

# **Prison Conditions in India**

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## Contents

Preface.....	i
I. Introduction.....	1
II. Police Detention.....	3
Torture .....	5
Women in Police Detention.....	9
The Purposes of Torture .....	11
III. The Prison System.....	17
The Class System in the Prisons.....	18
"Convict-Officers" .....	20
Overcrowding.....	23
Health and Medical Care .....	24
Punishment in the Prisons .....	25
Women in the Prisons .....	26
Prisoners Confined for Politically Motivated Offenses .....	28
IV. India's Human Rights Movement.....	31
V. What Is To Be Done?.....	35
Appendix: The Numbers .....	37



## Preface

This report is based on a two-week visit to India in October 1990 by Aryeh Neier, Executive Director of Human Rights Watch, and David Rothman, Professor of Society and Medicine at Columbia University, historian of prisons and other asylums, and a member of Human Rights Watch's Prison Project Advisory Committee. In addition, information was gathered for this report by Dan Wolfe, a Columbia University law student who served an internship with the Lawyers Collective in Bombay. In addition, Mark Williams, a New York lawyer who worked with the Lawyers Collective, reviewed a draft of this report and provided comments and research assistance. The report was written by Aryeh Neier and David Rothman.

Despite extensive efforts by the participants in this investigation to obtain access to the Indian prisons, they did not succeed. Moreover, even though Indian officials were apprised in several different ways of the dates and purposes of the investigation, ultimately some Indian authorities treated the participants as though they had entered India covertly and for a devious purpose. Immediately before leaving India, Messrs. Rothman and Neier were separately detained briefly (in each case for less than an hour) by officers of the Bombay Police Special Branch and interrogated about their purposes, their itinerary and the identity of those whom they had met in India.

Given this effort by the Special Branch, we list below the means that we used to apprise the Indian authorities of our mission. They included:

- in July 1990, an Asia Watch delegation headed by former U.S. Ambassador to India, Harry Barnes, passing through India in connection with a visit to Afghanistan, met with Indian government officials, and informed them of the dates, purposes and participants in our prison investigation;
- in September 1990, we sent two sets of follow-up letters by courier and by fax to Indian officials seeking their cooperation and again providing data about the dates, purposes and participants in our prison investigation;
- also in September 1990, Asia Watch contacted the Indian Embassy in Washington D.C. to provide this information;
- also in September 1990, and at the beginning of October 1990, the participants in the investigation telephoned Indian government officials from New York to provide this information and to seek their cooperation;
- once in India, the participants in the investigation telephoned Indian foreign ministry officials on the day they arrived and on just about every day of their stay in India to seek their cooperation;
- also in India, the participants in the investigation met with the Attorney General and a top aide to the Prime Minister at the beginning of their visit to seek the cooperation of the government.

Again, these efforts did not succeed. The participants in the investigation did not gain access to the prisons and did not succeed in meeting with officials with direct responsibility for the prisons. Accordingly,

the authors were required to obtain the information set forth in this report by interviewing former prisoners; lawyers who have represented inmates of the prisons and police lock-ups; leaders of India's human rights groups; doctors associated with post mortem examinations; and scholars who have studied the prisons and the police lock-ups. In addition, the authors collected a large amount of documentary material including court decisions; commission reports; reports of human rights groups; press reports; and jail manuals.

The authors of this report express gratitude to all those who furnished information for this report and regret that the Indian government chose not to cooperate in this investigation.

## Introduction

India is the world's largest democracy in more than name. It has free elections, a multi-party parliamentary system, a diverse and outspoken free press, an independent judiciary and the country abounds with non-governmental organizations that take pride in their independence and that help to make up a lively civil society.

Yet if the checks and balances of democracy are supposed to curb government lawlessness, something has gone wrong in India. At least, so it seems from an examination that we recently conducted of imprisonment and police detention in India. In some major cities of the country that we visited, and probably elsewhere as well, anyone unlucky enough to be arrested faces a far greater likelihood of torture, or worse, at the hands of the police than in many countries entirely lacking in the protections for civil liberties available in India.

Though we had some inkling in advance that we would find extensive police abuse of detainees, we were not prepared for what we discovered about prisons and jails<sup>1</sup> to which detainees are sent after the police are done with them. We knew they would be bad, if only because life is hard for most Indians outside the prisons. It stands to reason, therefore, that if incarceration is meant to punish, life inside the prisons should be worse. What took us by surprise, however, is the manner in which it is worse for the great majority of prisoners and, more surprising, the fact that imprisonment is somewhat less harsh than we had anticipated for some prisoners.

Though prisons are supposed to be levelling institutions in which the variables that affect the conditions of confinement are expected to be the criminal records of their inmates and their behavior in prison, other factors play a part in many countries. But India and Pakistan have retained colonial era regulations which explicitly counter the concept of prison as leveller. In a country in which a governmental

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<sup>1</sup>The terms "prison" and "jail" are used interchangeably in India, perhaps reflecting the fact that no significant effort is made to separate "undertrials," as those awaiting trial are known, from convicts. Separation of undertrials from convicts is required by a decision of India's Supreme Court, but this decision is widely ignored in practice. A substantial majority of all prisoners are "undertrials." (see Appendix)

and legal commitment to egalitarianism is taken for granted, and where the intense and often violent debate over equal rights mainly concerns how far to extend a quota system to benefit "untouchables" – or "dalit" (the oppressed, as some prefer to be known) – tribal people and other so-called "backward classes," there is a rigid class system in the prisons in much of the country that is explicitly mandated by law.

Under this system, special privileges are accorded to the minority of prisoners who come from the upper or middle classes irrespective of the crimes they may have committed or the way that they comport themselves in prison. Such privileges are even conferred on prisoners who have engaged in the most violent crimes against the institutions and officials of the state. Indeed, in some respects, prisoners whose offenses were politically motivated are a privileged elite, enjoying better treatment in everything from a more varied and ample diet to access to reading material.<sup>2</sup>

At first we found the contradictions that we encountered deeply puzzling. What could account for such extensive police lawlessness in a functioning democracy with a strong commitment to the rule of law and with the institutional apparatus to fulfill that commitment? Why do such abuses persist in a country in which the judiciary has included such strong advocates of human rights as former Supreme Court Justices Krishna Iyer and P.N. Bhagwati, both of whom were particularly concerned with the protection of detainees and prisoners? How to explain the avowedly unequal treatment of those who run afoul of the law in a country with such egalitarian commitments? To add to the mystery, why does a country with such a plethora of vigorous nongovernmental organizations and with a strong national awareness of civil liberties lack any significant domestic organization with a professional staff that operates nationwide and that is capable of challenging police abuses, or abusive prison conditions or of promoting human rights generally?

As we sought the answers to these questions, we came to believe that what we learned about the microcosm that was our concern was useful in attempting to understand the contradictions that permeate all of Indian society. Indeed, we think that our attempts to sort out the puzzle so far as the treatment is concerned of those detained in the police lock-ups and the prisons in India has helped us to deepen our own understanding of what is required in efforts to promote human rights worldwide.

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<sup>2</sup>These comments are not intended to apply to prisoners confined under security legislation in Punjab, Kashmir and Assam where separatist struggles and counterinsurgency campaigns have been underway. The authors of this report did not investigate those conditions. They are the subject of a separate investigation by Asia Watch.





## Police Detention

Under Indian law, every person who is arrested and detained in custody must be produced before a magistrate within 24 hours of arrest, excluding the time needed for transportation to court. A special order by a magistrate is required to authorize police detention for a longer period. Remand to police custody may be for no more than 14 days. If it is to be prolonged thereafter, another order from a magistrate is required. Detention in police custody, at least so far as the law is concerned, may not exceed 90 days. In cases in which the potential sentence is under ten years, detention in police custody may not exceed 60 days.<sup>3</sup>

In India, legal aid for those who cannot afford to retain counsel is available at trial, but not – at least, in practice – at the point when detainees are brought to what is known as "remand court."<sup>4</sup> Since the majority of

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<sup>3</sup>These requirements are suspended in the case of arrests made under the Terrorist and Disruptive Activities Act (TADA), adopted on May 17, 1985 and subsequently extended for two years at a time. Under the Act remands may be extended up to one year without charges. The law applies to offenses committed in aid of "terrorism" and "disruption." Its broad uses and, the abuses to which TADA gives rise, will be considered separately by Asia Watch in forthcoming reports on Punjab and Kashmir.

<sup>4</sup>The leading court case on the right to counsel in India is *M.H.Hoskot v. State of Maharashtra*, 1978, 3 S.C. 544. It provides that the defendant shall "have legal assistance assigned to him in any case where the interests of justice shall require" at no cost if the defendant cannot pay. Though the Court's opinion, by Justice Krishna Iyer, explicitly

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cites bail motions as among the circumstances where justice "would be well-nigh impossible" without legal aid, free legal assistance is not made available at this stage in India. The Legal Services Authority Act of 1987, though enacted, has not been brought into effect and implemented at this writing more than three years later.

For all practical purposes the legal aid movement started in 1980 with the appointment of the Committee for Implementing Legal Aid Schemes ("CILAS"), which was headed by Justice P.N. Bhagwati. CILAS drafted model schemes which were used by many states to formulate their own legal aid and advice programs. The general gist of these programs, which are still used today, is the utilization of panels of voluntary lawyers (who would receive minimal honoraria, and not actual remuneration, for their services rendered) who represent certain individuals eligible for legal aid (determined by "means," "social criteria," i.e. scheduled tribes and castes, women, etc., or "special circumstances" tests). Because of the voluntary nature of such representation and the low (and difficult to obtain) honorarium provided, very few lawyers participate in the

all prisoners in India – those confined in the prisons as well as those held in police lock-ups – have not been tried, the absence of legal aid until the point of trial reduces greatly the value of the country's system of legal representation of the poor. Lawyers are not available to assist most prisoners at the point when many of them most need such assistance.

In practice remand to police custody is routine except for the minority who can afford to retain counsel to appear before a magistrate and who can afford bail. We spent a morning in remand court in Bombay. The magistrate barely said a word. Prisoners who appeared before him without counsel were remanded to police custody without inquiry as to whether there were any grounds to believe that this would be useful in furthering investigation of the crimes they were alleged to have committed – the ostensible basis for remand. Nor was there any inquiry as to whether they were likely to show up for trial and could be released on personal recognizance. In contrast, the majority of the few prisoners who showed up with counsel were released pending trial. After the attorneys spoke in behalf of their clients, no questions were asked by the magistrate. None of these proceedings seemed to take more than about two minutes.

