of the Constitution, the statute and professional ethics.”²²⁵

Mumbai lawyer Shahid Azmi was among the few lawyers willing to defend terrorism suspects in Maharashtra. A witness to violent anti-Muslim riots as a teenager in 1992, Azmi was arrested after joining a Kashmiri militant group and was sentenced to five years in prison. In June 2009 he told Human Rights Watch that his experience with the justice system and those of many others he met while in prison—all convicted under the abusive and now-defunct Terrorist and Disruptive Activities (Prevention) Act—inspired him to defend persons charged with acts of terrorism.²²⁶

Azmi was defending several of the 2008 terrorism suspects, including an Indian national charged in connection with the Mumbai attack, when he was killed in February 2010.²²⁷ Three gunmen posing as prospective clients entered his office one evening and shot five rounds at

²²⁴ Local bar associations can be formed by lawyers appearing in various district or city courts and usually serve union functions.

²²⁵ Satya Prakash, “Don’t refuse cases, Supreme Court tells lawyers,” *The Hindustan Times*, December 8, 2010, <http://www.hindustantimes.com/Don-t-refuse-cases-Supreme-Court-tells-lawyers/Article1-635762.aspx> (accessed December 22, 2010).

²²⁶ Human Rights Watch interview with Shahid Azmi, Mumbai, June 25, 2009.

²²⁷ “26/11 accused Faheem Ansari’s lawyer Shahid Azmi shot dead,” *The Times of India*, February 11, 2010 <http://timesofindia.indiatimes.com/india/26/11-accused-Fahim-Ansaris-lawyer-Shahid-Azmi-shot-dead/articleshow/5561910.cms> (accessed April 26, 2010). Azmi’s vigorous defense of the defendant in the Mumbai attacks was widely credited with resulting in that client’s acquittal in May 2010. See, for example, Mayura Janwalkar, “Terror suspect is free, thanks to Shahid Azmi,” *DNAIndia.com*, May 4, 2010, <http://www.dnaindia.com/dnainprint910.php?newsid=1378731> (accessed May 4, 2010).

him from point-blank range. Azmi told Human Rights Watch that he had been receiving threatening phone calls.²²⁸ Three men were arrested and charged with Azmi's murder.²²⁹ Police subsequently said the gunmen were contract killers for a Hindu gang suspected of links to the killings of other Muslims and that Azmi was targeted because he had been defending two members of a rival Muslim gang.²³⁰

In other areas of the country, at least eight lawyers who defied bans on defending Muslim terrorism suspects were physically attacked by other lawyers affiliated with nationalist Hindu parties, threatened, or publicly insulted. In most cases, the authorities have taken little if any action against those responsible.²³¹

In September 2010, the Pune Bar Association banned members from defending two Muslim men accused of involvement in the Pune attack seven months earlier. Bar association members also chanted slogans at one court hearing to protest the suspects' right to counsel.²³² One lawyer, Sushil Mancharkar, resigned from the case after two dozen activists from the nationalist BJP demonstrated outside his home, demanding he step down.²³³ Another lawyer, A. Rehman, said he was forced to resign as the state minority leader for the Nationalist Congress Party, which positions itself as a secular party, for refusing to remove himself from the case.²³⁴

²²⁸ Human Rights Watch interview with Azmi, June 25, 2009.

²²⁹ "Nikam appointed special prosecutor in lawyer Azmi's murder case," *The Times of India*, July 10, 2010, <http://timesofindia.indiatimes.com/city/mumbai/Nikam-appointed-special-prosecutor-in-lawyer-Azmis-murder-case/articleshow/6148007.cms> (accessed August 25, 2010).

²³⁰ "Ex-Chhota Rajan aide Bharat Nepali got lawyer Azmi killed," *Mumbai Mirror*, February 17, 2010, <http://www.mumbaimirror.com/index.aspx?page=article§id=15&contentid=20100217201002170349287132ee5e8a> (accessed May 4, 2010). Numerous Muslim activists, political observers, and lawyers, who spoke on condition of anonymity for fear of retaliation, told Human Rights Watch in email and telephone interviews that they suspected Azmi was killed for his successful defense of Muslim suspects in high-profile cases.

²³¹ Human Rights Watch compiled information on these attacks from interviews with attorneys who have represented Muslim terrorism suspects in India including Colin Gonsalves of the Human Rights Law Network, New Delhi, July 4, 2009, and Mohammad Shuaib, Lucknow, June 28, 2009, as well as from Indian media reports and from *Mohd. Shuaib v. Bar Council of India*, Writ Petition No. 494, filed October 14, 2008, before the Supreme Court of India, copy on file with Human Rights Watch.

²³² "Police remand of German bakery blast accused Himayat Baig extended," *DNA India*, September 20, 2010, http://www.dnaindia.com/mumbai/report_police-remand-of-german-bakery-blast-accused-himayat-baig-extended_1440625 (accessed September 27, 2010).

²³³ "BJP protests Pune lawyer's move to defend terror accused," Indo-Asian News Service, September 19, 2010, http://www.thaindian.com/newsportal/politics/bjp-protests-pune-lawyers-move-to-defend-terror-accused_100431014.html (accessed September 27, 2010).

²³⁴ "German bakery blast advocate resigns from minority cell of Maharashtra NCP," *DNA India*, September 23, 2010, http://www.dnaindia.com/mumbai/report_german-bakery-blast-advocate-resigns-from-minority-cell-of-maharashtra-ncp_1441830 (accessed September 27, 2010).

While most of the IM suspects eventually obtained counsel, Indian human rights groups and defense attorneys told Human Rights Watch that the intimidation tactics have greatly reduced the pool of lawyers willing to defend Muslim terrorism suspects more generally. “Lawyers are reluctant to represent terrorist suspects,” said retired Gujarat High Court Judge Ramesh Mehta. “There is a kind of peer pressure to not defend them.”²³⁵ It is also clear that defending a terrorism suspect of any ethnicity is unpopular in India. Lawyers for the 11 Hindus charged in the Malegaon bombing of 2008 also alleged that they received death threats.²³⁶

Many bar associations qualified the bans by saying they only applied in cases with “incontrovertible evidence” of guilt—when the legal process itself is the mechanism for determining guilt, and where proceedings that violated a defendant’s right to counsel cannot fairly determine guilt.²³⁷ To their credit, the Uttar Pradesh and Madhya Pradesh state bar councils denounced the bans. Even in those two states, however, at least three lawyers were assaulted in 2008 for defending terrorism suspects.

In Uttar Pradesh, veteran defense attorney Mohammad Shuaib of Lucknow alleged that Hindu lawyers repeatedly beat and harassed him inside courthouses in the cities of Faizabad, Barananki, and Lucknow—once so severely that he was sent to a hospital emergency room.²³⁸

Shuaib filed detailed complaints with local police and numerous other authorities. He said the desk office at the police station refused to accept his complaint, an FIR. The refusal of police to register lawyers’ complaints of mistreatment violates India’s Code of Criminal Procedure.²³⁹ The police may decline to investigate claims made in an FIR if they are “not of a

²³⁵ Human Rights Watch interview with retired High Court Justice Ramesh Mehta, Ahmedabad, June 19, 2009.

²³⁶ Human Rights Watch email exchange with defense attorney Ganesh Sovani, Mumbai, July 15, 2009. See also “Plot to kill Sadhvi Pragnya’s lawyers foiled: police,” *Thaindian News*, July 10, 2009, http://www.thaindian.com/newsportal/uncategorized/plot-to-kill-sadhvi-pragnyas-lawyers-foiled-police_100216377.html#ixzzoWjrXbe79 (accessed August 1, 2009).

²³⁷ “Madhya Pradesh lawyers pledge not to defend terrorists,” Indo-Asian News Service, September 24, 2008, http://www.thaindian.com/newsportal/world-news/madhya-pradesh-lawyers-pledge-not-to-defend-terrorists_10099467.html (accessed September 11, 2009).

²³⁸ Human Rights Watch interview with Shuaib, Lucknow, June 28, 2009. Human Rights Watch also obtained information in his case from *Mohd. Shuaib v. Bar Council of India*, and Indian newspaper reports.

²³⁹ A First Information Report (FIR) is a criminal complaint that police either file against a suspect as a result of their own investigation or on behalf of a complainant. When filing an FIR on behalf of a complainant, police are required to register the FIR of the reported offense, read it to the informant and have it signed, and to provide a copy to the informant at no cost under India’s Code of Criminal Procedure, secs. 154-156, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>. As recently as 2008, the Indian Supreme Court noted police unwillingness to register FIRs without pressure from higher authorities: See *Lalita Kumari v. Gov’t of UP and Orissa*, Writ Pet. (CRL.) No. 68, decided July 14, 2008.

serious nature” or lack “sufficient ground” for investigating, but they have a documented record of abusing that right.²⁴⁰ Numerous eyewitnesses, including law enforcement officials, could provide grounds for investigations into the refusal to issue FIRs.

Police also refused to accept an FIR from Lucknow attorney Zamal Ahmed, who alleged that on June 6, 2008, two lawyers in Faizabad, including the secretary of the Faizabad Bar Association, pushed him and threatened him with “dire consequences” if he did not withdraw as counsel for a Muslim terrorism suspect.²⁴¹

In the state of Madhya Pradesh, lawyer Noor Mohammad said he was attacked on April 11, 2008, for defying a Dhar Bar Association ban on members defending terrorism suspects.²⁴² Police allegedly whisked Mohammad away in a van, but refused to release him until he signed a written statement that he did not wish to lodge an FIR and that he had not sustained any injuries.²⁴³

On October 14, 2008, the Human Rights Law Network, a Delhi-based nongovernmental organization, filed a plea with the Supreme Court of India calling on the court to initiate contempt proceedings against advocates who prevent terrorism suspects from receiving legal aid.²⁴⁴ The court rejected the plea, stating that the lawyers were governed by the Bar Council of India alone and that the court did not have jurisdiction over the matter.²⁴⁵

Shuaib stopped pressing for action against his attackers. “Eventually the cases would have to go before the same courts that already have done nothing,” he told Human Rights Watch. “What would be the point?”²⁴⁶

²⁴⁰ Code of Criminal Procedure, secs. 154, 157, 173, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>. As recently as 2008, the Indian Supreme Court noted police unwillingness to register FIRs without pressure from higher authorities: See *Lalita Kumari v. Gov't of UP and Orissa*, Writ Pet. (CRL.) No. 68, decided July 14, 2008.

²⁴¹ Mohd. Shuaib v. Bar Council of India.

²⁴² Kashif-ul-Huda and Mumtaz Alam Falahi, “Bar association expels lawyers representing terror suspects,” *The Muslim News*, August 19, 2008. <http://www.muslimnews.co.uk/news/news.php?article=14719> (accessed September 17, 2009).

²⁴³ Mohd. Shuaib v. Bar Council of India.

²⁴⁴ *Ibid.*

²⁴⁵ “Can’t direct contempt proceedings against lawyers, says SC,” *The Times of India*, November 8, 2008, http://timesofindia.indiatimes.com/Cant_direct_contempt_proceedings_against_lawyers_says_SC_/articleshow/3687607.cms (accessed September 17, 2009).

²⁴⁶ Human Rights Watch interview with Shuaib, June 28, 2008.

Some lawyers under attack have said they did not even want to take the cases but did so simply to show that India is capable of upholding the rule of law even in circumstances of remarkable duress.

Threats against the Mumbai Gunman's Defenders

After the attack on Mumbai in November 2008, the influential Mumbai Metropolitan Magistrate Court Bar Association issued an edict against any of its 1,000 members representing the sole suspect apprehended, Pakistani native Ajmal Kasab, or any Indians charged as accomplices.

Kasab is “not the same as other criminals arrested,” said Bar Association president Rohini Wagh. “His main aim was an attack on our city, our country.” Wagh justified the ban by noting the two-and-a-half day siege was among the most publicly documented attacks in history, with numerous eyewitnesses to Kasab’s actions. “There is no doubt about what he did,” Wagh argued. “The whole world was watching it [live on television] for 60 hours.”²⁴⁷

Following the Bar Association ban, only one of 17 eligible pro bono lawyers, Anjali Waghmare, volunteered to represent Kasab. On the night of Waghmare’s appointment on March 30, 2009, more than 200 people descended on her Mumbai home, throwing stones and shouting obscenities until she agreed to sign a note withdrawing from Kasab’s case. “What I am doing is following the court’s orders and the mandate of law. How can a mob decide whether it is right or wrong?” a visibly upset Waghmare said the next day.²⁴⁸

The judge presiding over Kasab’s trial gave Waghmare special protection and ordered an investigation into the incident that led to several arrests for contempt of court. As of this writing, however, none of the attackers had been prosecuted. At the judge’s urging, Waghmare also agreed to stay on the case but had to step down two weeks later because of an unrelated conflict of interest. Many of the protesters outside Waghmare’s house were members of the Hindu political party Shiv Sena.²⁴⁹

²⁴⁷ “Lawyers Group Refuses to Defend Mumbai Suspects,” *Breaking News.ie*, December 10, 2008, <http://breakingnews.ie/world/lawyers-group-refuses-to-defend-mumbai-suspects-389928.html> (accessed July 23, 2010).

²⁴⁸ “Shaken Kasab lawyer seeks time for rethink,” *The Times of India*, April 1, 2009, <http://timesofindia.indiatimes.com/Mumbai/Shaken-Kasab-lawyer-seeks-time-for-rethink/articleshow/4341541.cms> (accessed July 23, 2010).

²⁴⁹ *Ibid.*

Some Islamic organizations and leaders condemned attorneys for representing Muslim terrorism suspects as well. Abbas Kazmi, a prominent Muslim attorney, was expelled as a trustee from a prominent Islamic athletic foundation two weeks after he agreed on April 16, 2009, to replace Waghmare as Kasab's counsel. The Mumbai-based foundation, Islam Gymkhana, said it took the action because defending a terrorism suspect "is against the essence of Islam."²⁵⁰ Kazmi also said he received anonymous hate mail containing messages such as, "You should be hanged along with Kasab."²⁵¹

The judge removed Kazmi as Kasab's lawyer in November 2009, several months into the trial, in a dispute over the witness list. The judge then appointed Kazmi's junior to defend Kasab.

After he was forced to step down, Kazmi said prosecutor Ujjwal Nikam had publicly denigrated him during court proceedings, calling him "Abu Abbas"—the name of the Palestinian mastermind of the deadly 1985 hijacking of the cruise ship *Achille Lauro*—and "the terrorist's lawyer."²⁵² Nikam said he made the comments "in a lighter vein."²⁵³

In July 2010, Kasab's appellate lawyer, Amin Solkar, received a text message on his cellphone threatening "dire consequences" if he did not immediately withdraw from the case. State police authorities, to their credit, provided Solkar with a security escort.²⁵⁴

²⁵⁰ "Qasab's lawyer removed as Gymkhana trustee," *Indian Express*, May 1, 2009, <http://www.indianexpress.com/news/kasabs-lawyer-removed-from-islam-gymkhana/453443/> (accessed June 26, 2009); Human Rights Watch Interview with Abbas Kazmi, Mumbai, June 26, 2009.

²⁵¹ Human Rights Watch interview with Kazmi, June 26, 2009.

²⁵² "Kazmi Cries Foul," *Indian Express*, December 1, 2009, <http://www.indianexpress.com/news/kazmi-cries-foul-says-nikam-humiliated-him-during-26-11-trial/548541/> (accessed December 7, 2009).

²⁵³ "Kasab has realised the inevitability of his fate," *Rediffnews.com*, April 9, 2010, <http://news.rediff.com/interview/2010/apr/09/interview-with-26-11-prosecutor-ujjwal-nikam.htm> (accessed April 10, 2010).

²⁵⁴ Human Rights Watch telephone interview with Amin Solkar, Mumbai, July 15, 2010. Copy of the SMS on file with Human Rights Watch.

VII. Failure of Accountability

India rightly takes great pride in its democratic institutions, particularly its courts and the special commissions that it has established to protect human rights. Unfortunately, these institutions often fail in ensuring accountability for human rights abuses. In many instances, this pattern continued in the cases of the 2008 bombing suspects. All too often, magistrates accept police denials of mistreatment rather than order independent investigations of suspects' allegations. Moreover, India continues to provide effective immunity from prosecution to its security forces and other public officials. The army and other special forces, in particular, remain almost completely above the law. Human Rights Watch has repeatedly called upon India to remove all immunity clauses in Indian law, so that officials and police responsible for abuses or failing to discharge their duties to protect vulnerable persons can be appropriately prosecuted and punished.

The Indian government often refers to institutions such as the national and state human rights commissions as ensuring the protection of human rights. However, these institutions are weak, under-staffed, and often ignored. The National Human Rights Commission (NHRC) itself has complained about restrictions that prevent it from performing a meaningful role in addressing impunity. The state human rights commissions are invariably poorly funded and stacked with political appointees, making them ineffective in addressing ongoing human rights violations. Other constitutional bodies such as the National Commission for Minorities or the commissions to protect Dalits (so-called "untouchables"), women, or other vulnerable groups have sometimes shown similar indifference or even negligence in fulfilling their mandates to investigate credible accounts of torture, unlawful detention, and deaths in police custody. And even when they find mistreatment, they are often reluctant to demand prosecution of police or other public officials who may have committed the abuses.

Indifferent or Biased Courts

India's strong and independent judiciary is the ultimate authority in the protection of human rights. However, defendants and their lawyers in the 2008 cases have repeatedly accused magistrates of failing to investigate police torture and other abuse, or to reflect on whether detainees might be too scared to voice complaints of mistreatment because they would be remanded to the very police committing the acts.

In Gujarat, dozens of suspects filed a petition in February 2010 in India's Supreme Court seeking transfer of their trial to another state, alleging "bias by the police as well as the

judicial machinery.” Their allegations against judges include turning “a blind eye to allegations of torture,” delaying appointment of pro bono defense counsel, withholding documents filed by the prosecution from the defense, and supplying out-of-state defendants with charge sheets written only in Gujarati though it is a language they could not read. The petition also notes that one judge refused to recuse herself from a case related to the bombings; a defense lawyer filed a recusal motion after he accidentally spotted one investigating officer in the case meeting privately with the judge.²⁵⁵ The Supreme Court stayed the trial and ordered a response from Gujarat state authorities but had not ruled on the petition as of this writing.

Judges, particularly at the lower-court, or magisterial, level, seem to be particularly prone to lenience with the police when dealing with the so-called “anti-national” elements. “The degree of impartiality in the higher courts is quite good but at the lower-level courts it is quite low” in such cases, R.K. Shah, a retired state prosecutor who now serves as a special prosecutor in Ahmedabad, told Human Rights Watch.²⁵⁶

Magistrates have shown a striking willingness to extend police custody well beyond the 15-day limit that is strictly defined under Indian law.²⁵⁷ In some cases, magistrates have granted remand applications even if the suspects or their lawyers complained that the defendants had been abused in the police lockups to which they were being returned. For example, a Delhi magistrate on October 16, 2009, granted remand for the first five suspects in the Delhi blasts even after he received a defense petition alleging police abuse of one of the accused, Saqib Nisar. The petition said Nisar’s father had visited his son in the Delhi Police Special Cell lockup three days earlier and saw marks showing he had been “beaten upon the face and other parts of the body.”²⁵⁸

Later that month, a Delhi magistrate approved the transfer of the same five suspects to Gujarat police custody despite having received a defense petition alleging that one of the accused had been visited and threatened by a Gujarati police investigator inside the Delhi Special Cell lockup. If suspect Mohammad Shakeel did not confess, the Gujarat police

²⁵⁵ *Jahid Shaikh v. State of Gujarat*, Transfer Petition (Crl.) No. 55 of 2010, Supreme Court of India, February 15, 2010, copy on file with Human Rights Watch. In an interview on June 20, 2009, in Ahmedabad, the defense attorney, Hashim Qureshi, told Human Rights Watch that in January 2009, he saw the judge meeting privately with the investigating officer.

²⁵⁶ Human Rights Watch interview with R.K. Shah, special prosecutor, Ahmedabad, June 22, 2009.

²⁵⁷ For more information on police manipulation of the law to evade the 15-day cap, see the section on extended custody in Chapter III, “Arbitrary Detention.”

²⁵⁸ Human Rights Watch interview with Vikas Padora, attorney for Saqib Nisar, New Delhi, July 4, 2009. The allegations are contained in an Application for Directions, Court of Chief Metropolitan Magistrate, Tis Hazari Courts, New Delhi, October 15, 2009. Copy on file with Human Rights Watch.

investigator warned, once he was sent to Gujarat: “We will crush your bones.”²⁵⁹ A magistrate turned them over to the custody of the Gujarat Police Crime Branch anyway.²⁶⁰

On two occasions, a Delhi magistrate granted remand based on police departments’ generalized, oral arguments while failing to record in writing his reasons for doing so. Defense attorneys showed Human Rights Watch other successful written police applications for remand that contained only general statements that the investigating officers hoped to obtain “further information.”²⁶¹ The Code of Criminal Procedure states that a magistrate must record his or her reasons for authorizing police detention.²⁶² The Delhi High Court rules state that a magistrate must provide the accused and his or her counsel the opportunity to offer objections to a grant of police remand.²⁶³ Meaningful objections cannot be offered if the accused and defense counsel are not provided with the prosecution’s application stating the grounds on which remand is sought.

Magistrates and higher-court judges also appeared uninterested in pursuing allegations of mistreatment even if they were no longer handling requests for remands to police lockups. A lawyer who in January 2009 was representing a client in a Gujarat court described the attitude of one magistrate at a hearing in Ahmedabad for several bombing suspects:

They were all tied together with a rope like you tie a herd of buffalo. They complained of mistreatment including beatings and being denied medical care. The magistrate said, “I am not here to receive these complaints. This is only a production hearing.”²⁶⁴

In Mumbai, one defense lawyer said a judge had failed to provide him with a copy of a court-ordered medical report on a suspect’s allegation in October 2008 that police damaged his hearing during a beating.²⁶⁵ Another Mumbai lawyer complained of a judge meeting with

²⁵⁹ Human Rights Watch interview with Jawahar Raja, defense counsel for Mohammad Shakeel, New Delhi, July 4, 2009. The petition, filed in *Mohammad Shakeel v. NCT of Delhi*, High Court of Delhi, CMA 3549 (2008), is on file with Human Rights Watch. In November 2008, Gujarat police denied making the threat but did not deny having visited Shakeel in the Delhi Special Cell lockup. By that time, Shakeel had already been in Gujarat police custody for more than two weeks.

²⁶⁰ Human Rights Watch email exchange with human rights attorney Sachin Pandya, Ahmedabad, November 11, 2008.

²⁶¹ Human Rights Watch interview with Jawahar Raja, July 4, 2009. The applications are contained in *Mohammad Shakeel v. NCT of Delhi*, High Court of Delhi, CMA 3549 (2008), Annex R6.

²⁶² Code of Criminal Procedure, sec. 167 (3), <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

²⁶³ Delhi High Court Rules, Part 3, Chapter 11, Part B.