In some cases, it appears that the 24-hour rule is evaded by the failure of the police to register an arrest right away. In many more cases, remands take place more than once and, in some cases, detainees are held in police custody for far longer than is legally permitted.<sup>5</sup>

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**legal aid panels and therefore many persons who are deserving of legal aid must represent themselves. For example in 1986, only 165 of the more than 10,000 lawyers in Bombay participated in the legal aid program in the Sessions Court (criminal trial court); most of them were junior lawyers. See Anand Grover, "The Right to Legal Aid," *The Lawyers*, Nov.-Dec. 1986, p. 10.**

<sup>5</sup>A Bombay newspaper has published an account of the detention of 19 "tribal" boys for nine months in various police lock-ups. They had obtained employment in a stone-breaking project, but after two weeks of work the contractor who had employed them led them to the police. The police found a

The period during which detainees are held by the police is the most dangerous for them physically. They are confined in lock-ups at police stations, often in crowded cells with only the most rudimentary sanitary facilities, if any. The Lawyers Collective in Bombay, which has been permitted to visit lock-ups and prisons under court order, has provided this description:

The lock-up is a bare room with no piece of furniture at all, usually divided into two parts, the living area and the toilet area, separated from each other by a one foot divider. It is almost always a very poorly ventilated room with usually only one small window built close to the ceiling. There is never a fan in the cell. The lock-up is also poorly lit, usually by just one bulb for the whole room, which is never switched off. In lock-ups in the urban areas, the urinal area is usually enclosed, but without a door. There is normally no commode – just a pot in a corner which is cleaned out occasionally. The water supply is unpredictable and intermittent at best. The stench is unbearable and flies abound. The undertrial is not provided with a change of clothes nor with soap, oil or toothpaste. No mats are provided for sleeping nor are coverlets supplied. The lock-ups are inevitably overcrowded, especially at night. From the uniformity in their filthy and overcrowded conditions, and in the brutal, dehumanizing

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blood-stained handkerchief on one of them and insisted that it belonged to a woman who had been murdered. All of them were tortured and for a six-day period, denied food or water. One of the boys, Jaggu Chavan, died. After three months, they were brought before a judge who ordered them into jail custody, but the police took them to another lock-up instead. Eventually, after nine months, they were absolved and released without charges. Latha Venkatram, "9-Month-Long Ordeal for 19 Tribals," *Mid-Day*, Bombay, November 26, 1989. See also an account of the death of Jaggu Chavan in "PUCL Alleges Death in Police Custody," *Indian Express*, March 25, 1989.

treatment meted out by the police to their occupants, it seems lock-ups are specially built to oppress detainees and make their stay a type of deterrent to crime.<sup>6</sup>

## Torture

Torture in the lock-ups is routine. Attorneys who regularly defend those who have been held in such lock-ups described to us the frequency of the "third degree"<sup>7</sup> – a term commonly used in India to cover practices that are fairly described as torture – as ranging from far more than half of all detainees (in Bombay) to virtually all detainees (in New Delhi).

One of the small civil liberties groups in India, the People's Union for Democratic Rights (PUDR) in New Delhi, published a brief report in October 1990 on deaths in police custody in that city. Most of the cases cited in the report came to the PUDR's attention because of newspaper accounts. In a city with less than one percent of the national population, the report enumerates 48 deaths in police custody from 1980 to 1989, most of them of persons under the age of 30. The PUDR alleges that "most of these people died due to severe beating and prolonged torture. Practically every person taken to a police station in connection with some or the other offense in our country is subjected to severe beating and torture. ... Sticks, boots and belts and wooden rollers are the most common instruments of beating. Sexual abuse, designed not only to hurt but also to humiliate is part of the torture. Naked or semi-naked men are a common sight in police lock-ups. It is this process of torture, regular and systematic, whose end product is sometimes death, as in the case of these unfortunate 48 people in Delhi." The report also cites the findings of other civil liberties groups in other parts of India which also generally based their reports on press accounts. In 1988, 20 deaths in police custody were reported in the state of Andhra Pradesh; 15 in Bihar; 8 in Kerala; 22 in Uttar Pradesh; 19 in West

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<sup>6</sup> Anand Grover, "Policing Lock-up Conditions," *The Lawyers*, Bombay, September 1987, p. 7.

<sup>7</sup>"Third degree" is an American term that entered British English and Indian English through the movies. It is reportedly derived from freemasonry; the third degree is the highest degree, that of Master Mason. Apparently, it came to refer to the highest degree of questioning of criminal suspects.

Bengal. No nationwide figures are available. Yet if experience elsewhere is a guide, press accounts of such episodes fall far short of presenting a complete picture.

Aside from these lock-up deaths, there is the matter of "disappearances." As in other countries like Sri Lanka and El Salvador, some of the victims are individuals who died under torture and whose bodies were then disposed of to conceal how they were killed. One Indian state in which disappearances have been recorded is Andhra Pradesh, of which the capital is the city of Hyderabad. In January 1990, the Andhra Pradesh Civil Liberties Committee published an "open letter" to the Chief Minister of the state. In addition to describing 111 deaths in police lock-ups in the state from 1984 to 1989 – in each case the organization cited the police explanation for the death and contrasted this with its own findings – the civil liberties group enumerated 21 disappearances after arrest during the same period. Most of the bodies of the victims were never found; in a few cases, as in one in which the body had been run over by a train and another that had been burned, an effort had apparently been made to obscure the causes of death.<sup>8</sup>

A comprehensive nationwide compilation of deaths in police custody, it appears, would number in the hundreds each year. No doubt some of these deaths are due to natural causes or to suicides. Unfortunately, though post mortem examinations are routinely conducted, it is almost unheard of for family medical representatives to take part and the results of post mortems are often not made available to families or lawyers for the deceased. The doctors who conduct autopsies are often themselves police employees. For Hindu victims, the practice of cremating the dead, of course, negates the possibility of subsequent independent autopsies when doubts are raised about the findings of these police doctors.

We looked into a 1990 case in Delhi in which a Dr. Archaran had taken the unusual step of refusing to issue a certificate of natural death in connection with a death in police custody that had resulted from a beating. The police had claimed in this case that tuberculosis was the cause of death. Though the post mortem examination did reveal an old lesion due to tuberculosis, the doctor persisted in his finding that this had nothing to do with the death; his examination made it clear, he insisted, that the young man who had died in a lock-up was beaten to death.

In this case, the post mortem was conducted by a resident who specialized in forensic medicine at a large teaching hospital in South Delhi, the All Indian Institute of Medical Sciences. We interviewed the President of the Resident Doctors Association, Dr. Animesh, at the hospital who told us that the police had applied great pressure on Dr. Archaran to change his findings. Such pressure was usually effective, Dr. Animesh informed us, because virtually all employment opportunities for those trained in forensic medicine

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<sup>8</sup>"State of Civil Liberties in A.P.: An open letter to the Chief Minister," Andhra Pradesh Civil Liberties Committee, January 1990, 52 pp. This document also enumerates 203 killings in Andhra Pradesh by the police in "encounters."

are in the service of the police. "Most doctors simply take the word of the police," he told us. Resistance to police pressure succeeded in this case, he said, for two reasons: the entire Resident Doctors Association, with a membership of about 600, had backed up Dr. Archaran who established that a beating led to the death; and because the particular finding had been made by a doctor who did not seek a position with the police as he had taken a teaching position at the hospital.

Despite the unavailability of such medical evidence in the great majority of cases to establish conclusively that these deaths in custody are attributable to torture, the number of young people who perish during relatively brief periods of confinement in police lock-ups makes it clear that something is seriously wrong with the way they are treated. What takes place in custody confirms the view expressed by a Deputy Inspector-General of Police, Shailendra Misra, who has written that "The brutal behavior of our police is established beyond doubt ... in the form of reports of police commissions, surveys of public opinion and reports on specific instances of brutality."<sup>9</sup>

An episode that took place last year is illustrative. As the People's Union for Democratic Rights reconstructed the story, in an area of Delhi known as Seemapuri on June 1, 1990, Shammu Khan, 22, and his friend Ismail got into a quarrel. As they scuffled, Shammu stabbed Ismail, who was rushed to a doctor. Shammu was arrested and taken to the local police station. Four days later, Ismail had recovered but Shammu was dead.

A migrant to Delhi together with his family about 10 or 12 years earlier, Shammu Khan was the sole supporter of his wife, infant son, mother and sister. He was employed at a cycle factory and supplemented his meager wage from time to time by pulling a rickshaw. The area of Delhi in which he lived had been settled in recent years by poor people, many of them migrants from rural areas or refugees from Bangladesh. Ismail practiced a trade typical of the area: rag-picking.

On the night of the stabbing, Shammu Khan was picked up by two policemen from a nearby station at about 11:30 p.m. They began beating and kicking him as they took him away and did the same to a watchmaker who had been sleeping outside his shop who was taken along by the police for reasons that are not clear. On the way to the police station, the two officers were joined by four other policemen who joined in beating both men. All this was witnessed by neighbors of the two arrested men as well as by Shammu Khan's family.

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<sup>9</sup> Shailendra Misra, *Police Brutality: Analysis of Police Behavior*, Vikas Publishing House, Delhi, 1986, p.44. The book is a revised version of a dissertation by Mr. Misra, a long-time professional police officer, written for the Indian Institute of Public Administration.

By about 4 a.m., Shammu was in bad shape and was taken by the police to a hospital in the area. The police told the doctor that Shammu Khan was drunk and, as the PUDR reported, "The doctor duly attested that he was drunk and declared him otherwise 'well.'" He was sent back to the police station.

There he was seen a few hours later by a group of residents of Seemapuri who had come to try to free the watchmaker. Those who saw him did not think Shammu looked well, as his face was covered with flies and he had apparently vomited blood. The police seemed eager to get rid of Shammu and asked the residents who had come for the watchmaker if they would like to take Shammu as well. As he had stabbed someone, however, the residents had no sympathy for Shammu and refused to bail him out.

A little later, Shammu Khan's mother succeeded in getting the police to hospitalize her son again. Again the police told the doctor he was drunk, adding that he might have consumed some "poisonous substance." This time Shammu remained in the hospital under constant police guard, with his wife at his side. He died there three days later.

The police denied all allegations of violence. They stuck to their story that Shammu Khan had been drunk and died because he consumed an "unknown poison." Residents of Seemapuri did not believe this. Several thousand took part in a demonstration when Shammu's body was brought back to the neighborhood and they blocked traffic for hours. The participants included those who previously had no sympathy for Shammu Khan and had refused to bail him out. A magisterial inquiry was ordered, but in the past the results of such inquiries have not been made public. The PUDR, which conducted its own investigation, is pressing for a public report.

A few weeks after the death of Shammu Khan, another killing in police custody in Delhi also sparked a street demonstration. According to the People's Union for Democratic Rights, Joginder Pal Gupta, 37, went to the Model Town police town on August 21, 1990 to complain about an anonymous threatening phone call, apparently arising out of a neighborhood dispute. The next morning, his wife learned that he had been "brought dead" to Hindu Rao Hospital at 5:30 a.m. Thousands of residents of Joginder's neighborhood took to the streets in protest and the stories on this protest that appeared in the Delhi newspapers on August 23 prompted an investigation by the PUDR. That investigation established that the person who made the threatening call was apparently involved in what happened to Joginder Pal Gupta at the police station.

According to the police version of the episode, Joginder was not detained but remained at the station overnight voluntarily and died of a heart attack. PUDR did not find this persuasive, pointing out that when Joginder's body turned up at the hospital, it was severely mutilated: joints were broken; rope marks and cigarette burns were all over the body; and his clothes, cash, gold chain and ring were missing.<sup>10</sup>

The Bombay Committee for the Protection of Democratic Rights (CPDR) succeeded in one of the cases it investigated in 1990 in examining a copy of a coroner's post mortem report that verified its finding that

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<sup>10</sup> "Murder in Police Custody: Model Town," *People's Union for Democratic Rights, Delhi, September 1990.*

a death in police custody resulted from torture. The case involved Raju Mohite, 26, married and the father of a two-year-old son who lived with his five brothers and their father and mother in a slum, Andheri. Raju ran a tea shop at his home. On June 26, 1990, he was arrested on a charge that he had been involved in a robbery (apparently Raju was named as one of the participants by a boy, or two boys, who had previously been arrested in the case and beaten to name others who were involved). Raju was produced before a magistrate on June 27 and again on July 3 and remanded to police custody until July 17. On July 5, he was brought before a magistrate again, discharged by the police, given ten rupees (about 60 cents) and sent home. Though he could barely walk as a result of torture, he made it home in an autorickshaw. His brothers took him to a hospital where, apparently because they feared he might not be admitted if they attributed his injuries to the police, they said that Raju had been assaulted by unknown persons. The hospital notified the police and an Inspector came by. After being assured Raju would get treatment, one of his brothers told the Inspector what had happened. The next day several policemen came to the hospital and offered Raju's brother money and tried to persuade him to shift Raju to another hospital. While the police were still at the hospital, Raju died.

According to the CPDR:

We were told by those who saw Raju [when he was brought before the magistrate on July 5 for discharge] that he could barely walk, there were wounds all over his body, his thighs were swollen and except for a thin loin cloth there were no clothes on his body. Though it was quite obvious that Raju had been brutally tortured by the police, the Magistrate made no inquiries from him and he was left to fend for himself. Instead he mechanically granted the discharge requested by the Police. The Magistrate is required by law to enquire from the detainee whether he was ill-treated or whether he requires medical or legal aid. None of this was done....<sup>11</sup>

The Coroner's post mortem report showed contusions all over Raju Mohite's body that had been suffered within four days of his death as a result of being struck with a "hard and blunt object."