²⁶⁴ Human Rights Watch interview in India. Details withheld to protect the interviewee from possible retaliation.

²⁶⁵ Human Rights Watch interview with attorney Amin Solkar, Mumbai, June 25, 2009.

police and a client who was a bombing suspect at his house in late 2008, without notifying defense counsel.²⁶⁶

Magistrates and judges in some states also refused pleas by out-of-state suspects for translations of charge sheets and other court documents, even though the documents were in local languages such as Gujarati or Marathi that they did not understand. Instead, the judicial authorities instructed defense counsel to explain the charges to their clients. In some cases, the charge sheets were 60,000 pages.

“Just translating and printing those charge sheets is a cost most defendants cannot afford,” said Ahmedabad defense lawyer I.M. Munshi.²⁶⁷ While Indian law does not specifically say that charge sheets must be in a language the suspect can read, it does say the suspect must understand the evidence against him.²⁶⁸

Conduct in the Kasab Trial

The Indian government vowed to make the trial of Pakistani national Ajmal Kasab, the surviving gunman from the Mumbai attacks, a showcase of due process. On the first anniversary of the attacks, as some Hindu extremist leaders continued to call for Kasab to be hanged without trial, Home Minister P. Chidambaram said he was “proud of the fact that we are a country wedded to the rule of law, that we do not try Kasab in a kangaroo court and hang him overnight, like they do it in some other countries.”²⁶⁹

The trial surpassed the expectations of many critics, who expected summary proceedings that blatantly flouted due process. The trial lasted just over a year. Previous Indian counterterrorism prosecutions, such as those against suspects in a series of coordinated bombings in Mumbai in 1993, for example, had lasted more than 15 years. Noteworthy actions included Judge M. L. Tahaliyani’s acquittal of two Indian men charged as co-conspirators; the evidence against them was weak but there had been

²⁶⁶ Human Rights Watch interview with Azmi, June 25, 2009.

²⁶⁷ Human Rights Watch interview with attorney I.M. Munshi, Ahmedabad, June 20, 2009.

²⁶⁸ Indian Code of Criminal Procedure 1973, sec. 279, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

²⁶⁹ “I Can’t Change Pakistan’s Attitude: Chidambaram,” *Outlookindia.com*, November 27, 2009, <http://news.outlookindia.com/item.aspx?670139> (accessed December 7, 2009).

considerable public pressure to convict them. Using unusually blunt language, the judge labeled the police evidence against the co-defendants “unreliable.”²⁷⁰ The prosecution has appealed the two acquittals.

However, there have been allegations of shortcomings in some rulings in the trial. In one troubling example, Kasab claimed in April 2009 at the start of the trial that he was tortured into making his initial confession while in police custody. (This was one of several contradictory statements that Kasab made during the trial on the issue of his guilt. Three months after alleging he had been tortured into confessing, Kasab gave the court an apparently voluntary confession of guilt, then in December 2009 he retracted it again.) Human Rights Watch is not in a position to gauge the veracity of Kasab’s allegations of torture.²⁷¹ However, given India’s history of custodial abuse, we are concerned that Judge Tahaliyani does not appear to have ordered an investigation of these claims.²⁷²

Judge Tahaliyani also did not act on complaints from the two Indian co-defendants that they were subjected to torture while in the custody of Maharashtra Crime Branch police. When co-defendant Sabauddin Ahmed alleged that he was repeatedly administered electric shocks to his ears and genitals, Judge Tahaliyani told the accused he should have complained to a Mumbai magistrate at the time the alleged abuse occurred, according to his defense lawyer. Ahmed’s reply, the lawyer said, was: “How could I complain to the magistrate when I was being returned to the custody of the same police who tortured me?”²⁷³

²⁷⁰ The co-defendants, Fahim Ansari and Sabauddin Ahmed, were accused of supplying LeT with a Mumbai map that was used in the Mumbai attacks. See “How Ansari, Ahmed were acquitted in 26/11 terror trial,” Indo-Asian News Service, May 3, 2010, <http://sify.com/news/how-ansari-ahmed-were-acquitted-in-terror-trial-news-national-kfdwkehacjd.html> (accessed May 3, 2010).

²⁷¹ Information in this section was obtained through Human Rights Watch interviews with Abbas Kazmi in June 27, 2009, in Mumbai, from more than a half-dozen email and telephone exchanges with Kazmi in December 2009 and March and August 2010, from interviews with other defense attorneys in the trial in May 2010, from interviews with independent legal experts, and from media reports. On the torture allegations, see, for example, Erika Kinetz, “Mumbai gunman withdraws his confession as trial opens,” *The Independent*, April 18, 2009, <http://www.independent.co.uk/news/world/asia/mumbai-gunman-withdraws-his-confession-as-trial-opens-1670428.html> (accessed April 19, 2009); “Mumbai attacks trial adjourned after lawyer’s plea,” *The Economic Times*, April 22, 2009, <http://economictimes.indiatimes.com/news/politics/nation/Mumbai-attacks-trial-adjourned-after-lawyers-plea/articleshow/4434727.cms>; Vikas Bajaj and Lydia Polgreen, “In Reversal, Mumbai Attacker Admits Guilt,” *The New York Times*, July 21, 2009, <http://www.nytimes.com/2009/07/21/world/asia/21india.html?scp=1&sq=In%20Reversal,%20Mumbai%20Attack%20Admits%20Guilt&st=cse> (accessed July 22, 2009).

²⁷² Kasab’s allegations of forced confessions also were used by Pakistani government officials to downplay India’s allegations that violent Islamist extremists were using Pakistan as a launch pad for attacks on Indian soil. See, for example, Lydia Polgreen and Squad Mekhennet, “Network of Militants Is Robust After Mumbai Siege,” *The New York Times*, September 30, 2009, <http://www.nytimes.com/2009/09/30/world/asia/30mumbai.html> (accessed September 30, 2009).

²⁷³ Human Rights Watch telephone interview with defense attorney Ezaz Nakvi, Mumbai, May 2, 2010. Maharashtra Crime Branch police held Ahmed for two months from December 2008 to February 2009, using a legal maneuver to bypass India’s two-week legal limit on police custody.

Kasab's lead lawyer, Abbas Kazmi, complained that the judge did not permit him to speak with Kasab in a private setting and instead allowed only 10- to 15-minute consultations in the courtroom, with guards out of earshot but standing close by.²⁷⁴ In September 2010, the High Court also struck down a motion by Kasab's appeals lawyer to speak privately with his client, saying that Kasab's security could not be placed at risk.

Kazmi also complained that Judge Tahaliyani did not give him sufficient time to prepare his client's defense. Kazmi was appointed the day before the trial began; the judge rejected his request for a four-week adjournment to read the 11,000-page charge sheet and instead gave him eight days. International law stipulates that an accused must have adequate time to prepare his or her defense and to communicate with counsel.²⁷⁵

National Human Rights Commission

India's National Human Rights Commission (NHRC) responded weakly to the mistreatment of 2008 bombing suspects. The commission was established in 1993 to investigate allegations of human rights violations and recommend remedial action.²⁷⁶ It cannot, however, independently investigate allegations of abuse by federal forces including the army and paramilitary police. The NHRC is often the only recourse to victims of abuse, given the pervasive and chronic failure of the state authorities and the courts to provide redress.

In its early days, the NHRC made significant interventions in highly controversial cases. But Human Rights Watch found that the commission did little in response to the numerous complaints filed by victims of torture and other ill-treatment stemming from investigations into the 2008 bombings. A particularly troubling example is the commission's failure to conduct an independent investigation of the suspicious killings of two bombing suspects and one police inspector in a Delhi Special Cell police raid known as the Batla House encounter (described in Chapter II, "Torture and Other Ill-Treatment of Terrorism Suspects").

²⁷⁴ Human Rights Watch interview with Kazmi, June 27, 2009. The UN Standard Minimum Rules for the Treatment of Prisoners, Part 1, sec. 93, grant prisoners access to a lawyer and say that: "Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official," <http://www2.ohchr.org/english/law/treatmentprisoners.htm>. The Indian Evidence Act of 1872 as well as Supreme Court rulings require attorney-client consultations to be confidential, as noted in Chapter II, "Torture and Other Ill-Treatment of Terrorism Suspects." Kazmi argued that the guards were standing so close in the courtroom that they were intimidating even if they could not hear the conversations.

²⁷⁵ ICCPR, art. 14-3(b), <http://www2.ohchr.org/english/law/ccpr.htm#art14>.

²⁷⁶ The NHRC was established through the Protection of Human Rights Act, 1993, Chapter II, Section 3 (1), <http://nhrc.nic.in/hract.htm> (accessed December 29, 2010).

Complainants in several other cases that did not involve fatalities received even less attention from the NHRC. For example, the commission refused to investigate serious allegations by Abu Zafar, a brother of one of the key bombing suspects, that he was abducted, unlawfully detained, and threatened by Gujarat state police in January 2009.²⁷⁷ “The complaint is not entertainable,” the NHRC responded, without elaborating or interviewing Zafar. “Hence, no action is called for and file closed.”²⁷⁸ One prominent human rights activist and several relatives of suspects from Azamgarh said that they were still awaiting responses to their complaints to the NHRC.²⁷⁹

In an interview with Human Rights Watch, Dr. Y.S.R. Murthy, who at the time was the NHRC’s policy research director, called the criticism of its responses to the Batla House encounter and to other bombing-related complaints “unfair.” He said that instead of bending to political pressure, “we have taken positions which are not welcomed by the government,” such as issuing reports on abusive conduct by police and public officials.²⁸⁰ Murthy said that all complaints to the commission were fed into a database that automatically generated acknowledgements, and that the postal system was responsible for any failure of delivery.²⁸¹ He added that the status of each complaint could be checked on the NHRC website though only if the complaint has been acknowledged and allotted a case number.

Justice J.S. Verma, who chaired the NHRC in 2000-2003, noted that the commission has significant investigatory powers at its disposal. “The problem is not the commission’s mandate but how it applies it,” Verma told Human Rights Watch. As chairman, Verma issued scathing reports on controversial issues such as state complicity in communal riots in Gujarat, abusive national counterterrorism laws and police encounters.²⁸² Critics say that the commission shies from tackling sensitive issues because its members are political appointees who often are not known for their human rights activism.²⁸³ In a 2009

²⁷⁷ For further details on Abu Zafar see the section on arrests of relatives in Chapter III, “Arbitrary Detention.”

²⁷⁸ NHRC response to complaint No. 2556/6/1, February 8, 2009.

²⁷⁹ Several relatives in Azamgarh showed copies of letters and petitions sent to the NHRC detailing complaints of arbitrary arrests, torture and forced confession to Human Rights Watch in July 2009. John Dayal, a Delhi-based human rights activist and member of the government-appointed National Integration Council, told Human Rights Watch that he did not receive a response when he requested NHRC intervention to investigate the beatings of nearly two-dozen Muslim terrorism suspects in March 2009 in Ahmedabad’s Sabarmati Jail. Human Rights Watch exchanged emails with Dayal, in New Delhi, on September 9, 2009.

²⁸⁰ Human Rights Watch interview with Y.S.R. Murthy, policy research director, National Human Rights Commission, New Delhi, July 6, 2009.

²⁸¹ *Ibid.*

²⁸² Human Rights Watch interview with retired Supreme Court Justice and former NHRC Chairman J.S. Verma, New Delhi, June 14, 2009. Chapter III, sec. 12(a) of The Protection of Human Rights Act, 1993, grants the NHRC *suo moto* investigatory powers.

²⁸³ The Protection of Human Rights Act, 1993, Chapter II, sec. 3.

meeting with Human Rights Watch, G.P. Mathur, a retired Supreme Court justice and then acting chairperson of the NHRC, steadfastly defended the government's human rights record along the lines of a government spokesman instead of an impartial rights monitor. The government appointed a new chairperson, former chief justice of India's Supreme Court, K.G. Balakrishnan, in June 2010. It is as yet unclear whether the new chairperson will take a more proactive role in investigating allegations of human rights violations in politically charged cases.

By failing to exercising its powers—however limited—to the fullest, the NHRC risks alienating marginalized citizens even further. When the commission released its report on the Batla House encounter, protesters burned copies outside its headquarters in central Delhi and near Batla House.²⁸⁴

The NHRC inaction is also of concern because other government-appointed panels look to it to take the lead on human rights protections. Asked why the National Commission for Minorities (NCM) did not investigate the Muslim bombing suspects' allegations of abuse, Zoya Hasan, a prominent intellectual who was at the time an NCM member, replied: "There is a general perception" that "the NHRC is the appropriate body for such complaints."²⁸⁵ The NCM is, however, also empowered to investigate both specific complaints and any issue of discrimination, and to recommend remedial action to state and central government.²⁸⁶

²⁸⁴ Mumtaz Alam Falahi, "NHRC Batla House Report burnt: Protests against Human Right Commission in New Delhi, Azamgarh," *Ummid.com*, July 25, 2009, http://www.ummid.com/news/July/25.07.2009/anti_nhrc_protests_in_various_parts.htm (accessed September 2, 2010).

²⁸⁵ Human Rights Watch interview with Zoya Hasan and other members of the National Commission for Minorities, New Delhi, June 15, 2009.

²⁸⁶ National Commission for Minorities Act, Chapter III, sec. 9, http://ncm.nic.in/ncm_act.html (accessed October 1, 2009).

VIII. Draconian Counterterrorism Laws

Several federal and state laws facilitate abuses of counterterrorism suspects in India. Of particular concern are amendments to the federal Unlawful Activities (Prevention) Act (UAPA), the federal National Investigation Agency Act (NIAA), and the state of Maharashtra Control of Organized Crime Act (MCOCA).

Conflicting resolutions from the United Nations Security Council have provided political cover for India's passage of such laws. Within weeks of the September 11 attacks in the United States, the Security Council adopted Resolution 1373, which was sponsored by the United States and requires all UN member states—including India—to take tough action to prevent and counter terror attacks. The resolution does not require states to affirmatively heed human rights obligations.²⁸⁷ Nor does it define terrorism or terrorist acts, leaving each state to create its own definition. Indian politicians and media have frequently cited Resolution 1373 to justify abusive counterterrorism laws, with some going as far as to say that failing to enact them would constitute a “breach” of their country's international obligations.²⁸⁸

Subsequent Security Council resolutions have directed states to ensure that counterterrorism measures comply with international human rights law.²⁸⁹ Among the most important of these, Resolution 1456 of January 20, 2003, calls on states to “ensure that any measure taken to combat terrorism comply with all their obligations under international law... in particular international human rights, refugee, and humanitarian law.”²⁹⁰ However,

²⁸⁷ UN Security Council, Resolution 1373 (2001), S/RES/1373, September 28, 2010, <http://www.un.org/Docs/scres/2001/sc2001.htm> (accessed January 10, 2010). See also Human Rights Watch, *Hear No Evil, See No Evil: The U.N. Security Council's Approach to Human Rights Violations in the Global Counter-Terrorism Effort*, August 10, 2004, <http://www.hrw.org/legacy/background/un/2004/uno804/>; Anil Kalhan, et al., “Colonial Continuities: Human Rights, Terrorism, and Security Laws in India,” *Columbia Journal of Asian Law*, vol. 20, no. 1, 2006, www.abcny.org/pdf/ABCNY_India_Report.pdf, pp. 213-224.

²⁸⁸ Kalhan, et al., “Colonial Continuities: Human Rights, Terrorism, and Security Laws in India,” www.abcny.org/pdf/ABCNY_India_Report.pdf, pp. 213-224.

²⁸⁹ For a fuller discussion of the controversies surrounding UN counterterrorism mandates and human rights, see James Cockayne, Alistair Millar, and Jason Ipe, “UN Counterterrorism and Human Rights: Time for a Reset?” in *An Opportunity for Renewal: Revitalizing the United Nations Counterterrorism Program*, Center on Global Counterterrorism Cooperation, September 2010, http://www.globalct.org/images/content/pdf/reports/Opportunity_for_Renewal_Final.pdf (accessed January 5, 2010), pp. 35-42.

²⁹⁰ UN Security Council, Resolution 1456 (2003), S/RES/1456, January 20, 2003, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/S.RES.1456+\(2003\).En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/S.RES.1456+(2003).En?Opendocument) (accessed January 4, 2011), para. 6.

neither the Security Council nor the Counter-Terrorism Committee it established to monitor compliance with Resolution 1373 has made human rights concerns a sufficient priority.²⁹¹ In his final report of October 2010, Martin Scheinin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said that the counterterrorism regime created by the UN Security Council exceeds the scope of its powers and in some cases “continues to pose risks to the protection of a number of international human rights standards.”²⁹²

India now has the potential to play an important role in reforming UN counterterrorism mandates to ensure their compliance with human rights standards both at home and abroad. In January 2011, India became a two-year member of the UN Security Council and was appointed to chair the council’s Counter-Terrorism Committee for one year.²⁹³

India should at the same time reform its counterterrorism laws at home. Like all governments, India has a responsibility to protect its population from terrorist attacks. But it has sought to do so by resuscitating counterterrorism laws that previously brought widespread condemnation for violating or facilitating the violation of basic human rights, including the internationally protected rights to be free from extrajudicial execution, torture, and arbitrary detention. Moreover, employing such abusive measures alienates communities that feel they are being targeted, and can serve as a recruitment tool for militant groups.

²⁹¹ In one important step, the UN Counter-Terrorism Committee appointed a human rights advisor to its executive directorate. But it did not do so until 2005 and it was not until 2006 that the human rights advisor was actually allowed to directly advise the executive directorate. See Eric Rosand, Alistair Millar, and Jason Ipe, *The UN Security Council's Counterterrorism Program: What Lies Ahead?*, International Peace Institute, October 13, 2007, <http://www.ipinst.org/publication/policy-papers/detail/105-the-un-security-councils-counterterrorism-program-what-lies-ahead.html> (accessed January 10, 2010). In December 2010, the Security Council encouraged the Counter-Terrorism Committee’s executive directorate to develop further human rights activities. See UN Security Council, Resolution 1963, S/RES/1963, December 20, 2010, http://www.un.org/Docs/sc/unscl_resolutions10.htm (accessed January 5, 2011).

The UN Security Council in December 2009 passed a resolution creating an ombudsman to mediate requests from individuals, organizations, and companies to be removed from a controversial al Qaeda and Taliban sanctions list that can result in the freezing of financial assets and travel bans. The ombudsman position was created in response to numerous complaints that the sanctioning committee lacked a meaningful appeals process. However, the Ombudsman does not have the power to overturn listing decisions or even to make recommendations to the listing committee, a political body that reaches decisions confidentially. See UN Security Council, Resolution 1904 (2009), S/RES/1904, adopted December 19, 2009, http://www.un.org/Docs/sc/unscl_resolutions09.htm (accessed May 22, 2010), and UN Commission on Human Rights, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/65/258, August 6, 2010, http://www.un.org/ga/search/view_doc.asp?symbol=A/65/258 (accessed January 5, 2011), para. 56.

²⁹² Scheinin also called on the Security Council to systematize its counterterrorism measures under one framework rather than several resolutions. See UN Commission on Human Rights, *Report of the Special Rapporteur*, A/65/258, http://www.un.org/ga/search/view_doc.asp?symbol=A/65/258, para. 39.

²⁹³ “Ambassador of India to Chair Counter-Terrorism Committee,” Security Council Counter-Terrorism Committee statement, January 7, 2011, <http://www.un.org/en/sc/ctc/news/2011-01-07india.html>. India’s representative to the UN has expressed his commitment to “making the council’s counterterrorism machinery more robust and effective.” See “Terror to be India’s focus at UNSC,” *Hindustan Times*, December 24, 2010, <http://www.hindustantimes.com/News-Feed/americas/Terror-to-be-India-s-focus-at-UNSC/Article1-642487.aspx#> (both accessed January 7, 2011).

Maharashtra Organized Crime Law

At least 21 Muslims accused in the 2008 bombings and the 11 Hindus accused in the 2008 Malegaon bombing have been charged under the Maharashtra Control of Organized Crime Act (MCOCA) of 1999, India's most draconian counterterrorism law.²⁹⁴

MCOCA allows suspects to be detained without charge for 90 days with a possible 90-day extension, for a total of 180 days. Up to 30 days of that period can be in police custody.²⁹⁵ These periods double the excessive periods allowed under the India Code of Criminal Procedure, which permits pre-charge detention for up to 90 days, of which up to 15 days may be in police custody. While international law provides only that suspects must be charged "promptly," several of the 2008 bombing suspects were held for 70 to 90 days. The detention periods in both MCOCA and the Indian criminal code contravene the right of detained suspects under the International Covenant on Civil and Political Rights (ICCPR) to be "promptly" informed of the charges against them.²⁹⁶

MCOCA also allows the admissibility in court of confessions obtained in police custody without the presence of a lawyer²⁹⁷—a practice widely believed to encourage torture in order to obtain confessions. At least four IM suspects charged under MCOCA have publicly retracted their confessions to police, claiming their statements were obtained through torture or other coercion. Amin Solkar, a Mumbai defense attorney, said the signs of abuse were evident when he first visited some of those suspects several days after their arrests. "I could see the marks on them—abrasions on the arms and back," Solkar said. "One of them told me he lost his hearing after he was stripped naked, tied to a stick, and beaten."²⁹⁸

Sadiq Sheikh, another suspect held by the Maharashtra ATS, was allegedly tortured while being arbitrarily detained for one week before his arrest was formally announced in September 2008, relatives said. Sheikh's brother said that when he finally visited the suspect two weeks after he was picked up, "A chunk of his hair was missing and there was a

²⁹⁴ Order of Hasan Gafoor, late commissioner of police, Mumbai, "Sanction U/Sec. 23 (2) of Maharashtra Control of Organized Crime Act, 1999," February 12, 2009. Copy on file with Human Rights Watch.

²⁹⁵ Maharashtra Control of Organised Crime Act of 1999, sec. 21(2).

²⁹⁶ The ICCPR in article 9 prohibits arbitrary arrest or detention, and states that pre-charge detention periods must be "reasonable." See the following section of this chapter.

²⁹⁷ Maharashtra Control of Organised Crime Act of 1999, sec. 18. India in 2004 repealed a federal counterterrorism law called the Prevention of Terrorism Act (POTA) in part because of widespread abuse of a similar provision admitting police confessions as evidence in court. For more on POTA, see the following section of this chapter.