A death in police custody in Delhi that took place subsequent to our visit to India involved a chowkidar (watchman) at an electricity substation in the R.K. Puram neighborhood. A theft of electric cable from the substation had been reported to the police. The chowkidar, Ram Swaroop, was arrested for this offense on January 28 or 29, 1991; there is disagreement between his wife and the police as to when the arrest occurred. By January 31, he was dead. During this period he was not produced before a magistrate even though, if the police version of when he was arrested is accurate -- that is January 29 -- he should have been arraigned by January 30. According to the police, however, this was not required because he was released for a period, and then rearrested.

The People's Union for Democratic Rights, which investigated the case, reports that in the night before Ram Swaroop was reported to have died, the police informed his wife that he was ill, that he needed

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<sup>11</sup> Committee for the Protection of Democratic Rights, "Another Lock-Up Death: An Investigation," Bombay, July 1990.

medicine, and that she should give them his old medical records. The records she gave them showed he had once been treated for tuberculosis and the police subsequently said he died of a tuberculosis attack. A nephew of Ram Swaroop who lived in his home wanted to return to the police station with the police to see him, but at that point one of the police told the nephew his uncle was dead. The body was eventually turned over to the family for cremation. Those who saw the body said that the marks of torture were clearly visible.

The PUDR points out that Ram Swaroop had been given a medical fitness certificate after he was treated at a hospital for tuberculosis many years earlier; that he had been certified as medically fit by the chief medical officer for the electricity company that employed him; and that he had not suffered any bout of ill health in the years since he had been treated for tuberculosis. The police claim that he died of tuberculosis was made before a post mortem was conducted; at the time we obtained a copy of the PUDR's investigative report, the organization was still calling for public release of the post mortem report.

After Ram Swaroop's death, the union at the electricity sub-station organized a large demonstration at the police station where he died and cut off power to the police station. The demonstration brought the matter to public attention and precipitated the suspension of two police officers.

### **Women in Police Detention**

For women who are detained by the police, a particular danger is rape in custody. Many of the victims are migrant women who lack the established community connections that would make protests in their behalf effective.

Renu Mandal, 27, had arrived in Delhi from West Bengal in January 1990 just five days before the incident that led to her rape in police custody. She settled in an area known as Chittaranjan Park that is largely populated by Bengali migrants, moving in with her sister and her sister's husband. On January 11, Renu quarreled with a neighbor's child and slapped the child. The episode escalated into a dispute between the two families. Two police officers who were in the neighborhood at the time intervened and took Renu and her brother-in-law into custody. The brother-in-law was beaten and released; Renu was detained and raped. Shortly afterwards, she was released. When she got back to her sister's home, she related what had happened to her and her brother-in-law and others took her to see a local official to complain. In addition, she was examined at the All India Institute of Medical Sciences to verify what happened to her. As a consequence, one police officer was dismissed and another was suspended.

It is impossible to assess the frequency of custodial rape, but one indication is that the Delhi Police themselves acknowledge 14 cases in which 24 police officers were accused and suspended or dismissed over a two-year period from 1988 to 1990, among them the two officers involved in Renu Mandal's case. According to the PUDR, "chance circumstances" brought these cases to light. Otherwise they probably would have gone unreported. To a far greater extent than in Western countries, the victims of rape risk punishment themselves or ostracism if what happened to them becomes known. They may be rejected by their husbands and families and, in the case of unmarried girls, the chances of marriage are reduced drastically. Such crime

statistics as are available in India make it seem that rape is exceedingly rare;<sup>12</sup> gross underreporting seems the best explanation. (see also, "Women in the Prisons," below) In the case of rape in custody, the factors that militate against reporting are especially great: it is unlikely that the woman's shame would ever be known by anyone other than the victim and her rapists if she maintains silence; the fear of further retribution is especially great when it is the police who are the rapists; the woman has little or no opportunity to raise a prompt outcry after the rape; and the almost certain result of a complaint is that the victim would suffer more while nothing would happen to her rapists. Even the "chance circumstances" that did result in the suspension or dismissal of 24 Delhi police officers for raping detainees in a two year-period did not lead to criminal convictions of any of those officers, though some cases were still pending when the police report was issued.<sup>13</sup>

At times, custodial rape has become so notorious that it has stirred popular protests. One such protest took place in the state of Andhra Pradesh in January 1990. As the Indian newspaper, *Sunday Observer*, reported:

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<sup>12</sup>In the most recent year for which we were able to obtain statistics, 1986, 7,952 cases of rape were reported nationwide, or fewer than two rapes per 100,000 women. These figures do not comport with anecdotal evidence, but we lack any ability to guess even a range within which the actual number might fall. In the United States, the reported rate of rape is more than 80 per 100,000 women. Victim surveys show rates of rape that are much higher still.

<sup>13</sup>The People's Union for Democratic Rights investigated five of these cases and notes that in all five "the victim was a migrant woman with a socially and economically vulnerable background." "Custodial Rape: The Baljeet Nagar Story," PUDR, Delhi, May 1990.

Last Tuesday, the entire area witnessed a bandh [strike] against the on-going police atrocities. The action was triggered-off after an alleged rape [of three women] committed by three local police constables on three successive days.... Although this latest incident is being denied, local people have come forward and detailed past instances about the threats wielded by the policemen involved in the alleged rape, Kanakaiah, Vankateswaralu and Vijeykumar (already suspended in connection with the latest episode) were often named in these accounts of threats to local women to submit to their lustful desires. If any of the men interfered, the policemen would silence them with threats of booking them as Naxalites [a radical movement that has been involved in many crimes of violence – see below].<sup>14</sup>

Not all of the violence against women in police lock-ups is of a sexual character, as the Bombay Lawyers Collective has reported after interviewing all the women held in the Bombay Central Jail in 1987:

More than 50 percent of the women interviewed complained of violence and abuse in police custody.... Women have complained of being whipped with belts, especially on the thigh and upper leg, or being hung with a pole around the back of the neck and arms, or being caned on the palms and on the soles of their feet till they are swollen and tender, having their hair yanked by two policemen from either side, and all this to the accompaniment of abuse and threats of worse to come.

One deaf and dumb girl whom we interviewed went through all the physical motions of falling flat on her face and pulling her hair and hitting herself while all the time crying, in an attempt to explain how badly she was beaten. Last month a girl who was three months pregnant was taken from the jail into police custody for interrogation on suspicion in a new case. The next day she was produced before the magistrate, where she was found to have been whipped. There were huge black bruises all over her hands and legs.<sup>15</sup>

### **The Purposes of Torture**

In some countries, police torture of detainees is intended primarily to coerce a confession or to obtain a guilty plea. Where torture is a tool of political repression, a principal purpose is to force the victim to name others who may be involved in some real or imaginary conspiracy. Though coercing confessions or forcing

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<sup>14</sup> Mukundan C. Menon, "Cases of Custodial Rape Rampant in AP," *Sunday Observer*, January 21, 1990.

<sup>15</sup> Deepti Gopinath, "The Prison Rights Project," *The Lawyers*, Bombay, October 1987, p. 16.

defendants to name accomplices may be factors in India, this does not explain the extent of mistreatment in custody in India. For one thing, Indian law makes an extrajudicial confession inadmissible at trial; in that respect, Indian law seems to protect defendants more than they are protected in the U.S. where – under the Supreme Court's Miranda decision – they are only entitled to a warning about their rights and not to be interrogated in the absence of counsel if they express a desire to exercise their rights. The rule making confessions to the police inadmissible is less protective than it seems at first, however, because evidence obtained as a result of such a confession, such as the location of stolen property, is admissible.<sup>16</sup> Also, Indian defense lawyers told us, many persons who confess to the police then feel that they must also confess when they appear before a magistrate.

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<sup>16</sup> An Indian lawyer describes the legal rules as follows: "Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. Moreover, Sections 25 to 27 of the Evidence Act guard against this danger. Section 25 provides that no confession made to a police officer shall be proved against a person accused of any offence. Section 26 provides that no confession made by any person while he is in the custody of the police, shall be used as evidence against him. However, Section 27 provides that when any fact is discovered in consequence of information received from an accused in custody of the police, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." Grover, *op.cit.*, p. 8.

Yet confessions are not needed in many cases. By comparison to many other countries, India does not seem to have a high level of street crime.<sup>17</sup> Time and again, when we asked those familiar with the prisons and police lock-ups to describe the typical detainee, they cited the example of poor people from rural areas coming into the cities and boarding trains without paying the fare.<sup>18</sup> In such cases, the testimony of the

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<sup>17</sup> Our evidence for this is mostly impressionistic as we have little confidence in the crime statistics that the government compiles. As elsewhere, probably the most reliable statistics are those for murder as this crime is generally defined the same way in different countries and it is the most universally reported crime. The most recent year for which we obtained statistics was 1986 when 27,269 murders were reported and another 4,195 criminal homicides not amounting to murder. In combination, these totals are lower than in the United States – slightly higher in the case of murder; lower in the case of manslaughter. Yet India's population is three and a half times as large as the United States, making the apparent homicide rate very much lower. Though these figures confirm our impressions, we do not put too much stock in them as gathering reliable statistics in such a large and diverse country with such poor communications seems a daunting task.

<sup>18</sup>One victim of the grotesque failure of legal and penal management was a man called Ram Chandra. He was arrested in 1952 for

arresting officer ought to suffice; there is probably no need to coerce a confession. Similarly in cases like that of Shammu Khan, where violence erupts between acquaintances, a confession would not ordinarily be needed. Not only the victim but also those who summoned the police could provide testimony.<sup>19</sup>

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riding on a train without a ticket and spent thirty years in a Bihar jail awaiting trial. The police had forgotten about him. His case papers were lost... Had his case not been unearthed by a civil liberties group, and his release ordered by a high court judge, he would be locked up to this day." Trevor Fishlock, *India File*, John Murray, London, 1988, p. 97.

<sup>19</sup>Statistical information on the number of cases in which confessions might be important to the police is difficult to obtain, but a breakdown of the number of persons actually convicted of crimes under the Indian Penal Code in a given year is suggestive. The most recent year for which we were able to obtain a breakdown is 1981. It shows the following convictions:

Murder	16,372
Other homicides	2,301
Rape	1,774
Kidnapping	3,736
Dacoity (professional gang crime)	10,482
Robbery	7,228
Burglary	36,993

There is nothing new about police torture in India. Indeed, we believe that tradition is an important factor in the prevalence of torture: that is, the police torture because they have always tortured. In 1854 a commission was established by a British Governor "for the Investigation of Alleged cases of Torture at Madras." Within a brief period, nearly 2,000 complaints of torture were lodged with the Commission. That body found torture was prevalent and reported:

Among the principal tortures in vogue in police cases we find the following: twisting a rope tightly around the entire arm or leg so as to impede circulation; lifting up by the moustache; suspending by arms while tied behind the back; searing with hot irons; placing scratching insects, such as the carpenter beetle, on the navel, scrotum and other sensitive parts; dipping in wells and rivers, till the party is half suffocated; squeezing the testicles; beating with sticks; prevention of sleep; nipping the flesh with pincers; putting pepper or red chillies in the eyes or introducing them into the private parts of men or women; these cruelties occasionally persevered until death sooner or later ensues.<sup>20</sup>

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Theft	92,443
Riots	112,212
Other	<u>9,325</u>
Total	292,866

Confessions leading to the discovery of property would be of greatest value in cases of "burglary" and in some cases of "theft." The latter category, however, includes theft of services, as in the case of the passengers who do not pay their fares. We lack information as to how many cases of theft of services are included under the heading of theft. In the largest category of convictions, those involving riot, confessions would seem to have little significance. Samarendra Mohanty, *Crimes and Criminals*, Ashish Publishing House, New Delhi, 1990, p. 37.

<sup>20</sup>Torture Commission Report, April 16, 1855, paragraph 67.

In the 136 years since that report was issued many commissions – some national, some at the state level – have examined police torture and come up with similar findings. The judiciary has similarly denounced torture. In a famous decision of the Allahabad High Court in 1964, Judge Sri Mulla wrote that: "in the entire country there is not another criminal force whose misdeeds can come anywhere near the list of crimes of that organised body called the Indian Police force."<sup>21</sup> Inspector Misra, who served as Director of a National Police Commission which was appointed in November 1977 and issued its report in June 1980, writes that, "The current methodology of third degree does not show any remarkable refinement over the methods described by the [1854-5] Torture Commission."<sup>22</sup>

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<sup>21</sup> *All India Reporter*, 1964, Vol. 51, pp. 702-8.

<sup>22</sup> Misra, *op. cit.*, p.32. A leading Indian court case dealing with torture is *Sunil Batra (II) v. Delhi Administration* 1980 3 S.C. 488, in which a prisoner was tortured by the insertion of a baton in his anus. The victim was tortured because of "an unfulfilled demand for money." In his opinion for the Supreme Court, Justice Krishna Iyer wrote that this suggested "that bribery, at the point of barbarity, is a flourishing trade within the house of punishment itself." Gunnar Myrdal, who wrote about the corruption of the Indian police in his classic *Asian Drama* had this experience in New Delhi that illustrated the long-standing reputation of the police for corruption. He complained to the chief of police "about the local taxi drivers who broke all the traffic regulations. Why did he not order his policemen to enforce the rules? 'How could I?' was the reply, 'if one of them went up to the taxi driver he might be told

Probably the most widely known episode of police brutality to detainees in India occurred in 1980 in the town of Bhagalpur in Bihar. Journalists discovered that the police in Bhagalpur had blinded 31 prisoners by poking their eyes with bicycle spokes and weaving needles, and then pouring on acid.<sup>23</sup> The revelation

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'Get away or I will tell the people that you have asked me for ten rupees! If the policeman objected that he had not done it, the taxi driver would come back with 'Who would believe you?'" Sir Leon Radzinowicz and Joan King, *The Growth of Crime*, Basic Books, New York, 1977, p. 179.

<sup>23</sup> This case illustrates the extreme passivity of the magistrates who remand detainees to police custody. As Justice P.N. Bhagwati noted when an aspect of the case came before the Indian Supreme Court: "We also cannot help expressing our unhappiness at the lack of concern shown by the Judicial Magistrates in not enquiring from the blinded prisoners, when they are first produced before the Judicial Magistrates and thereafter from time to time for the purpose of remand, as to how they had received injuries in the eyes.... [T]he forwarding report sent by the Police Officer in Charge stated that the accused had sustained injuries and yet the Judicial Magistrates did not care to enquire how injuries had been caused." *Khatri and Others v. State of Bihar and Others*, AIR 1981 SC 928 (Order dated December 19, 1980).

attracted world-wide attention, and the actions of the police were denounced by the Indian press and by political leaders. Fifteen policemen were suspended and modest compensation was paid by the government to each of the men who had been blinded after the case was publicized. Yet some of the residents of Bhagalpur took part in a demonstration in support of the police. The victims of the blindings reportedly include "dacoits" – professional criminals – and many Indians apparently thought that what the police had done was right.

Popular endorsement of summary punishment was reflected in some of the events that took place in the aftermath of Bhagalpur. As Trevor Fishlock, a journalist who covered India for the *Times* of London and won a British Press Award for his reporting on India, has pointed out:

Two months after the disclosure of the blindings, journalists documented police brutalities in the city of Varanasi (formerly Benares), a holy place for Hindus to which pilgrims in their thousands go to wash away their sins in the Ganges. In the police stations here men were held down while booted policemen jumped repeatedly on their knees until the bones shattered. One man had a slab of stone dropped on his knee. He, and others, had to have legs amputated. Twelve cases were reported in the magazine *Sunday*, one of the modern breed of Indian magazines specializing in investigative journalism, which said there had been scores of similar brutalities in Varanasi. The *Indian Express* commented on the leg breakings: "The known cases of atrocities by the keepers of law and order reveal only the tip of the iceberg, the bulk of which lies submerged in social apathy. Callous indifference makes our bloodthirsty police believe they can get away with anything."

A few months after this, *Sunday* exposed the treatment meted out to thirteen young men in Madhya Pradesh. They were hung by their ankles from a ceiling ring in a police station, beaten with staves and given electric shocks on their genitals.<sup>24</sup>

As best we could determine, the twin factors that account for most police brutality to detainees are corruption and the widespread view that it is the role of the police to dispense summary punishment. Corruption is a crucial element because the police have a low status in India and are poorly paid; bribery is a means for many to supplement their earnings. In the case of detainees, bribes – by the detainee himself or by his family – are reportedly paid to avoid torture. The system can only work, however, if those who do not pay, or cannot pay, are tortured. As Inspector Misra has pointed out, "With a policeman the reputation to expect brutality fetches more money than actual brutality, but of course the reputation has to have a solid foundation. Once a policeman acquires a reputation of expert third degree he makes enormous quantities of money in daily crime work by simply withholding his customary brutality."<sup>25</sup> As for summary punishment, it reflects both the public demand that the police should control that crime which does take place in India and middle class lack of sympathy for the migrant poor like Shammu Khan or the fare beaters on the trains.

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<sup>24</sup> Trevor Fishlock, *India File*, John Murray, London, 1988, pp. 101-2.

<sup>25</sup> Misra, *op. cit.*, 3.

A 1989 report on custodial deaths by a civil liberties group in West Bengal, the Association for the Protection of Democratic Rights, asserts that "To everyone it appears quite natural that the police should beat up any arrested person." As in other countries where the police dispense summary punishment – Brazil, with its police death squads, is an extreme example – this demand by the middle class apparently reflects its lack of faith in the judicial system to dispense punishment. Unfortunately, some of the legal rules that the Indian judiciary has devised to protect defendants contribute to this cynicism about the judicial process, as do the great delays in bringing cases to trial. Most of all, however, it is the lack of sympathy by the Indian middle class for the Indian poor that seems to account for the middle class demand that the police should punish those poor persons – especially migrants – who transgress the law.<sup>26</sup>

In a way, the fact that the police are so notoriously corrupt is itself a factor that contributes to the public demand that they should dispense summary justice. Shailendra Misra has pointed out that:

Most policemen affirm the expectation of people of the police that they would deal roughly with the culprits. In a particular city a couple of ruffians creating trouble in the market place were arrested by the police, put up in court the next morning and were bailed out by the court. At this the people of the town protested why the police had not beaten up the ruffians during the night when they were in police lock-up, took out a protest procession.... When the police are 'soft' on a criminal allegations of corruption are immediately made and people suspect the worst complicity between them and the criminals.<sup>27</sup>

Inspector Misra goes on to point out that the fact that the police have a reputation for brutality creates a public expectation that the police will be brutal and this places pressure on them to live up to their image.

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<sup>26</sup>"In Bhagalpur more than two-thirds of the 'general sample' [in an opinion study by the *Illustrated Weekly of India*] and 60 percent of the 'opinion leaders' sample were of the opinion that the blindings were justifiable." Outside Bihar 86 percent of both samples said they were not justifiable but "73 percent of the outside Bihar sample felt it would have been okay if instead of blinding them the police had beaten up the lot." *Ibid.*, p. 14.

<sup>27</sup>*Ibid*, p. 14.

"While policemen are themselves to blame for having, initially, created this image of themselves they cannot now easily get out of it," Misra writes. "The people expect the police to give a sound thrashing to the culprits."<sup>28</sup>

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<sup>28</sup> *Ibid.*

## The Prison System

Although prison systems everywhere are marked by inertia, few can match India's in immutability of practice. A country which over 40 years ago cast off British rule still administers its system under the colonial Prisons Act of 1894. Perhaps because the act is such a relic of the past, or perhaps because prison officials prefer the route of least accountability, the various state prison manuals that embody the 1894 provisions are collectors' items, not only in short supply but expensive. (We happened upon the Punjab Manual in a Delhi bookstore, bought this reportedly difficult to find edition for twenty dollars, and thereby won admiration from our various informants.) A number of prison commissions have attempted to update and revise the code, but aside from a few states, these efforts have not received legislative approval. The bible remains the 1894 text.

It is not only the rules and regulations but the day-to-day reality of India's prisons that is so archaic. In fact, the prison sanction (which in the west grew apace with modernization) has not achieved centrality within India; incarceration is probably not more extensive now than it was under British rule. Numbers often give a false sense of precision in India – "give or take a few million," is a frequent and appropriate qualifier to any estimate – but they do delineate the boundaries of the prison world. The most prestigious and thorough investigation of the prisons, the All India Committee on Jail Reform (under the chairmanship of the retired Supreme Court justice, Anand Mulla), found 1220 facilities in the country as of December 31, 1980, of which 822 (67 percent) were lock-ups, and almost all of the others, state prisons; together they held some 160,000 inmates.<sup>29</sup> The Indian states, it is true, vary enormously in their record-keeping skills and are notoriously

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<sup>29</sup> A more recent source we have come across put the figure at 184,000 in the prisons and jails, exclusive of the police lock-ups. Accepting this higher figure, even assuming that the number in the lock-ups brings the total to as many as 250,000, the rate of incarceration would still be extremely low. At 250,000 prisoners in a population of 850 million, the incarceration rate would be 34 per 100,000. According to a recent report, in the United States, the incarceration rate is 426. The lowest rate for any of the more than a dozen European countries cited in the report was in The Netherlands: 40. The

lackadaisical about responding to inquiries from national commissions. Yet, even if the figure were off by a factor of two or three, India would still have one of the lowest rates of incarceration in the world. (The United States, with the highest known rate, has less than one-third of India's population, and incarcerates more than six times as many people as were actually counted in the Indian system a decade ago.)

This conclusion is buttressed by the fact that with all due allowance for overcrowding, India does not have the prison buildings to hold that many more inmates. More, the overall length of prison stays are quite short (again by American standards). Of the 160,000 inmates ten years ago, 92,000 were undertrials, and their periods of confinement while they awaited their turn in court, were almost always less than a year (92 percent).<sup>30</sup> Of the 59,000 inmates already convicted of crimes, 32 percent served under one year; 16 percent

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**Sentencing Project, "Americans Behind Bars: A Comparison of International Rates of Incarceration," Washington, D.C., January 1991, Table 3.**

<sup>30</sup>In some states, undertrials have been confined for much longer. In a 1979 case involving Bihar, Justice Bhagwati commented:

An alarmingly large number of men and women, children including, are behind prison bars for years awaiting trial in courts of law. The offenses with which some of them are charged are trivial, which even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years ... and a few of them, even more than ten years, without their trial having begun. What faith can these lost

one to five years; 8 percent five to ten years, and 44 percent over ten years. Thus, the prisons did have a cadre of long-termers, 26,000 in number, but they were a small fraction (16 percent) of all persons incarcerated. Third, and perhaps most telling, the criminal system, as we have seen, relies extensively on summary justice. To the extent that police (or soldiers) beat or kill putative offenders, imprisonment becomes a superfluous sanction. If the numbers of inmates is low, it is because punishment is often meted out in rough and ready fashion.

As one would then expect, prisoners are drawn from the lowest classes, and undoubtedly the lowest castes, although contemporary surveys generally do not include caste on their questionnaires.<sup>31</sup> The All India Committee observed that a majority of the inmates came from the "underprivileged sections of society," noting that "persons who have means and influence generally manage to remain beyond the reach of the law even if they are involved in violation of the law. (p.21) The figures compiled by other investigations confirm this impression: one study in the state of Uttar Pradesh (a relatively backward region except for the area around New Delhi), reported that 63 percent of prisoners were low income (earning less than 80 rupees, or less than U.S. \$5 a month); only 1.5 percent earned over 335 rupees or about U.S. \$20 a month. Fifty percent of the UP inmates were illiterate; only 10 percent had over 10 years of schooling.