²⁹⁸ Human Rights Watch interview, Amin Solkar, Mumbai, June 25, 2009. See also "IM member loses hearing, blames it on police 'torture,'" *Daily News & Analysis*, October 31, 2008 http://www.dnaindia.com/mumbai/report_im-member-loses-hearing-blames-it-on-police-torture_1202192 (accessed September 24, 2009).

scratch on his chest. We asked the police what happened and they said, ‘Oh, he must be shedding.’”²⁹⁹ One month later, his relatives noticed he was limping. “We asked, ‘What is the problem with your leg? Has someone assaulted you?’” his sister-in-law recalled. “He replied, ‘What else can you expect?’”³⁰⁰

As with all suspects charged under MCOCA, the defendants held in Maharashtra for the 2008 bombings will be tried in special courts, where judges have broad discretion to use secret witnesses, hold *in camera* (closed) proceedings, and create a presumption of guilt for terrorism offenses if certain kinds of inculpatory evidence are found. The judge is also allowed to deny bail in almost all circumstances. Any offense that results in a person’s death can result in a death sentence.³⁰¹

Leading Indian human rights lawyers have challenged MCOCA’s application in terrorism cases. They note that in India states have control over law and order, but India’s Constitution grants the central government power over security matters. They contend that because MCOCA authorizes the state to prosecute acts “promoting insurgency”³⁰² and is being used to try terrorism suspects, it is unconstitutional. Furthermore, the Indian government in 2004 added a similar provision to prosecute insurgency in the Unlawful Activities (Prevention) Act (UAPA) and became the national law used to prosecute terror suspects. The Constitution provides that in any conflict between a state law and a central law, the central law prevails.³⁰³

Critics note that MCOCA was not even used in terrorism prosecutions until 2006, two years after the central government repealed the national Prevention of Terrorism Act (POTA). MCOCA contains many of the provisions of the repealed POTA, such as the admissibility of a confession made to a police officer as evidence. “When POTA was repealed, Maharashtra found it had no tough law to help investigate terrorists, so it turned to MCOCA,” said Mahesh Jethmalani, a prominent Mumbai attorney who unsuccessfully challenged the use of MCOCA to prosecute the Hindu suspects in the 2008 bombing in Malegaon.³⁰⁴ Jethmalani, who ran for political office in 2009 on a tough law-and-order platform, said he opposes MCOCA not because it is harsh but because it gives states unconstitutional authority. “My heart says ‘yes’ but the lawyer in me says ‘it is inapplicable,’” he said. Even a veteran MCOCA special

²⁹⁹ Human Rights Watch interview with Asad Sheikh, Mumbai, June 25, 2009.

³⁰⁰ Human Rights Watch interview with Mahjabeen Sheikh, Mumbai, June 25, 2009.

³⁰¹ Maharashtra Control of Organised Crime Act of 1999, secs. 3(1)(i), 21(4) and (5), and 22.

³⁰² See MCOCA, sec. 2(1)(e).

³⁰³ Constitution, art. 254.

³⁰⁴ Human Rights Watch interview with attorney Mahesh Jethmalani, Mumbai, June 24, 2009.

prosecutor who approves of tough counterterrorism laws told us that the act was wrongly applied in terrorism cases. “This is a state organized crime law. It has no place in terrorism cases, which is the jurisdiction of the center [national government],” the prosecutor said.³⁰⁵

Several other Indian states, particularly Gujarat, sought to enact MCOCA-style laws after the 2008 bombings and the November 26 attack in Mumbai. Their efforts to date have been thwarted by the central government, which must approve these laws before they can become active.

Laws of 2008: Repeating Past Abuses

In the month after the November 2008 attack on Mumbai, the Indian Parliament approved two new counterterrorism measures: amendments to UAPA and to the National Investigation Agency Act (NIAA), which creates a federal bureau to probe national security threats. The laws were passed after less than two days of parliamentary debate, with no significant opportunity for input from the public or civil society groups. The new measures reinstate provisions from two previous counterterrorism laws that had been allowed to lapse or had been repealed following widespread criticism that they facilitated arbitrary arrest, incommunicado detention and torture.

Among other concerns, the new laws contain a vague and overbroad definition of terrorism, authorize warrantless search and seizure with few safeguards, and double periods of pre-charge detention to 180 days, of which 30 days may be in police custody. They also contain measures identical to those of MCOCA, described above, such as the creation of special courts with broad discretion to hold *in camera* (closed) hearings, use secret witnesses, and create a presumption of guilt in instances where certain kinds of inculpatory evidence are found. The 2008 federal laws cannot be fully applied to most of the 2008 bombing suspects because they were enacted after those men were arrested, and would thus be *ex post facto* legislation, prohibited under Indian and international law. However, the suspects still are subject to many of UAPA’s pre-existing provisions that run counter to international legal protections.³⁰⁶

Amendments to the Unlawful Activities (Prevention) Act

Many of the 2008 amendments to the Unlawful Activities (Prevention) Act of 1967 (UAPA) were culled from two previous laws that resulted in widespread violations of international

³⁰⁵ Human Rights Watch interview with MCOCA special prosecutor, Mumbai, June 2009. Name and exact date withheld because the prosecutor did not have authorization to be interviewed and spoke on condition of anonymity.

³⁰⁶ For a more detailed legal description of these laws, see Human Rights Watch, “Back To the Future: India’s 2008 Counterterrorism Laws,” www.hrw.org/en/reports/2010/07/28/back-future-o.

human rights standards: the Terrorist and Disruptive Activities (Prevention) Act of 1985 (TADA), and the Prevention of Terrorism Act of 2002 (POTA).³⁰⁷

TADA, which was passed against the backdrop of a Sikh separatist movement, resulted in tens of thousands of politically motivated detentions before it was repealed in 1995. It was used to target Sikhs, Muslims, Dalits, trade unionists, and political opponents.³⁰⁸ The law allowed detention without formal charge for up to one year, the use of secret witnesses and closed trials, and confessions to a police officer to be admissible in court.³⁰⁹ Allegations were widespread that the law encouraged police to routinely use torture to obtain confessions or plant evidence as a means of detaining targeted groups or individuals.³¹⁰ Although the conviction rate under TADA was less than one percent, cases initiated while it was in force continue to hold legal validity.

The Indian government enacted POTA in the wake of the September 11, 2001, attacks in the United States, and an attack on India's Parliament three months later that is attributed to the Pakistan-based LeT and Jaish-e-Mohammed (JeT). POTA contained the same abusive provisions as TADA but limited detention without charge to six months. Critics allege that POTA was similarly used to harass political opponents and target tribal groups, religious and ethnic minorities, and Dalits. In the state of Gujarat, POTA disproportionately subjected hundreds of Muslims to lengthy detentions after a mob attack on a train led to Hindu-Muslim riots that killed about 2,000 people—mostly Muslims—in 2002. Some Muslims also accused police of threatening to charge them under POTA if they testified about having witnessed attacks by Hindus or police at the time.³¹¹

In southern Tamil Nadu state, Indian authorities used POTA to detain political leaders including MP V. Gopalswamy, popularly known as Vaiko, for their alleged support of the armed separatist Liberation Tigers of Tamil Eelam in Sri Lanka. Vaiko remained in detention for over a year, until he was released on bail. POTA charges against him were dropped in

³⁰⁷ For a review of TADA's and POTA's inconsistencies with international human rights law, see Kalhan et al., "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India," www.abcny.org/pdf/ABCNY_India_Report.pdf. See also Human Rights Watch, *Punjab in Crisis: Human Rights in India*, August 1991, <http://www.hrw.org/en/reports/1991/08/01/punjab-crisis>, pp.148-157, regarding abuses under TADA.

³⁰⁸ Human Rights Watch, *India Human Rights: Anti-Terrorism Legislation*, backgrounder, November 20, 2001, <http://www.hrw.org/backgrounder/asia/india-bck1121.htm>.

³⁰⁹ The Terrorist and Disruptive Activities (Prevention) Act of 1985, (as amended in 1987), secs. 20(4), 16 and 15.

³¹⁰ See Human Rights Watch and Ensaaf, "Protecting the Killers; A Policy of Impunity in Punjab, India," October 17, 2007, <http://www.hrw.org/en/node/10644/section/1>.

³¹¹ Kalhan et al. "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India," www.abcny.org/pdf/ABCNY_India_Report.pdf, pp. 173-81.

August 2004 when a review committee said that speeches supporting a banned group did not amount to terrorism.³¹²

The Indian Parliament repealed POTA following legal challenges in 2004, but it immediately tucked some of its controversial counterterrorism provisions into UAPA, and added several others to UAPA in response to the 2008 bombings and the November 2008 attack in Mumbai. “They brought back the unjust provisions of POTA and TADA through the back door,” said Ravi Nair, executive director of the Delhi-based South Asia Human Rights Documentation Centre. Even POTA and TADA included some safeguards such as a review committee or sunset provisions, Nair noted, but under the 2008 amendments to UAPA, “all that is gone.”³¹³

In one important exception, the Indian government commendably resisted political pressure to restore the repealed POTA clause allowing confessions obtained in police custody, without the presence of a lawyer, to be used as evidence.

Among many causes for concern, the amended UAPA includes a vague and overly broad definition of terrorism, which does not meet the criteria of the UN special rapporteur on human rights.³¹⁴ The UAPA definition includes acts “likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people ... by any means of whatever nature to cause or likely to cause” death or injury to persons, damage to property, or “the disruption of any supplies or services essential to the life of the community in or in any foreign country.”³¹⁵ This definition can encompass non-violent forms of political protest. It gives authorities the ability to classify political opponents and a broad range of oppositional movements arising from regional, ethnic, or religious grievances, as “terrorist.”

³¹² Ibid, pp. 182-83, 192-93.

³¹³ Human Rights Watch interview with Ravi Nair, executive director, South Asia Human Rights Documentation Centre, New Delhi, June 17, 2009.

³¹⁴ Martin Scheinin, the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has emphasized the risks of vague and overly broad definitions of terrorism, accompanied by harsh penalties and wide ancillary powers of detention and investigation, which authorities can easily use to persecute political opponents or unpopular or marginal religious and ethnic populations. To safeguard against such abuse, Scheinin recommends that any definition of terrorism contain the following three cumulative characteristics:

- the acts are committed with the intention of causing death or serious bodily injury;
- the acts are committed for the purpose of provoking terror in the general public or part of it, intimidating a population, or compelling a government or an international organization to do or refrain from doing any act;
- the acts constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism, E/CN.4/2006/98, December 28, 2005.

³¹⁵ UAPA, sec. 15.

The breadth of the definition is all the more troubling when paired with UAPA's expanded powers to ban organizations or prosecute their members. UAPA had already empowered the government to outlaw a group as a "terrorist organization," a "terrorist gang," or an "unlawful association." The 2008 amendments broadened those powers by increasing the number of criminal offenses linked to association with or membership in a terrorist organization or gang.

UAPA defines terrorist organizations or groups using the same vaguely worded definition of "terrorism" discussed above.³¹⁶ Its definition of the "unlawful activity" that can trigger a ban on an association is similarly vague.³¹⁷

The law allows a ban on a group that the government declares to be a "terrorist organization," a "terrorist gang," or an "unlawful association" to take immediate effect.³¹⁸ Bans on groups that the government designates as "terrorist organizations" are permanent and are not subject to judicial review.³¹⁹ Bans on "unlawful associations" are subject to judicial review and must be renewed every two years.³²⁰ Defense lawyers for SIMI, which was banned as an "unlawful association" immediately after the September 11 attacks in the US, have made strong arguments that the government reissues the ban every two years without credible evidence of new unlawful activity.³²¹

International law guarantees the right to form associations, and any restrictions placed on that right must be "necessary in a democratic society for national security or public safety, public order... the protection of public health or morals or the protection of the rights and freedoms of others," and be the least restrictive possible.³²² Restrictions on the right to

³¹⁶ UAPA, secs. 35-40.

³¹⁷ Under sec. 2(o) of UAPA, an unlawful activity is any action (including speech and communication) that supports or is intended to support any claim for secession, which broadly "disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India," or that "causes or is intended to cause disaffection against India."

³¹⁸ UAPA, sec. 3.

³¹⁹ The banned group can apply to a judicial review committee but has no right to introduce new evidence or present witnesses in support of its application. See UAPA, secs. 36(4), 37. The UAPA provides that the review committee may annul the central government's refusal to revoke a declaration if "it considers that the decision to reject [de-listing] was flawed when considered in light of the principles on an application for judicial review."