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souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them."

*Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, AIR 1979 SC 1360. In this case, Justice Bhagwati directed the release of many undertrial prisoners in Bihar jails who had already served longer periods than if they had been convicted for the crimes with which they had been charged.

<sup>31</sup> But see the study of the prisons in Orissa cited *infra*.

## The Class System in the Prisons

Perhaps the most prominent artifact from India's colonial past is the classification scheme for prisoners. The directives laid down in 1894 are still operational. Inmates are divided into three categories, A, B, and C, which really collapse into two: A and B inmates<sup>32</sup> are persons who "by social status, education and habit of life have been accustomed to a superior mode of living. Habitual prisoners may be included in this class by order of the Inspector General of Prisons." Category C is the residual category consisting of "prisoners who are not classified in class A and B." (Punjab Manual, p.196) In effect, those of high class and caste, those with property or lineage or education, are set apart from the poor, the uneducated, the low caste.<sup>33</sup> It is not what you have done but who you are. The Raj is alive and well in the prison.<sup>34</sup>

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<sup>32</sup>In much of India, the "A" category has fallen into disuse. Under the 1894 directives, it was to apply to prisoners from the same social status as "B" prisoners who have not committed certain offenses. The enumerated offenses included just about all those that might lead to convictions for crime except those involving non-violent political dissent. In effect, therefore "A" prisoners were participants in the struggle for India's independence from colonial rule, many of whom met the social class test for "A" and "B" classification, who were imprisoned for peaceful protests. Few persons of this sort have been imprisoned in recent years, accounting for the non-use of the A category today in much of the country.

<sup>33</sup>One indication of the degree to which lower caste or non-caste Indians are confined in the prisons is provided by a study of the prison population of the state of Orissa. Situated on the northeast coast of India,

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Orissa's population of more than twenty million roughly reflects the urban/rural population distribution of the nation as a whole. A study conducted over a ten month period in 1985-6 of the male inmates in all of Orissa's prisons who had been confined two years or longer found that 32.40 percent were members of scheduled tribes; 17.87 percent were members of scheduled castes; and 11.53 percent were lower caste. ("Scheduled tribes" are officially recognized "tribal" groups, principally from mountainous parts of northern India. "Scheduled castes" are officially recognized lower caste Hindus who are eligible for affirmative action programs.) Another 2.4 percent were from "other communities," and presumably included Bangladeshi refugees. Members of intermediary castes accounted for 27.45 percent of the prisoners; members of higher castes for 8.03 percent. In combination, the scheduled tribes, scheduled castes and lower castes accounted for 61.8 percent of the prisoners. Samarendra Mohanty, "Crimes and Criminals: A Socio-Economic Survey," Ashish Publishing House, New Delhi, 1990, pp. 72-7. These low caste or non-caste Indians account for 15 to 20 percent of India's population. Accordingly, if Orissa is

The classifications are not simply paper notations. They matter enormously in terms of prison conditions. A just completed state investigation of the prisons of Tamil Nadu (the relatively progressive province that includes Madras), reported, matter of factly, that the daily stipend for feeding a class A and B

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representative, this segment of the population is disproportionately represented in the prisons by a factor of three to four. For purposes of comparison, a recent study of imprisonment in the United States found that black males account for 43 percent of the inmates in prisons and jails in the United States. The Sentencing Project, "Americans Behind Bars: A Comparison of International Rates of Incarceration," Washington D.C., January 1991, p. 3. This is about half of all male prisoners. Accordingly, as blacks represent about 12 percent of the population of the United States, black males are disproportionately represented in the prisons by a factor of four.

<sup>34</sup> In at least one state, however, Maharashtra (which includes the city of Bombay) the class system has been abolished by court decision as a violation of Article 14 of the Constitution requiring equal protection of the laws. In most of the country, however, the class system prevails, as it does in neighboring countries that formed part of the British Raj, including Pakistan.

prisoner ranged from 14 to 17 rupees (around U.S. \$1), for C prisoners, 7 to 8 rupees (around U.S. \$0.50). The A and B prisoners were allowed to buy fruits and other foods of "good nutritive value"; the others were not. The privileged prisoners may write and receive one letter a week, the others, one letter every two weeks. The A prisoners can receive any newspapers, the others, only those on a prescribed list. (The Home Department Policy Note on "The Administration of Jails in Tamil Nadu," 1990, pp.4-6) In still other jurisdictions, the A prisoners are exempted from the performance of menial labor tasks and from such restraints as handcuffs and irons, all of which is standard fare for the C class prisoners.

The persistence and import of the grading by caste and class is testimony not only to India's past but to its present. The classification system is altogether functional, serving and abetting the authority – and the corruption – of prison administrators. Tradition and convenience fit well together. The official regulations provide that state officials classify the inmates, but the actual authority devolves down to the prison administrators. To dispense the grade and designate privilege at once enlarges their control over the prison population, and enhances their ability to exchange favors for favors. Given the exceptional disparity in conditions of confinement, inmates with resources are fully prepared to pay whatever the going rate is for an A or B status, and although hard evidence of such pay-offs is not easy to come by, almost every student of Indian prisons, whether inside or outside the system, agrees that such corruption is rampant. Even without payoffs, the resources of a prisoner are expected to play an essential role in determining classification as indicated in the language of the directive that "social status" or "habit of the life" have made the prisoner "accustomed to a superior mode of living." Also prisoners with resources can hire private counsel who will devote themselves to seeing to it that their clients are accorded such privileged status.

### "Convict Officers"

Another directive from the 1894 Prisons Act that is still in force in India deals with "convict-officers." According to the Punjab Jail Manual, "Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code." The Manual goes on to establish three grades of convict-officers: "convict watchmen"; "convict-overseers"; and "convict-warders." Appointments to these posts are to be made by the Superintendent of a prison from among prisoners who have served varying portions of their sentences, depending on the grade to which they are appointed. The duties of these convict officers are all those that are customarily performed by prison guards elsewhere. (Manual, pp. 108-110)

According to a lawyer in New Delhi who regularly represents inmates in Tihar Jail, a large prison in the city where the population ranges from more than 5,000 up to about 8,000 prisoners, the effect of this system is to transform many C Class prisoners into personal servants for the convicts who serve as their guards.<sup>35</sup> In Tihar Jail, he told us, there are 200 to 250 Class B prisoners. They get a raised platform with a

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<sup>35</sup>This lawyer also knew Tihar Jail from the perspective of an inmate; he had been confined for a seven-and-a-half-month period, as well as for briefer periods, during the years of Mrs. Gandhi's emergency.

mat on which to sleep, or a cot if they ask for it; their diet includes meat; they arrive with adequate clothing or are provided with it; they are assigned clerical work in the prisons; some take part in studies.

The remainder of the prisoners are Class C. They sleep on the floor; they work in a prison factory for minute sums that are supposed to be paid to them when they are released though this money often disappears<sup>36</sup>; they get two small loaves of bread in the morning and another two in the evening (the Delhi lawyer described these loaves as "horrible") with some lentils and a bit of vegetable matter.<sup>37</sup> According to this

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<sup>36</sup>According to a 1987 dissertation on the Punjab prisons, the sums paid were 50 paise per day for unskilled labor, or about U.S. \$0.03; one rupee per day for semi-skilled labor, or about U.S. \$0.06; and one rupee and sixty paise for skilled labor, or about U.S. \$0.10. A year's worth of skilled labor six days a week could produce the equivalent of about U.S. \$30.00. The dissertation cites interviews with prisoners and court decisions that indicate that these sums are not actually paid, a reflection of the corruption in the prisons. Malkiat Singh Rahi, "The Functioning of Punjab Prisons: An Appraisal in the Context of Correctional Objectives," unpublished Ph.D. thesis, Guru Nanak Dev University, Amritsar, India, 1987, pp.236-7.

<sup>37</sup> In 1987, the Bombay High Court decided a case in which a prisoner had complained "that the Brinjal Vegetable served in the morning meal contained worms, caterpillars." Out of frustration in getting his complaint heard, he swallowed nails, which were taken out in the hospital. According to

lawyer, this diet is inadequate for survival. If they have some money, or their families provide money, they can purchase additional food at a prison canteen. If they have no money, they are dependent on the convict officers for supplements to their diet. "Food services are the major source of corruption in the prisons of Punjab and the same fact is well documented by various Commissions and Committees appointed on Jails before and after independence," according to an Indian scholar, Malkiat Singh Rahi, who has studied those institutions. "Ninety-five percent of the interviewed prisoners in all the prisons feel completely dissatisfied and disgusted with the quality and quantity of food. It further came out that unwholesome food is served two times only as no lunch is served in the prisons of Punjab."

Another scholar who published his dissertation on the Indian prisons as a book, Jaytilak Guha Roy, has cited the testimony of members of the Indian intelligentsia who were confined during the years of the Emergency:

In reality, of course, prisoners, particularly the poor and the illiterate ones, seldom get such food as allotted to them under the Jail Code due to "well organized" and "systematic" corruption in our prisons. Barun Sengupta, a well-known journalist of Calcutta, who spent more than eight months in some jails in West Bengal as a MISA detenu during Emergency of 1975-77, gave a factual narrative as to how a large quantity of the prisoners' allotted food used to be stolen by the corrupt prison officials. According to him, there are two or three stages where bulk of the prisoners' food is stolen. At the initial stage, the prisoners are deprived of a considerable part of their allotted diet which never enters the prisons while its money value is shared by the tenderers and the higher authorities of prison management in terms of their underhand mutual agreements. At the next stage, a part of the part that enters the prison compound is stolen from the godown as well as the kitchen. The balance is then cooked or prepared from which some further quantity is again stolen at the time of actual distribution to the inmates.

Almost similar narrative has been given by Kuldeep Nayar, a responsible journalist of national eminence, in his book *In Jail*. Writing on corruption in notorious Tihar Jail where he was detained during Emergency, Shri Nayar observed: "Perhaps the way almost everyone had his cut was most evident in our milk supply. It came in bulk to the main gate (phatak) there,

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**the prisoner, the Superintendent of Dhule District Jail so resented this protest that he forced the prisoner to eat "a pot of night soil." The Court held that there was no justification for the restrictions the prison had imposed on making complaints. *Madhukar Bhagwan Jambhale v. State of Maharashtra* 1987 M.L.J.68.**

enough milk for the top officials was taken out of the cans, which were then topped up with water. And as the cans moved to the wards, all those who handled them appropriated their share: again topping up with water.<sup>38</sup>

Rahi also points out that "shoes are not provided to the prisoners in any prisons of Punjab. Most of the very poor prisoners remain without shoes during their term of imprisonment."<sup>39</sup>

To get food supplements, or blankets in the winter, Class C prisoners must fan the convict-officers, or massage their legs or even perform sexual services for them. The enslavement of other prisoners to the convict officers who effectively run the prisons is particularly severe in the case of newcomers, known as *amdani*. They are teased, harassed, abused, even tortured, as part of the process of breaking them in. In some prisons, the convict-officers have the authority to determine which wards the *amdani* will be confined in, using their power to transfer them to a somewhat better location as part of their means for exercising power.

Juveniles sent to prison are supposed to be kept separate from adults, but in fact they are only confined in separate wards and mingle during the day with the adult prisoners. In Tihar Jail in Delhi, for example, according to a former inmate who drew a map of the prison for us indicating the uses of each ward, boys aged from 11 or 12 up to age 18 are confined in Ward 9 at night but mingle with adult prisoners during the day. They perform many services for the convict-officers and are particularly used for sexual purposes. (Conjugal visits are not available in Indian prisons.) Homosexual rape, we were told, is infrequent; it is simply expected that these youngsters will perform sexual services for those who are given charge of them by the prisons.<sup>40</sup> According to the lawyer/former inmate who gave us a description of life in Tihar Jail, many of

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<sup>38</sup>Jaytilak Guha Roy, *Prisons and Society: A Study of the Indian Jail System*, Gian Publishing House, New Delhi, 1989, pp. 98-99.

<sup>39</sup>Rahi, *op. cit.*, pp. 225-8.

<sup>40</sup>The confinement of juveniles in Tihar Jail led to a court decision, *Sanjay Suri v. Delhi* 1987 (2) SC 276. Judge Ranganath Misra noted in his decision a previous case in which the courts had found "a shocking state of affairs in so far as juvenile prisoners are concerned. The District Judge has interviewed some of the juvenile prisoners in regard to whom he learnt...that they had been

the convict-officers are themselves drug addicts. The regular officers of the prison supply them with the drugs required to sustain their habits and, thereby, maintain control over them while the convict-officers maintain control over the other prisoners.

### **Overcrowding**

In the late 1950s, an Indian government commission, the All India Jail Manual Committee, observed:

Almost all over India overcrowding in prisons has become a common problem. In some prisons the cells and barracks which were originally meant for accommodating inmates have been converted into store-rooms, godowns, work-shops, etc. The original authorized accommodation of an institution is thus slowly shrinking whereas the daily average population and the total admission indicate a steady increase. As a consequence, overcrowding has assumed the proportions of a major problem for the Correctional Administration.<sup>41</sup>

In the years since then, overcrowding has increased greatly, with another government commission of the early 1980s reporting that in some states "prison barracks are so overcrowded that inmates have to sleep in shifts."<sup>42</sup> That commission found that the confinement of undertrials in the prisons was a major cause of overcrowding, and that the proportion of undertrials to convicts in the prisons had been rising.

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**subjected to sexual assault by the adult prisoners. The juvenile prisoners who made statements before the District Judge have expressed apprehension that they might get into difficulties if their names are disclosed...."**

**Though an effort had been made in the earlier case to protect the juveniles in Tihar Jail, Judge Misra determined that it had not been effective and issued new orders in an attempt to protect them by maintaining strict segregation within the jail. According to our informants, that segregation is not enforced.**

<sup>41</sup>**Report of the All India Jail Manual Committee, 1957-9, para 38.**

<sup>42</sup>**Report of the All India Committee on**

According to a recent dissertation on the prisons, "Unnecessary detention of undertrials apart, another principal cause of overcrowding in Indian prisons is the heavy influx of short-term convicts. A large number of these convicts usually consist of first offenders involved in technical or minor violations of the law."<sup>43</sup> The All India Committee on Jail Reforms said that, "Such offenders need no incarceration from the reformatory point of view. However, in spite of various provisions in law, such as probation, for diversion of such offenders from institutional treatment in the open community they continue to be sent to prison in large numbers."<sup>44</sup> The Committee cited statistics indicating that of some 59,586 convicts in the Indian prisons as of December 31, 1980, 31.61 percent were serving sentences no more than one year. Given the turnover, this means that the overwhelming proportion of those confined in the prisons after conviction were sentenced for offenses that the courts deemed to warrant relatively brief sentences. The dissertation mentioned above cites statistics from West Bengal showing that between 1980 and 1985, the proportion of convicts in the prisons serving sentences of less than six months was an astonishing 83.92 percent.<sup>45</sup> The author of the dissertation reports that he visited the prisons in West Bengal and that "the deleterious effect of overcrowding on prisoners' health is evident from the fact that the skin and other infectious diseases tend to grow" and that he had come across "many prisoners suffering from these diseases."<sup>46</sup>

#### Health and Medical Care

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Jail Reforms, 1980-83, Vol. I Para 3.17, p. 21.

<sup>43</sup>Jaytilak Guha Roy, *Prisons and Society: A Study of the Indian Jail System*, Gian Publishing House, New Delhi, 1989, p. 75. A 1978 study found that 93.58 percent of the prisoners in the Punjab jails had no previous conviction. "Socio-Economic Background of Prisoners in Punjab Jails," 1978, Economical and Statistical Organisation, Punjab, p. 7.

<sup>44</sup>Report of the All India Committee, *op. cit.*, para. 3.15, p. 21.

<sup>45</sup>Jaytilak Guha Roy, *op. cit.*, p. 78.

<sup>46</sup>*Ibid.*, p. 79.

Many of the Indian prisons have poor sanitary facilities. The All India Committee on Jail Reforms of 1980-83 stated:

Flush latrines are available in a very few prisons. In most of the prisons open basket-type latrines are still in use. Proper ratio of latrines to prisoners is not being maintained. Latrine and urinal facilities in barracks/dormitories for use at night are very inadequate. As a result, they overflow during the night. In most of the prisons latrines have not been provided in cells; only pots are kept there for answering calls of nature. A perpetual stinking smell pervades the atmosphere of most of the prisons.<sup>47</sup>

One category of prisoners that seems particularly entitled to decent health care is the non-criminal lunatics (see section on Women in the Prisons, below). Though their confinement in the prisons is inherently unjustifiable, the abuse is exacerbated by the failure to provide facilities that are conducive to health and by the denial of adequate medical care as these deprivations may be expected to contribute to their further deterioration and, thereby, to their further confinement. Yet the All India Committee on Jail Reforms pointed out that: "It is extremely unfortunate that lunatics lodged in jails are not only not given proper care and treatment but are forced to live in inhuman conditions. They are huddled up in small barracks or in cells under unhygienic conditions and without proper care."<sup>48</sup>

So far as prisoners generally are concerned, "the doctor is king," a former inmate told us. He can recommend a special diet – milk, eggs, meat. The doctor can also send an inmate to the hospital or clinic in the prison itself or, when more sophisticated care is required, to a general hospital.

In practice, we were told, prisoners rarely derive these benefits from consultation with prison doctors. For the most part, the medical attention available to prisoners consists of the dispensation of one drug, which was described to us as a pain killer that reduced fever – perhaps aspirin. This would be of little value if accounts we heard about the prevalence of infectious diseases in the prisons were substantiated. Reportedly, the privileges that doctors can provide are often available only to prisoners who pay for them.

Malkiat Singh Rahi contends that even consignment to the prison hospital is not such a great boon to prisoners as "there are not proper buildings for the hospitals and subordinate clinical staff is not provided." Also, he writes, "The other conspicuous aspect of the health services is the total neglect of the mental health of the prisoners."<sup>49</sup> The prisons lack any qualified personnel – psychiatrists, psychologists or even social workers – to deal with the mental health problems of the inmate population, according to Rahi.

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<sup>47</sup> All India Committee, *op. cit.*, Vol I, pp. 74-75.

<sup>48</sup> *Ibid.*, p. 84.

<sup>49</sup> Rahi, *op. cit.*, p. 231.

## Punishment in the Prisons

Though punishment cells and punishment wards are used in the Indian prisons, as in prisons worldwide, another system of punishment seems as prevalent, or more prevalent in India. That is the use of physical restraints. The various jail manuals provide for these restraints.

According to the Punjab Jail Manual, prisoners may be punished by handcuffing them or by the use of leg fetters. In the case of handcuffs, the Manual provides that these may be of three kinds: an iron bar variety, weighing not more than 21 pounds; or the spring catch variety that is more familiar in the United States, weighing not more than a pound; or chain handcuffs, weighing not more than a pound. The manual provides that the handcuffs, if employed to hold the wrists in front of the body, may be used for no more than 12 hours at a time and for not more than four consecutive days or nights; if the wrists are held behind the body, the handcuffs may be used for no more than six hours at a time. The Manual also provides for the use of leg fetters; one variety that is specified, and that was reported to us to be in use, has a bar that holds the legs apart. Though the Manual says this bar may be no more than 16 inches in length, a former inmate gave us a description of a much longer bar that holds the legs apart in such a manner as to cause great pain after the legs have been kept in such a position for a substantial period. The Manual allows the sixteen-inch bar to be used for up to ten days at a time, and other leg fetters may be used for up to three months at a time.<sup>50</sup>

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<sup>50</sup>The Indian courts have attempted to restrict the use of such restraints, apparently without great success. In a conversation with an American lawyer working with the Bombay Lawyers Collective, Mark Williams, Justice Krishna Iyer (ret.) stated: "In the handcuffing case [*Prem Shankar Shukla's* case] certain law was declared, but afterwards neither the judges nor the executive implemented it...The judiciary finds that before its eyes, nothing is happening in spite of its declarations. You cannot form another Bench of the Supreme Court for the purpose of enforcing its own orders." *The Lawyers*, May 1990, pp. 8-9.

Another restraint was also described to us by a former prisoner, though its use is not specified in the manual: this is a bar that is attached to fetters, but that reaches upward and, reportedly, digs into the prisoner's stomach when he walks. We were told that this is used in Tihar Jail in Delhi.

The Manual also specifies restrictions on diet – even beyond what is usual – as punishment. It does not refer to a practice we heard about in Calcutta: transfer to the "non-criminal lunatics" sections of a prison (see section on Women in the Prisons, below).

We were not able to establish the frequency with which such punishments are imposed.

### **Women in the Prisons**

Though there are some separate prisons for women in India, most of the accounts we were able to obtain about women prisoners referred to sections in large prisons for men in which women are confined. This comports with the findings of a National Expert Committee on Women Prisoners which was established in 1987 by Margaret Alva, then Minister of State for Human Resources in the government of Prime Minister Rajiv Gandhi. According to this body, separate institutions are available for only about one quarter of the women in prisons; the rest are housed in sections of prisons for men.<sup>51</sup> Unlike the situation involving juveniles and adults, separation is apparently generally enforced. As would be expected, the number of female inmates is relatively small. Though we lack reliable nationwide statistics, in the prisons and jails (as opposed to the police lock-ups) the number of women is probably no more than five percent of the total.<sup>52</sup>

Some of the women in prisons are convicts and undertrials like the men. We also heard accounts of two other categories of female inmates of the prisons: women held in protective custody; and women referred to in India as "non-criminal lunatics."<sup>53</sup>

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<sup>51</sup>Sanjoy Hazarika, "For Women in India Prisons, a 'Grim Picture,'" *The New York Times*, February 29, 1988.

<sup>52</sup>"Only 2-3 percent of total arrests under the Indian Penal Code constitute female offenders who make up only 2-6 percent of the total prison population." Jusjit Purewal, "Report on Code for Women Prisoners Shelved," *Indian Express*, September 8, 1989.

<sup>53</sup>"One sixth of the unconvicted prisoners are non-criminal lunatics (NCLs) who under

So far as women held in protective custody are concerned, according to the women's rights advocates and human rights lawyers we interviewed, the majority are rape victims. Because of the stigma that an Indian woman suffers if she has been raped, the authorities apparently fear that the victim will not show up in court to testify against her rapist. Accordingly, she is imprisoned to make certain that she is available to testify at trial. The civil liberties and women's rights advocates with whom we spoke about this matter, however, suggested to us that holding such women in prison in "protective custody" is itself a reflection of the contempt that is prevalent in India (and elsewhere as well, of course) for rape victims. While not ostensibly designed to punish the victims, this is the effect of confinement in protective custody, which may last for two, three or four years. Moreover, though it may make a particular victim available to testify in court against her alleged rapist, the imprisonment of rape victims can hardly be expected to enhance the willingness of rape victims generally to come forward to accuse their rapists. Also a number of those with whom we spoke about this matter cited cases in which the victims were confined in protective custody while the "miscreants," as one women's rights activist labelled them, were not apprehended. Though we did not have the opportunity to try to verify these allegations, if they are valid, the implication gains in force that protective custody has the purpose as well as the effect of punishing the victim.

So far as the conditions of confinement are concerned, the accounts we heard accorded with those described by former Supreme Court Justice V.K. Krishna Iyer who headed the National Expert Committee on Women Prisoners. After visiting one prison, he noted that 15 women confined in one cell "had no amenities – clothing, work, education or even medical examination. There were no beds, bedsheets or pillows, just a cane mat."<sup>54</sup> The report of the Expert Committee, which was published in February 1988, also discussed the torture and rape that women endured in the custody of the police en route to prison.