³²⁰ UAPA, sec. 6.

³²¹ Human Rights Watch interviews with SIMI defense lawyers Jawahar Raja and Mayur Sureh, July 4, 2009, and Trideep Pais, June 18, 2009, New Delhi. In an unprecedented ruling, a special tribunal in New Delhi on August 5, 2008, lifted the government's ban on SIMI and scolded prosecutors for a lack of solid evidence to justify its extension. The following day, however, India's Supreme Court stayed the tribunal's decision.

³²² ICCPR, art. 22, <http://www2.ohchr.org/english/law/ccpr.htm#art22>. See also Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, pp. 504-508.

freedom of association may not discriminate on the basis of religion, ethnicity, political opinion, or other prescribed status.³²³

State police have used the UAPA bans on groups to round up the same suspects after every terrorism incident simply because they had been previously charged—but not convicted—of membership in an unlawful organization.³²⁴ In the state of Rajasthan, for example, police have been holding 13 Muslim men as suspects in the Jaipur bombings since August 2008 even though the primary charge against them is membership in SIMI. The SIMI suspects are also charged with conspiracy against the nation for allegedly providing shelter to the primary suspects in the bombings, but the alleged SIMI members claim they did not know of any bombing plot and in some cases did not even know the suspects. One alleged SIMI member's link to a primary bombing suspect was that he was his landlord.³²⁵

UAPA allows that landlord, if convicted, to be sentenced to life in prison: membership in a banned group, gang, or organization can result in life sentences if that group is “involved” in a terrorist act, even if the member had no involvement in the act in question.³²⁶

Similarly, harboring a terrorist is punishable by prison terms ranging from three years to life, and conspiracy in a planned or executed terrorist act—another offense with which many of the 2008 bomb blast suspects are charged—is five years to life.³²⁷ The sentences make almost no distinction between various levels of knowledge or complicity. “If a court finds that a fellow stays overnight at your house and you had an inkling of what he is up to, you could get life, just like the mastermind,” said Nitya Ramakrishnan, a prominent Indian defense attorney who filed appeals to POTA. “It is totally up to judicial discretion and judicial discretion is constantly getting hardened.”³²⁸

The 2008 UAPA amendments also grant security forces sweeping powers that are not authorized under the Indian criminal code, significantly raising the risk of arbitrary

³²³ ICCPR, art. 2, <http://www2.ohchr.org/english/law/ccpr.htm#part2>.

³²⁴ Human Rights Watch email from Raja, New Delhi, September 20, 2009, and interview with Pais, New Delhi, June 18, 2009.

³²⁵ Human Rights Watch telephone interview with Salim Engineer, Rajasthan state president of Jamaat-e-Islami Hind, Jaipur, July 5, 2009. See also “Chargesheets filed against 11 SIMI activists,” *The Times of India*, November 19, 2008, <http://timesofindia.indiatimes.com/city/jaipur/Chargesheets-filed-against-11-SIMI-activists/articleshow/3730238.cms> (accessed July 20, 2009).

³²⁶ UAPA sec. 10 imposes a penalty of up to two years imprisonment for membership in an unlawful association. Under sec. 20, the maximum sentence for membership in a terrorist organization involved in a terrorist act is life in prison.

³²⁷ UAPA, secs. 18-19.

³²⁸ Human Rights Watch interview with Nitya Ramakrishnan, New Delhi, July 7, 2009.

detentions such as those that occurred under TADA and POTA. Police may conduct arrests, searches, and seizures based merely on their “personal knowledge” that an offense was committed under UAPA, and a superintendent of police can authorize an officer to compel information from third parties on the same grounds. Failure to comply is punishable by up to three years of imprisonment.”³²⁹

The UAPA amendments also increase the risk of arbitrary detention, custodial abuse, and violation of basic due-process rights by allowing courts to double the maximum period of detention without charge for terrorism suspects.

A judge can extend pre-charge detention from the 90 days allowed under the Indian criminal code to 180 days upon a vaguely defined special request from a prosecutor. The law also doubles the maximum period of police custody from the 15 days allowed under the Indian criminal code to 30 days.³³⁰ Detainees face the greatest risk of torture and other ill-treatment while in the custody of police, who may seek to extract confessions and other evidence.³³¹ Investigating police may also request that a suspect be returned to police custody for further questioning after he or she is released to judicial custody.³³² This raises the specter of police retaliation against suspects who, while in judicial custody, had complained of abuse at the hands of the police. These lengthy detention periods—including those already allowed under the Indian criminal code—contravene article 9 of the ICCPR, which provides that anyone arrested shall be promptly informed of any charges against them.³³³

³²⁹ UAPA secs. 43A, F, 43F. These provisions confer discretion for search, seizure, and arrest that is much broader than under the Indian criminal procedure code, which as a general rule requires a threshold of “reasonable suspicion” for arrest and “reasonable grounds” for searches by a police officer. See Code of Criminal Procedure, secs. 41 and 165, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

³³⁰ UAPA sec. 43D.

³³¹ Human Rights Watch documented numerous cases of abuse during pre-charge police detention in its August 2009 report, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, <http://www.hrw.org/en/reports/2009/08/04/broken-system-0>, pp. 67-73. The Law Commission of India, in its 1994 report on custodial crimes, stated: “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.” Law Commission of India, “152nd Report on Custodial Crimes,” 1994, <http://lawcommissionofindia.nic.in/101-169/Report152.pdf> (accessed June 16, 2009), para. 1.5.

³³² UAPA, sec. 43D(2)(b).

³³³ The ICCPR in article 9 also upholds the right to liberty and prohibits arbitrary arrest or detention. It is well established in international human rights law that any interference with the fundamental right to liberty must be shown to be strictly necessary and proportionate. The UN Human Rights Committee in 2008 concluded that it was “disturbed” by the United Kingdom’s Counter-Terrorism Bill 2008, which permits a 28-day pre-charge detention in terrorism cases, and was “even more disturbed” by the proposed extension of this maximum detention period to 42 days. The Committee recommended, consistent with the ICCPR, that suspects be “promptly informed of any charges and tried within a reasonable time or released.” See Human Rights Committee, Final Conclusions and Recommendations on Reports of the United Kingdom, France, San Marino and Ireland, 93rd session, July 25, 2008, para. 15, <http://www2.ohchr.org/english/bodies/hrc/hrcs93.htm> (accessed June 8, 2010).

For individuals who are charged, the UAPA requires denial of bail where the court determines “that there are reasonable grounds for believing that the accusation against such a person is prima facie true.”³³⁴ This provision applies not only to persons accused of direct involvement in violent acts, but also to anyone charged with the offenses of membership in a terrorist organization, harboring a terrorist, fundraising for a terrorist organization, and conspiracy to commit a terrorist act. A *prima facie* basis for the offense of membership may be relatively easy to establish, resulting in ineligibility for bail irrespective of factors such as any threat posed by the detainee or flight risk.

The easy denial of bail under the UAPA facilitates police and prosecutorial abuse of the law to allow prolonged pre-trial detention contrary to general Indian criminal law and international human rights law. India’s criminal procedure law maintains the court’s discretion to order bail even where there is a presumption against bail.³³⁵ The ICCPR provides that “it shall not be a general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.”³³⁶

Another 2008 amendment directs a court during trial to presume the guilt of an accused in two circumstances, without a showing of criminal intent. The first is if arms, explosives, or other specified substances were recovered from the accused and there is reason to believe they or similar items were used to commit an offense under UAPA. The second is in cases where fingerprints or other “definitive evidence” suggesting involvement were found at the site or on anything used in the commission of the offense.³³⁷ In such cases, the burden of proof is on the accused to prove their innocence.

This measure undermines India’s constitutionally guaranteed right to a fair trial and creates enormous risks of wrongful prosecution, particularly given the record of the Indian police in fabricating evidence.³³⁸ The ICCPR provides that everyone charged with a criminal offense has the right to be presumed innocent until proven guilty.³³⁹ The UN Human Rights Committee has stated that the presumption of innocence is “fundamental to the protection of human rights” and “imposes on the prosecution the burden of proving the charge”

³³⁴ UAPA, sec. 43D(5).

³³⁵ Code of Criminal Procedure, sec. 439, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>.

³³⁶ ICCPR, art. 9(3), <http://www2.ohchr.org/english/law/ccpr.htm#art9>.

³³⁷ UAPA, sec. 43E.

³³⁸ While the Indian Constitution does not expressly guarantee the presumption of innocence, the Supreme Court of India has included such a presumption in its holdings concerning the constitutional right to a fair trial. See Supreme Court, *State of Punjab v. Baldev Singh*, AIR 1999 SC 2378.

³³⁹ ICCPR, art. 14(2), <http://www2.ohchr.org/english/law/ccpr.htm#art14>.

beyond reasonable doubt.³⁴⁰ It cannot be derogated from, even during a public emergency or other declared state of exception.³⁴¹

NIAA: Potential for Abuse

Alongside the amendments to UAPA, India in December 2008 passed the National Investigation Agency Act (NIAA). The law created a specialized National Investigation Agency (NIA), with broad powers to investigate terrorism-related crimes and other national security offenses. It also authorizes the creation of special courts to prosecute crimes it investigates.³⁴² These courts are of particular concern because they reinstate abusive powers contained in the lapsed TADA and POTA.

Proponents describe the NIA as similar to the US Federal Bureau of Investigation (FBI) because it can investigate terrorism cases in any part of India without seeking permission from individual states, which have authority over policing.³⁴³

As of this writing, the NIA's investigative role was uncertain. Government authorities have credited the NIA with averting several attacks and with an investigation that led to charges against militant Hindu nationalists in attacks on Muslim mosques and cemeteries in Amjer, Hyderabad, and Malegaon. The NIA is also probing the role of Pakistani-American David Coleman Headley in the 2008 attack in Mumbai and other crimes in India.

In December 2009 Indian Home Minister P. Chidambaram proposed merging the NIA into a broader National Counter-Terrorism Center.³⁴⁴ While there are advantages to a streamlined and coordinated counterterrorism effort, Human Rights Watch has several concerns about the NIA's potential to become politicized or abusive.

³⁴⁰ UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 30.

³⁴¹ UN Human Rights Committee, General Comment No. 29 on Article 4: States of Emergency, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 11.

³⁴² National Investigation Agency Act, 2008, No. 75-C.

³⁴³ NIAA sec. 9 states that "a State Government shall extend all assistance and cooperation [to NIA] for investigation of [terror related offences]."

³⁴⁴ Chidambaram, Intelligence Bureau Centenary Endowment lecture, official transcript, December 23, 2009, New Delhi, <http://www.mha.nic.in/pdfs/HM-IB-Endowment231209.pdf>.

The NIA cannot investigate an offense unless it is granted permission to do so from the central government, which has 15 days to decide whether to hand it to the agency.³⁴⁵ In addition, the NIA's enabling legislation states that the agency answers to the central government but fails to clearly define the NIA's and the government's respective powers.³⁴⁶ Security analysts say this puts the NIA at risk of being thwarted any time a probe might prove embarrassing to the ruling party or its allies. Rather than being subject to the whims of political officials, the NIA's decisions should be made by its director and its professional staff.³⁴⁷

There are also serious questions as to whether the NIA can be effective in thwarting potential attacks, an issue the central government says it intends to address with the creation of the National Counter-Terrorism Center. The government granted the NIA powers to investigate offenses already committed, but does not specify how information should be obtained, shared, or disseminated to prevent future crimes. "The NIA does not place the emphasis on prevention that it ought to," said Sanjay Patil, a Delhi-based expert on South Asian police reform. "This is a tremendous failing."³⁴⁸

NIAA provisions authorizing the central and state governments to establish special courts to prosecute crimes that the NIA investigates are particularly worrying. Human Rights Watch opposes the creation and use of special courts to prosecute national security crimes. The record of national security courts in many countries over the years shows that such courts, while highly sensitive to the need to protect national security, typically lack the respect for the rights of defendants intrinsic to criminal courts of broader practice. National security courts are frequently authorized to conduct trials in a manner that restricts the rights of defendants beyond what is permissible under international human rights law.