As for the female non-criminal lunatics,<sup>55</sup> the conditions that they endure in prison were described to us as the worst of all. There are sections in some prisons for such prisoners (for male as well as female

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**the Indian Lunacy Act 1912 can be held in jail 'for their own protection.'" Jasjit Purewal, "Most Women Prisoners are not Offenders," *Indian Express*, September 7, 1989.**

<sup>54</sup>Sanjoy Hazarika, "For Women in India Prisons, a 'Grim Picture,'" *op. cit.*

<sup>55</sup>Sections 8 and 13(1)(2) of the Indian Lunacy Act provide that a Magistrate may commit lunatics to the prisons for "suitable custody" and "proper care and treatment."

non-criminal lunatics, though we heard more about females in this category and formed the impression that incarceration of such females was more widespread) because a number of Indian states lack space for them in mental hospitals. In Presidency Jail in Calcutta, we were told by the Association for the Protection of Democratic Rights that there are about 300 female non-criminal lunatics.<sup>56</sup> They are confined in three large, bare rooms and receive no care to assist them in rehabilitating themselves so as to obtain release. They have nothing to do. One indication of the conditions of such confinement is that a form of punishment at this prison is to transfer prisoners from the sections in which convicts and undertrials are held for a period to the sections – male or female, as appropriate – for non-criminal lunatics. A March 31, 1990 expose of conditions in the female non-criminal lunatic section of Presidency Jail in *The Statesman*, a leading newspaper of Calcutta, reported six deaths over a four year period due to malnutrition; repeated episodes of sexual harassment of the inmates, some of whom are mentally retarded, including the rape of a girl outside the prison where she had been taken on the pretext of a court appearance and the sale of another girl to a brothel; and

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Clearly, the Indian prisons do not meet these criteria for such confinement. No offense need be imputed to the lunatic.

<sup>56</sup>A March 31, 1990 article in the Calcutta newspaper, *The Statesman*, "Tales of Horror From Presidency Jail," put the number at that time at "about 210." At about the same time another Calcutta newspaper, *The Telegraph*, put the number at 250. Barum Ghosh, "10 Women Lunatics Die in Jail," March 26, 1990. A vivid account of the conditions under which the female non-criminal lunatics are held in Presidency Jail appears in Partha S. Banerjee, "The Barred Ghetto," *The Times of India (Sunday Review)*, July 22, 1990. This article describes a crusade since 1985 by a Calcutta lawyer, Shib Shankar Chakraborty, to free the non-criminal lunatics from West Bengal jails.

the corruption of the wardens through the pilferage and sale of items intended for the use of the inmates such as hair oil, soap and medicines.<sup>57</sup>

Another Calcutta newspaper, *The Telegraph*, reported that at least ten female non-criminal lunatics died in Alipore Jail in January and February 1990 due to the lack of an appropriate diet or proper medical treatment. The newspaper's account, noting that the state minister for jails and social welfare had launched an inquiry, reported that 17 women had died in this section of Alipore Jail during the previous year, 1989. According to *The Telegraph*, these figures were confirmed by the jail superintendent.<sup>58</sup>

It should be noted that we heard a number of accounts that we were not able to verify similar to the account in *The Statesman* about corrupt relations between prison authorities and brothel keepers. According to our informants, the result of these relationships is that some women prisoners are released under circumstances which force them into prostitution. Some of the women who experience this, we were told, are young girls who have been arrested on charges of vagrancy, or who have been held in protective custody as victims of abduction or rape. In West Bengal, we spoke about this problem with a representative of a coalition known as the Forum Against Oppression of Women, which is composed of some eight women's organizations which have united to deal with this question, as well as with such matters as dowry deaths. One of the cases that was described to us which had been the focus of concern by this coalition involved two Bangladeshi girls who had been imprisoned in the Presidency Jail because they lacked papers. They were reportedly transferred from the prison to a brothel.

#### **Prisoners Confined for Politically Motivated Offenses**

As best we were able to determine, some prisoners accused of violent crimes committed for political reasons have benefitted from relatively good conditions in the prisons.<sup>59</sup> We were particularly struck by what we learned in Calcutta about a group of some 26 Naxalite prisoners confined there.

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<sup>57</sup>"Tales of Horror From Presidency Jail,"  
*op. cit.*

<sup>58</sup>"10 Women Lunatics Die in Jail," *op. cit.*

<sup>59</sup> As noted in the Introduction, these comments do not apply to Punjab, Kashmir and Assam where internal military conflicts have been underway. Conditions in those areas are the subject of a separate investigation by Asia Watch.

The Naxalites are a left-wing revolutionary group that emerged in India in 1967. They are named for a village in West Bengal, Naxalbari, where there was an armed peasant uprising in that year. At the outset they were a break-away faction of the Communist Party that formed a separate Marxist-Leninist party. The original uprising was crushed within a few months but, thereafter, similar uprisings followed in other areas of Bengal and in Andhra Pradesh, Bihar, Uttar Pradesh and Orissa, advocating armed struggle, the seizure of land from landlords and the elimination of "class enemies." The Indian authorities seem to have suppressed the Naxalite movement, at least in part by resort to methods as brutal as those of the Naxalites themselves. The movement was effectively crushed in 1972, but since then "Naxalite" has become an umbrella term for other movements that espouse a similar ideology. During the 1970s, many hundreds of alleged Naxalites died at the hands of the police in what are referred to in India as "encounter killings." In some cases, the label Naxalites has been applied to non-violent movements in an effort to justify violent repression, including extrajudicial executions and disappearances.

Our arrival in Calcutta coincided with a street demonstration of some 200 persons organized by the Association for the Protection of Democratic Rights (APDR), a West Bengal civil liberties group, calling attention to the situation of these Naxalite prisoners. The demonstration was timed to take place just as Nelson Mandela was arriving in Calcutta for one of a series of giant rallies held in his honor in cities across India. The APDR was attempting to capitalize on Mandela's visit by pointing out that the West Bengal government was celebrating a long-term political prisoner who had been released by the South African government while continuing to hold its own long-term political prisoners.

Yet given the violence ascribed to the Naxalites, did they warrant designation as "political prisoners?" Yes, according to the APDR, because they had never been tried. Though Indian law requires that every accused person must be brought to trial within two years of arrest, the Naxalites in the West Bengal prison had been confined without trial for as long as eleven or twelve years. According to a leader of the APDR with whom we spoke, Sujato Bahra, the civil liberties group was not even aware of these 26 prisoners until some four months earlier. They were charged with a range of crimes, from the publication of seditious material, to attempted murder, to murder. No trials had been held, according to Bahra, for two reasons: the prisoners had not cared to exercise their legal right to a trial; and the government had not bothered to put them on trial.<sup>60</sup>

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<sup>60</sup>West Bengal is not the only state to hold Naxalites for a long period without trial. According to a press report, "There are at least 50 Naxalite prisoners who, under the label of undertrials spent over five years already in the Warangal prison [in Andhra Pradesh]." G.S. Vasu, "Pathetic Plight of Undertrials in AP Jails," *Indian Express*, May 1, 1989.

So far as the failure of the Naxalites to demand a trial is concerned, Bahra told us that these prisoners belonged to an extreme faction of the Naxalites that did not believe in the system and, therefore, had no use for the exercise of rights available under the system. After the APDR found out about these prisoners, he had interviewed them in prison and had asked why they never called APDR to intervene. They told him they didn't care about the APDR; they regarded the APDR as their enemies. They believe in violence as a means of taking power over the class enemy. Even so, once it found out about them, the APDR took up their cause.

We interviewed a married couple who had been arrested about the same time as the Naxalites and, though they did not say this to us, may have been involved in the Naxalite movement. They told us that they suffered extreme torture in police lock-ups; in the case of the wife, she said she and her sister-in-law had been tortured most brutally during a 27-day period before they were produced before a magistrate. The Naxalites who were arrested with them were treated similarly, she said. Thereafter, she had spent three years in Presidency Jail, one of Calcutta's prisons, along with other "political prisoners" – that is, Naxalites. There, she told us, they had received privileged treatment. They were confined in a separate ward under better conditions than prisoners accused of common crimes: the sanitation was better, the food was better; the water was better; the medical care was better. Sujato Bahra told us that the Naxalites now held in another West Bengal prison, Alipore Jail – where Nehru was once confined – also were relatively privileged within the prison. They were confined one to a cell but were free to move about in the compound from 11:00 a.m. to 5 p.m.; and they got better food and other amenities than the majority of prisoners, including a television set. These accounts suggest that though they may suffer in police detention, and though they may be disregarded by the legal system, in the prisons themselves even so extreme a group as these West Bengal Naxalites, because of their educational or family background, benefit from the class privileges accorded to those accustomed to "a superior mode of living." All else is subordinated to considerations of class.

## India's Human Rights Movement

A factor that contributes to police dispensation of summary justice and the maintenance of the class system in the prisons is the relative weakness of the organizations that attempt to protect civil liberties in India. As we have noted, there are several such organizations, and they do good work in conducting investigations such as those focusing on custodial deaths that we have cited; and the lawyers who volunteer their services on behalf of these organizations do good work in the courts. Our examination of many reports published by India's civil liberties groups persuades us that these reflect a high level of sophistication; and that such reports are compiled with care to set forth evidence and to limit conclusory assertions to what is demonstrated by that evidence. The quality of this reporting is as good as we are familiar with anywhere. Yet the civil liberties groups in India are not national in their scope; they are only able to operate locally or regionally. (One group, the People's Union for Civil Liberties, has branches in several cities, but its work is concentrated in Delhi.) They are not professionally staffed; they depend entirely on the efforts of volunteers. They lack their own offices; they operate from the homes and offices of their members. As a 1989 book on the human rights movement in India put it, "CL&DR [Civil Liberties and Democratic Rights] groups have never enjoyed a stable institutional existence. Groups come up at points of crisis, survive for a period of time, and 'in the tradition' of most such institutions in the country, become inactive, fade away, even die out, only to resurface, often in a new form at the time of another crisis."<sup>61</sup> Given this level of development, it is virtually impossible for them to conduct the sustained campaigns required to curb such practices as police torture.<sup>62</sup>

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<sup>61</sup> Smitu Kothari and Harsh Sethi, *Rethinking Human Rights*, Lokayan, Delhi, 1989, p. 178.

<sup>62</sup> A group that does have its own offices and professional staff is The Lawyers Collective in Bombay. Though it deals with many human rights issues, and has been particularly vigorous and effective in dealing with the matters covered in this report, it is not exactly a human rights organization. It is more fairly described as a public interest law firm, supporting itself by charging fees to clients who can afford it. The issues it deals with include such matters as consumer issues;

One reason that this weakness is surprising is that efforts to defend civil liberties in an organized way are not new to India. An Indian Civil Liberties Union was established in 1936 by Jawaharlal Nehru and continued to operate under Nehru's leadership until independence. Rabindranath Tagore was its honorary president and Krishna B. Menon was its first secretary. Yet after independence when Nehru became Prime Minister – according to V.M. Tarkunde, a surviving member of the Indian Civil Liberties Union who subsequently became a High Court Judge and, at the age of 82, is probably the best known and most widely respected civil liberties leader in India today – he wrote a letter to fellow members of the ICLU calling for its dissolution. Apparently, Nehru acted both because he considered that the civil liberties struggle was over; and because, as Prime Minister, he considered that his government could be counted on to protect civil liberties. Whether Nehru's letter was the direct cause is unclear, but the ICLU expired.

The organized civil liberties movement was reborn in India in 1975 when Nehru's daughter, Prime Minister Indira Gandhi, imposed a state of emergency and jailed several thousand political opponents.<sup>63</sup> To resist the repression, a long-time associate of Nehru and Mahatma Gandhi, Jayaprakash Narayan, took the lead in October 1976 in forming the People's Union for Civil Liberties and Democratic Rights, with Tarkunde as Secretary. Vigorous at the outset, the new group scaled back its work in 1977 when Mrs. Gandhi was defeated at the polls; many of its activists went into the Janata government. When that government fell in October 1980, and Mrs. Gandhi returned to power, the group became more active again, and split into two groups: the People's Union for Democratic Rights and the People's Union for Civil Liberties. Subsequently, the two groups have collaborated at times, as in investigating and denouncing police failure to protect the Sikhs when some 3,000 of them were murdered in Delhi in 1984 in reprisal for the assassination of Prime Minister Gandhi.

As this attenuated history suggests, the civil liberties movement in India has flourished or declined in accordance with the need to defend peaceful dissenters, as during the period prior to independence and during Mrs. Gandhi's emergency. In such periods, the efforts of civil liberties groups focus on the defense of

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**environmental concerns; product safety matters; and other questions involving economic and social rights as well as those involving civil and political rights. Some of the concerns expressed in this report have been addressed more effectively in Bombay than elsewhere in India as a result of the work of The Lawyers Collective.**

<sup>63</sup>The emergency endured from June 26, 1975 to March 23, 1977.

middle class (or even upper class) victims of oppression. For most of the period since independence, however, peaceful political dissenters have not been targets of repression in India. The country's claim to be the world's largest democracy is well-founded in this respect as the rights that are essential for a democratic system to function are generally respected.

In the periods when middle class and upper class dissenters have been imprisoned, they have generally been spared abuses in police lock-ups and the poor conditions in prisons provided to Class C prisoners that we have described. If bail is granted, they can afford it and need not spend time in police lock-ups awaiting trial. Even if bail has not been granted, or in cases when such persons chose not to take advantage of bail for political reasons, they have been able to afford legal representation from the moment of arrest and, thereby, they have signaled to the police to take care. In prison, they have been Class B prisoners (or Class A, when and where that category has been in use) and thus provided with amenities that have made incarceration more bearable.

The fact that India's educated middle class has not felt a need to support a strong civil liberties movement for reasons of self interest is only one of the factors that seems to be responsible for that movement's failure to develop strong institutions. Another factor is the lack of adequate financial support from other sources.

In many Third World countries, and increasingly in Eastern Europe as well, organizations that promote human rights derive the bulk of their financial support from the United States and Western Europe. In India, however, the representatives of civil liberties groups whom we asked about this all expressed hostility to the idea of obtaining such support from foreign donors. They indicated that acceptance of such funding would have a delegitimizing effect.

Also, in some Third World countries, churches within the country have provided institutional support for efforts to promote human rights. This has been particularly significant in such Latin American countries as Brazil, Chile and El Salvador and such African countries as Zimbabwe where the Catholic Church has been in the forefront of human rights work. In India, of course, the churches are not such important bodies and the religions that are most powerful within the country have not identified themselves with the human rights cause. Though the Gandhian tradition remains a powerful force in India, particularly in the countryside, it has had more effect in promoting distributive justice than civil liberties.

The consequence of the Indian human rights movement's failure to establish itself institutionally as a more effective force is not the absence of civil liberties in India. Political freedom is well-entrenched in India, despite the severe blow it was dealt at the time Prime Minister Indira Gandhi imposed emergency rule in the 1970s, and despite even the restrictions and abuses that have accompanied Indian government combat with separatist movements in Punjab, Kashmir and Assam. Indeed, in some respects, the fact that political freedom in India can survive such great setbacks is a testament to its strength. Yet so far as day to day life is concerned, civil liberties are available only to the "haves" in India, the middle class and the well to do. If lower class Indians are caught up in the machinery of the law, they will probably suffer a sorry fate. Though India's human rights groups are devoted to the protection of such persons, and do excellent work in their behalf, they have not succeeded in making civil liberties a reality for India's "have-nots."

## What Is To Be Done?

The difficulty in dealing with abuses in police detention and in the prisons is exacerbated by the decentralization of authority in India. A determination to correct these abuses at the central government level would not suffice. The governments of the various states would have to decide to end torture by the police and to end the mistreatment of lower class Indians who make up the bulk of the prison population, and enforce those decisions.

As an organization that seeks to promote human rights internationally, Asia Watch (and its parent, Human Rights Watch) has less ability to influence the various state governments of India than the central government. The state governments do not have a foreign policy; they are generally not direct beneficiaries of international assistance programs; and they lack representation at the United Nations or foreign embassies. Accordingly, Asia Watch has little opportunity to embarrass those state governments directly by calling attention internationally to abuses for which they are responsible.

Under such circumstances, it is even more true of the problems considered in this report than is ordinarily the case with human rights abuses generally that the momentum to secure change must come from within the country. That is one reason that we discuss the Indian human rights movement in this report. Despite its weaknesses, it must play a leading role in attempting to see to it that abuses in police detention and the prisons are curbed.

Indian human rights organizations themselves, of course, hardly need advice from outsiders as to the seriousness of the problems or the importance of dealing with them. As we have noted, these organizations already do excellent work in documenting abuses and bringing to the courts the problems of police torture and mistreatment in the prisons. Indeed, it is the information compiled by Indian human rights organizations on which we have principally relied in making the findings we set forth here.

What outsiders may be able to contribute to enhance the efforts that the Indian human rights movement is currently making to deal with these issues is support to enable that movement to establish itself more solidly in institutional terms. Though we recognize the importance of the concerns that were expressed to us about the delegitimizing effect of foreign funding and foreign interference, it may nevertheless be possible for outsiders to find ways to provide assistance. If such ways are to be found, it will have to be through exploration between representatives of the Indian human rights movement and outsiders concerned with human rights in India. We express our eagerness to take part in such an exploration.

In some respects, the problems in the prisons, such as their class system, seem relatively susceptible to change. One reason is that the prison population is small. Again, we recognize that it is not only India's apparently low crime rate that accounts for the low rate of incarceration; it is also the substitution of summary punishment by the police for imprisonment. Even so, with a small prison population, the cost of making changes should not be prohibitive. This is of obvious importance in a country that is not affluent.

A factor that may have contributed to the perpetuation up to now of the class system in the prisons is fear by some of those concerned with the prisons that its elimination would reduce all the inmates to the conditions now provided to Class C prisoners: that is, levelling down rather than levelling up. Such a fear is

legitimate, and it would be a terrible consequence of ending the class system if that were to happen. Yet it must be eliminated. The conditions provided currently to Class B prisoners are the least that are required to comply with the United Nations Standard Minimum Rules. Compliance with Indian law, as well as the Standard Minimum Rules also demands an end to the confinement of juveniles with adults; and of undertrials with convicts.

The "convict officer" system is inherently abusive and must be ended. We call also for the elimination of cruel forms of punishment, such as handcuffing and the use of fetters.

Other abuses which are particularly glaring include the confinement of rape victims in protective custody; the confinement of non-criminal lunatics in prisons; and the sexual exploitation of women prisoners, often for corrupt purposes.

As to reforming police detention, the place to start is by eliminating the practice of remanding detainees to police custody after they are arraigned before magistrates. This practice amounts to a judicial invitation to the police to engage in torture and, in the case of women, rape. The 24-hour rule must be enforced; free legal assistance must be provided to indigent defendants at pre-trial proceedings, including bail hearings and remand hearings; magistrates must use arraignments to ascertain the physical conditions of detainees; the presumption should be that detainees should then be released on bail or on personal recognizance if the circumstances indicate they can be reasonably relied upon to appear to stand trial; bail should not be used as a punitive sanction against the poor; and those detainees who do not post bail, or who are not released pending trial because of a reasonable basis for believing that they may abscond, should be remanded to pre-trial detention facilities under the jurisdiction of the courts, not the police. Undertrials who are not brought to trial within six months to a year (depending on the seriousness of the alleged offense) should be freed unless delays are due to the efforts of defendants and their lawyers. Also, it is essential that police or other officials who abuse detainees should be vigorously prosecuted; and that independent doctors should conduct post mortem examinations that are made available to the families and attorneys of those who die in custody.

The reforms we propose with respect to police detention will require more sweeping changes than those we call for with respect to the prisons. Yet such reforms are urgent. Police detention in India is a disgrace. Despite India's well-founded claim to be the world's largest democracy, the systematic torture of detainees by the police is worse than we have encountered in many of the world's most repressive dictatorships. It must end.

## APPENDIX The Numbers

As noted at several places in this report, we lack confidence in the numbers cited in various documents we obtained. Nevertheless, we formed a general impression as to the distribution of prisoners as between males and females, juveniles and adults, convicts and undertrials. Our view comports with the findings of the National Expert Committee on Women Prisoners, headed by Justice Krishna Iyer, and cited in the body of the report.

The National Expert Committee itself expressed reservations about the data it assembled that are similar to our own concerns in this area. A note that appears at several places in the published edition of its report states: "The data included in the table are to be viewed as indicative figures only. Neither the National Expert Committee on Women Prisoners nor the publishers take responsibility for the accuracy of the data." With that caveat, the National Expert Committee counted as of June 30, 1986: 1,100 prisons nationwide; 167,326 prisoners; 163,431 male prisoners; and 4,871 female prisoners.

These figures omitted a few jurisdictions, most notable among them, Delhi. Also, they did not include those detained in the police lock-ups.

Also as of June 30, 1986 (again, excluding Delhi and a few other jurisdictions, and excluding police lock-ups), the National Expert Committee counted: 1,174 males under the age of 16 in the prisons; 102 females under the age of 16; 15,776 males ages 16-21; 549 females ages 16-21; 117,449 males over 21; and 2,939 females over 21. The totals are lower than the totals for the prison population generally, apparently reflecting the fact that the National Expert Committee did not obtain ages for all prisoners. Ages were not provided for 29,032 of the males included in the survey nor for 981 of the females.

The National Expert Committee was also not able to obtain a complete breakdown as between convicts and undertrials, but did obtain a breakdown of the length of incarceration of 96,990 undertrials, or 58 percent of the total number of prisoners it tabulated. Probably the actual proportion of undertrials is somewhat higher. 71,772 undertrial males and 1,120 females had been in prison less than 6 months; 14,105 males and 147 females had been in prison 6 to 12 months; 6,535 males and 38 females had been in prison 1-2 years; 2,369 males and 6 females had been in prison 2-3 years; and 1,078 males had been in prison 3 years or longer without trial.

The National Expert Committee was only able to obtain fragmentary data on the numbers of women held in various forms of custody other than as convicts or undertrials. In West Bengal, it counted 867 women prisoners, of whom 49 were convicts; 443 were undertrials; 251 were non-criminal lunatics; and 124 were held in protective custody. Assam reported 266 women prisoners, with no breakdown. Members of the Committee who visited subsequently reported in percentages: convicts, 24 percent; undertrials, 31 percent; non-criminal lunatics, 45 percent. Most states did not report non-criminal lunatics or women held in protective custody. It is impossible to determine whether this means that they did not hold such prisoners, or that they simply did not report them. In all, the National Expert Committee obtained a breakdown on the status of 2,681 women prisoners, of whom 746 were convicts; 1,359 were undertrials; and 576 were others (non-criminal lunatics, protective custody, etc.). Since the number of female prisoners it tabulated nationwide

was 4,871, this leaves 2,190 unaccounted for, aside from those from jurisdictions such as Delhi that did not report.

India is the world's largest democracy in more than name. It has free elections, a multi-party parliamentary system, a diverse and outspoken free press, an independent judiciary and the country abounds with non-governmental organizations that take pride in their independence and that help to make up a lively civil society.

Yet if the checks and balances of democracy are supposed to curb government lawlessness, something has gone wrong in India. Too often, anyone unlucky enough to be arrested faces a far greater likelihood of torture, or worse, at the hands of the police than in many countries entirely lacking in the protection for civil liberties available in India.

Once detainees have been sent to prisons and jails, there is a rigid class system in the prisons in much of the country that is mandated by law. Special privileges are accorded to the minority of prisoners who come from the upper or middle classes irrespective of the crimes they may have committed or their behavior in prison.

In this report, Asia Watch calls for a series of reforms to improve conditions in police detention and in the prisons. Many of these improvements will require a commitment to reform from the governments of the various states under India's decentralized system.

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