The courts authorized under the NIAA are no exception. Among other concerns, the judges to these special courts are appointed by the central and state governments on the

³⁴⁵ NIAA, sec. 6(3), states that "the Central Government shall determine... within 15 days... whether the offence is a Scheduled Offence or not." Section 6(4) states that the government will then decide whether "said offence" is "fit" for NIA investigation.

³⁴⁶ NIAA, sec. 4(1), states that, "the superintendence of the Agency shall vest in the Central Government" but does not define superintendence. "In the past, the failure to define superintendence in police acts at both the state and central levels has demonstrably led to the politicisation of policing with all its attendant ills," according to a 2008 report from a New Delhi-based nongovernmental organization detailing shortcomings in the NIA. See Commonwealth Human Rights Initiative, *Feudal Forces: Reform Delayed - Moving from Force to Service in South Asian Policing*, 2008, http://www.humanrightsinitiative.org/publications/police/feudal_forces_reform_delayed_moving_from_force_to_service_in_south_asian_policing.pdf (accessed December 29, 2010).

³⁴⁷ Human Rights Watch interviews with Indian security analysts including Sanjay Patil, consultant on police reforms with the Commonwealth Human Rights Initiative (CHRI) and author of the CHRI report "Feudal Forces: Reform Delayed," New Delhi, June 15, 2009.

³⁴⁸ *Ibid.*

recommendation of the chief justice of the relevant High Court.³⁴⁹ Judges appointed to special courts in India have shown a tendency to allow state security concerns to overshadow due-process rights.³⁵⁰ The NIAA also entitles the central government to determine the court’s jurisdiction if there is a dispute over its competence.³⁵¹ Cumulatively, these powers allow the government to intrude upon functions that are fundamentally judicial in nature.³⁵² They call into question the special courts’ appearance of impartiality—an essential aspect of the internationally guaranteed right to a fair trial before a competent, independent and impartial tribunal.³⁵³

The NIAA also gives special courts unfettered discretion to hold *in camera* (closed) proceedings, “if it so desires.”³⁵⁴ This is not compatible with a defendant’s right to a public hearing³⁵⁵—a basic fair trial safeguard that assumes particular importance in highly charged and politicized terrorism-related cases. In the context of terrorism-related cases, there may be relevant considerations that necessitate closing portions of a hearing, such as the security of witnesses, the confidentiality of certain evidence and evidence-gathering methods, and protecting the accused from harm. However, international fair-trial guarantees permit closed proceedings in national security cases only during “exceptional circumstances,” weighing the reasons for closure against the right of an accused to a public hearing.³⁵⁶

Another problematic provision of the NIAA permits a special court to conceal the identity of witnesses if it is satisfied that their lives are in danger.³⁵⁷ Prosecutors and courts have an obligation to ensure the security of all witnesses to a criminal case and take appropriate protection measures, such as keeping the identity of certain witnesses from the media and general public. However, the measures that these special courts can take to protect

³⁴⁹ NIAA, sec. 11(3).

³⁵⁰ For previous violations in this regard, see Kalhan, et al., “Colonial Continuities: Human Rights, Terrorism, and Security Laws in India,” www.abcny.org/pdf/ABCNY_India_Report.pdf, pp. 165-66.

³⁵¹ NIAA, sec. 11(2).

³⁵² See Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, August 26 to September 6 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), <http://www1.umn.edu/humanrts/instreet/i5bpjij.htm> (accessed January 4, 2011), paras. 3 and 5.

³⁵³ ICCPR, art. 14; also see the Human Rights Committee, General Comment 32, para. 21. The Constitution of India, art. 50, upholds the separation of the judiciary from the executive; <http://www2.ohchr.org/english/law/ccpr.htm#art14>.

³⁵⁴ NIAA, sec. 17(1).

³⁵⁵ ICCPR, art. 14(1); Human Rights Committee, General Comment 32, UN Doc CCPR/C/GC/32, paras. 28-29.

³⁵⁶ ICCPR, art. 14(1), permits closed proceedings “for reasons of morals, public order... or national security in a democratic society, or to the extent strictly necessary where publicity would prejudice the interests of justice.” However, the UN Human Rights Committee general comment 32, para. 29, has stressed that *in camera* proceedings should be held in “exceptional circumstances” in accordance with the exceptions set out in ICCPR, art. 14(1).

³⁵⁷ NIAA, secs. 17(2)-(3).

witnesses' identities are not subject to specified limits, raising the possibility that the court could conceal witnesses' identity even from the defendant and their counsel. If applied in such a manner, these provisions could deny the defendant's fair-trial right to examine prosecution witnesses.³⁵⁸

The NIAA's shortcomings might have been avoided had the government taken more time to design it. "No comprehensive analysis of the issues was done, no review of existing legislation and capabilities was conducted," concludes the nongovernmental Commonwealth Human Rights Initiative in its analysis of the law. "An invitation was never extended to the states or civil society to suggest possible alternatives."³⁵⁹

³⁵⁸ ICCPR, art. 14(3)(e). See also the European Court of Human Rights, *Van Mechelen v. Netherlands* (App. 21363/93, 21364/93, 21427/93, 22056/93), Judgment of 23 April 1997; (1998) 25 EHRR 647; ECtHR, *P.S. v. Germany* (App. 33900/96), Judgment of December 20, 2001.

³⁵⁹ CHRI, Feudal Forces.

IX. Reforming the Response to Attacks

Indian government investigations into bombings and other attacks on civilians are often slow, inefficient, and ineffectual. These shortcomings raise additional human rights concerns, such as the right of criminal suspects to a speedy and fair trial.

Since the 2008 attacks, India's central and state governments have taken some steps to deter future attacks and respond quickly. The central government also has increased training and intelligence-sharing initiatives with the United States and governments in the region. Nevertheless, greater efficiency will not address India's shortcomings in confronting terrorism unless the changes are coupled with concerted efforts to end torture and other abuses. Moreover, proposals for serious reforms will need to overcome formidable opposition from competing state and federal security forces, and from a public that often seeks quick solutions to complex problems.

Inadequate Responses

The slow and inadequate response by India's elite forces to the Mumbai attack was widely criticized as a case study in delays and lack of coordination that may have cost lives. Less publicized were the ways in which the investigations into the 2008 bombings in Jaipur, New Delhi, and Ahmedabad may have also been hampered by inter-state rivalry, sloppy evidence gathering, and conflicting information.

In one example, police as of September 2010 had still failed to submit a key forensic report in the serial blasts that rocked Delhi two years earlier. "There seems to be total lack of discipline, coordination and professionalism on the part of the investigating agency," a judge said in summoning senior police officers to explain the delay.³⁶⁰

In another example, although state and central law-enforcement authorities describe the 2008 bombings as a single conspiracy, police investigators in different states initially made numerous contradictory statements about who was responsible for the attacks.

Gujarat state police in August 2008 declared the "mastermind" of the blasts in Ahmedabad to be SIMI member Abu Bashar, who was in their custody. But on September 17, 2008, four

³⁶⁰ "Court raps police for probe delay," *Asian Age*, September 25, 2010, <http://www.asianage.com/delhi/court-raps-police-probe-delay-464> (accessed September 27, 2010).

days after bombs exploded in Delhi, the Delhi police named fugitive SIMI member Abdul Suban Tauqeer to be the “main leader” of the serial blasts. Two days later, Delhi police changed their position, announcing that Atif Ameen, one of two Muslim youths killed during the controversial police raid that day in Batla House, was the mastermind.³⁶¹

A week later, members of the Mumbai Crime Branch in Maharashtra state announced that Ameen actually reported to a suspect they were holding named Sadiq Sheikh, whom they pronounced the “architect” of all the blasts.³⁶² In February 2009, the Mumbai Crime Branch announced that Sheikh had also given a detailed confession about his role in a 2006 train bombing in Mumbai that killed more than 180 people. But in May 2009, a Mumbai magistrate threw out the charge against Sheikh after the Maharashtra state police ATS, which had repeatedly interviewed Sheikh, absolved him of any role in that bombing.³⁶³

In Delhi in July 2009, police named yet another mastermind, the fugitive LeT operations chief, Abu Alkama. “Alkama is the main mastermind behind the creation of Indian Mujahideen and is responsible for the September 13 blasts [in Delhi]. He is also involved in serial blasts in Jaipur, Ahmedabad, and UP [Uttar Pradesh],” an unnamed Delhi police official told reporters on the first anniversary of the Delhi bombings.³⁶⁴

While contradictory interpretations of the events have abounded, no central authority has intervened to coordinate investigations into the string of bombings. Given that nearly one-third of the 70-plus suspects are charged in multiple states, to which they must be shuttled for one hearing after another, it is not clear how many years if not decades the trials could last. All of the defendants are being held without bail.

In February 2010, the lawyer for nine suspects in the Delhi bombings petitioned the Supreme Court to consolidate the trials into one case or at least one city, saying the slow pace violates their right to a speedy trial under article 21 of the Indian Constitution. Defense attorney M.S. Khan told Human Rights Watch: “If petitioners are to be tried in several cases

³⁶¹ Human Rights Watch interviews with defense attorneys in Delhi, Ahmedabad, and Mumbai, June-July, 2009. See also ‘Encounter’ at Batla House: Unanswered Questions, Jamia teachers’ Solidarity Association, April 2009, p. 28.

³⁶² ‘Encounter’ at Batla House: Unanswered Questions, p. 29.

³⁶³ “IM’s Sadiq Sheikh let off in 7/11 case,” *Indian Express*, May 12, 2009, <http://www.indianexpress.com/news/ims-sadiq-sheikh-let-off-in-7-11-case/457699> (retrieved August 25, 2009).

³⁶⁴ “Police yet to nab 14 accused,” *Press Trust of India*, September 13, 2009. Police have also accused some alleged IM members for a series of blasts in the state of Uttar Pradesh in 2006-07.

at different places, it may not be possible for the prosecuting agencies of different States to complete various trials during the lifetime of petitioners.”³⁶⁵

Investigations into the Pune blast of February 2010 proceeded more smoothly. Even here, though, evidence may have been lost as the city police, initially assuming the explosion was caused by leaking gas, called in firefighters to wash the site clean.³⁶⁶ Moreover, the site allegedly was not cordoned off for several hours.³⁶⁷

Steps toward Reform

In the wake of the Mumbai attack, India’s central government took what it described as the first steps in sweeping reforms of its security apparatus. It says those measures helped thwart more than a dozen terrorist plots in 2009. Among other measures, the central government established four National Security Guard counterterrorism hubs, staffed with 250 guards apiece, in the cities of Mumbai, Chennai, Hyderabad, and Kolkata. The Mumbai police added another 250 officers to a special first-responder force. The Coast Guard expanded its fleet. For the first time, the elite Indian Police Service academy in the city of Hyderabad introduced a training capsule on counterterrorism and counterinsurgency. The central government also created the National Investigation Agency (see preceding chapter).

Additional plans include creating 20 counterterrorism and counterinsurgency schools around the country.³⁶⁸ Past training focused on counterinsurgency tactics in jungles, rather than on urban attacks.³⁶⁹ In December 2009, Home Minister P. Chidambaram proposed a “radical restructuring” of the nation’s security architecture, which would include a National Counter-Terrorism Center to serve as an umbrella group for India’s myriad federal and state intelligence agencies, including the NIA.³⁷⁰ In addition, Chidambaram called for the establishment of a

³⁶⁵ Human Rights Watch telephone interview with attorney M.S. Khan, June 29, 2010.

³⁶⁶ Shailendra Mohan, “Pune cops goof-up: Got blast site washed,” *Hindustan Times*, February 20, 2010, www.hindustantimes.com/rssfeed/maharashtra/Pune-cops-goof-up-Got-blast-site-washed/Article1-510781.aspx (accessed March 1, 2010).

³⁶⁷ Human Rights Watch telephone interview with Indian intelligence expert close to the investigations who spoke on condition of anonymity, May 2010.

³⁶⁸ “The National Investigation Agency,” *Hindustan Times*, July 2, 2009.

³⁶⁹ Human Rights Watch telephone interview with Ajai Sahni, executive director, Institute for Conflict Management, New Delhi, June 16, 2009.

³⁷⁰ P. Chidambaram, Intelligence Bureau Centenary Endowment lecture, official transcript, December 23, 2009, New Delhi, <http://www.mha.nic.in/pdfs/HM-IB-Endowment231209.pdf> (accessed April 1, 2010).

central crime data base, the creation of a separate security division within the Home Ministry, and said states should train an additional 400,000 state police officers.³⁷¹

Indian authorities, long reluctant to share information with foreign governments on cross-border crimes, have shown an unprecedented degree of openness to international and regional cooperation since the Mumbai attack. The Indian government expanded the limited US counterterrorism training programs for India and sent senior officials to the FBI for tips on running India's new National Investigation Agency.³⁷² Delhi and Washington have been sharing information on the Mumbai attack and other cross-border networks and plots. India also resisted pressure from certain nationalist politicians to break off peace talks with Pakistan following the Mumbai attack.

Indian security officials also have participated in regional initiatives such as a counterterrorism workshop in November 2009 that was sponsored by the United Nations Counter-Terrorism Committee. Other participants included Pakistan, Afghanistan, and Bangladesh.

Indian security experts with whom Human Rights Watch spoke praised the authorities for taking initiative and called some new measures an important step forward. But they suggested other proposals may do little to improve evidence or intelligence gathering and were skeptical about political prospects for implementing others.³⁷³

At the international level, for example, regional mistrust and political rivalries hamper efforts to address terrorism. For example, friction between India and Pakistan has slowed efforts by the eight-nation South Asian Association for Regional Cooperation (SAARC) to forge regional responses such as creating a regional terrorism database that could serve as an evidence-sharing center and early-warning system for potential attacks.³⁷⁴ "SAARC has excellent agreements but when it comes to actual implementation, it isn't effective because the level

³⁷¹ Ibid.

³⁷² "US-Indian security ties boosted after Mumbai: official," Agence France-Presse, June 19, 2009.

³⁷³ Human Rights Watch telephone interviews with security experts in New Delhi including Sahnii, May 4, 2010; Vikram Sood, former secretary of R&AW, New Delhi, May 7, 2010; Ajit Doval, former Intelligence Bureau director, New Delhi, May 7, 2010; Praveen Swami, then-associate editor, The Hindu, New Delhi, May 7, 2010; and with security analyst C. Christine Fair of Georgetown University, May 6, 2010. Also see Avnish Patel, "After Mumbai - India's Response," Royal United Services Institute, November 5, 2009, <http://www.rusi.org/analysis/commentary/ref:C4BoD3DCA5D253> (accessed January 5, 2010).

³⁷⁴ Eric Rosand, Naureen Chowdhury Fink, and Jason Ipe, *Countering Terrorism in South Asia: Strengthening Multilateral Engagement*, Center for Global Counterterrorism Cooperation, May 2009, pp. 8-9.

of suspicion among the members is so high,” said retired Maj. Gen. Dipankar Banerjee, an Indian security analyst.³⁷⁵

Indian and foreign security analysts told Human Rights Watch that India did not need a plethora of flashy new agencies and paramilitary forces with tanks to combat terrorism, but should instead commit to a large-scale campaign to train and recruit police officers who can serve as first responders and as the backbone of intelligence gathering. Without trained law enforcement officers, the proposed hubs and data-collection centers will be of little use. They expect that the training process will take years and encounter stiff resistance from state and central government agencies who will view them as a threat to their own power bases.

Domestic and international efforts to improve the professionalism and technical skills of law enforcement can be crucial in countering terrorism, provided that they do not jeopardize respect for fundamental human rights. For instance, police forces should be trained in crime-solving and prevention methods that do not involve torture or other ill-treatment. International cooperation should be used to ensure that persons who commit terrorist acts in one country do not obtain protection from extradition in another. At the same time, training, assistance, and international cooperation should never use or facilitate methods, such as coercive interrogations or renditions of terrorism suspects without due process, which themselves violate the protections of international human rights law.

³⁷⁵ Human Rights Watch interview with Maj. Gen. Dipankar Banerjee, director, Institute of Peace & Conflict Studies, New Delhi, June 17, 2009.

X. Recommendations

To the Indian Central Government

- Investigate all allegations of human rights violations during counterterrorism operations and appropriately discipline or prosecute those responsible.
- Ensure that police training in counterterrorism operations includes respecting due process, nondiscrimination, and humane treatment; monitor police during counterterrorism operations to ensure that human rights are being respected.
- Sign into law criminal procedure amendments passed by Parliament in 2010 that would require the police to record a formal reason under law for making a warrantless arrest.
- Codify the full set of guidelines for police officers making arrests that are contained in the landmark 1997 Supreme Court case *D.K. Basu*, and consider expanding them to apply to the police and other detaining authorities in circumstances outside a formal arrest to prevent torture and ill treatment.
- Amend the India Prisons Act and jail manuals used by various state governments to repeal anachronistic provisions such as those that classify hunger strikes as “mutiny,” punishable by whipping, and otherwise allow corporal punishment of prisoners, and replace them with directives that conform to international law.
- Enact the Prevention of Torture Bill, 2008 after removing provisions that would grant officials effective immunity from prosecution, and ensuring the bill’s conformity with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratify the Convention against Torture and its Optional Protocol. Extend an invitation to the UN Special Rapporteur on Torture.
- Initiate independent, impartial, and transparent investigations into allegations of faked “encounter killings,” including at Jamia Nagar in New Delhi.
- Amend section 46 of the Code of Criminal Procedure so that police are no longer permitted to use all “necessary” force to effect arrest or to use deadly force whenever a suspect “attempts to evade the arrest,” without regard to whether the suspect poses an imminent threat to others. Assist prosecutors in various states bringing cases against 2008 bombing suspects to better coordinate proceedings to ensure speedy trials.
- Revise the overly broad definition of terrorism under the Unlawful Activities Prevention Act (UAPA) to be consistent with the recommendations of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, notably that it cover only those acts that are

- committed with the intention of causing death or serious injury; are committed for the purpose of provoking terror or coercing the government to do or refrain from doing any act; and are in line with international conventions relating to terrorism. Repeal provisions of UAPA contrary to international law, including expanded police powers of search and seizure, the presumption of guilt under certain circumstances, and the doubling of the maximum pre-trial detention period for terror suspects to 180 days, of which 30 days may be in police custody and the rest in judicial custody.
- Amend the National Investigation Agency Act (NIAA) to ensure the independence of special courts from the executive, remove the blanket power of courts to hold *in camera* (closed) proceedings, and constrain the courts' power to conceal the identity of witnesses, in order to ensure that defendants can adequately confront those testifying against them.
 - Amend the UAPA and NIAA to include sunset clauses, so that the laws will expire within several years unless reenacted.
 - Use the UN review process for monitoring state compliance with Security Council Resolutions 1373 and 1456 to draft counterterrorism laws that do not violate international human rights law.
 - Reduce politicization of the National Human Rights Commission (NHRC) by requiring a transparent appointments process that includes public hearings and participation from civil society groups. Require state human rights commissions to report back to the NHRC on actions they intend to take on complaints the NHRC forwards to them for review. The aim should be to improve mechanisms for citizens to seek redress and hold government officials accountable for human rights abuses.
 - Initiate a public campaign to end discrimination on the basis of religion; prosecute government officials, political leaders, and others who incite religious violence.
 - Publicly denounce national and state bar association resolutions banning lawyers from defending terrorism suspects, which interferes with the right to counsel. Call on bar councils to promptly take disciplinary actions against members who threaten or harass lawyers defending terror suspects.
 - Initiate regional cooperation with other South Asian states to promote effective methods to protect human rights during counterterrorism investigations.

To the Indian State Governments

- Investigate all allegations of human rights violations during counterterrorism operations, including for abuses in response to the 2008 bombings, and appropriately discipline or prosecute those responsible.

- Establish routine cooperation with other Indian states through the NIA, the National Counter-Terrorism Center, and other mechanisms to handle the investigation of terror attacks and threats so that there is prompt exchange of information to identify the perpetrators.
- Ensure that police training in counterterrorism operations includes training on respecting due process, nondiscrimination, and humane treatment.
- Act promptly on NHRC guidelines to investigate “encounter killings;” prosecute security personnel found responsible for involvement in faked encounter killings and other extrajudicial executions.
- The Maharashtra state government should immediately repeal abusive provisions of the MCOCA, such as those providing extended periods of detention without charge and allowing confessions made to police to be admissible; other state governments should cease efforts to enact similar measures.
- The Rajasthan, Gujarat, and Delhi governments should launch an immediate inquiry to identify and prosecute jail authorities and police who were responsible for attacking terrorism suspects who were in judicial custody in Ahmedabad in March 2009, Jaipur in September 2009, and Delhi in August 2010.

To Concerned Governments and Multilateral Organizations

- Strongly encourage Pakistan and other neighboring countries to investigate and identify groups that conspire or commit attacks against Indian civilians, and prosecute or appropriately extradite those responsible.
- Make counterterrorism assistance to countries such as India and Pakistan contingent on periodic appraisals of conformity with human rights standards.
- Enhance the UN’s role to expand human rights considerations in the process of monitoring member states’ compliance with Security Council Resolutions 1373 and 1456.

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HUMAN RIGHTS WATCH
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

www.hrw.org

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The “Anti-Nationals”

Arbitrary Detention and Torture of Terrorism Suspects in India

In recent years, hundreds of people have been killed or injured in India in attacks conducted by an array of militant groups with religious, separatist, or nationalist agendas. Time and again, Indian state police and other security forces have committed serious human rights violations in their quest to identify the perpetrators. While the authorities are under intense pressure to solve these heinous crimes and prevent future attacks, such responses are both unlawful and counterproductive.

The “Anti-Nationals” documents the Indian security forces’ use of torture and coercion to obtain confessions, as well as other abusive methods against terrorism suspects. The report focuses on the mistreatment of alleged members of the militant Islamist group Indian Mujahideen, which has claimed responsibility for a half-dozen bombings and other deadly attacks since 2008. It also details evidence of abuse of Hindu nationalist suspects charged in a bombing in 2008.

The report is based on interviews with over 160 people, including suspects, their relatives and lawyers, civil society groups, security experts, and law enforcement officials.

The “Anti-Nationals” outlines steps that the Indian authorities should take to end abuses and hold those responsible to account. It also urges the government to revise counterterrorism measures reinstated after the brutal 2008 attack on Mumbai that could facilitate torture, prolonged detention without charge, and other abuses. Without these institutional changes, India risks alienating its populace and inadvertently bolstering the lure of violent groups.