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India's continued record of torture

The use of excessive force in India has plagued the country's human rights record for decades. Police officials have used real and rubber bullets during protests, participated in beatings, used electric shocks and water boarding in their attempt to solicit information and engaged in acts of sexual abuse. With the escalation of conflict in the region of Kashmir, such brutalities have hardly ceased in recent years. Worse yet the victims were civilians. The violence inflicted upon those who are taken into official custody is also a big issue, one that is further exacerbated by the lack of appropriate access to medical care and supervision.

While Indian authorities continue to play the blame game and deny that physical harm is regularly sustained by civilians and detainees, case after case continues to make its way into the attention and consciousness of the international community. In 2012, Sajad Ahmad Dar, was held in a Kupwara jail for two months, where he did not receive medical treatment that he clearly needed. He died as a result of the lack of attention by a medical professional, which was confirmed in the coroner's report, but the case has not been taken up by the authorities and the officers responsible for his treatment while in custody do not face any repercussions. This situation is hardly unique and what is more worrisome is that even after the intervention of international observers and non-governmental organisations, instances of maltreatment while in custody continue.

As a signatory of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, India is obliged to take measures to prevent the use of torture and excessive force within its borders and the contested area of Kashmir. Yet even though the country signed the Convention in October 1997, it has still not been ratified and accusations of torture continue. Until the Indian government provides clear definitions of torture and provisions on how to deal with such instances, it remains in limbo and continues infringing on basic human rights.

Torture while in custody

The National Human Rights Commission (NHRC) continues to receive reports of abuse cases sustained by detained individuals, annually totalling well over a thousand instances. Annually, nearly one hundred of these result in 'unnatural' deaths for those held in judicial custody. To add to the problem, claims of secret detention centres are consistently reported to the Asian Centre for Human Rights (ACHR), three of which are said to be in Jammu and Kashmir. These undercover institutions may explain how the NHRC managed to get away with registering only six official deaths in police custody in Kashmir since 2000.

The majority of confirmed deaths in police custody occur within 48 hours from the time the detainee was first taken in, leading to the assumption that these were the result of torture inflicted upon them by officials. In 2011, Mudassir Bashir Shah, a 22-year-old was detained for 14 days at a Special Operations camp. His family claims that it was here that he was first beaten by police authorities, before being transferred to the Sopore police station, where he was detained for a further six months before being released. Upon his release, the man claimed that police had forced him to write an admission and an apology for the stone-pelting that contributed to his original arrest, presumably again under the threat of violence. He was then arrested again for a further five months before his detention order was dismissed.

The Indian government conveniently ignores accusations of beatings and arbitrary repeated arrests, much in the same way it has dodged questioning into the matter by international human rights organisations. The lack of appropriate retributions and prevention mechanisms for instances of torture in police custody, create the illusion that the government is comfortable turning a blind eye. The

culture of torture thus becomes endemic to the judicial and police systems of India, a matter that cannot be resolved until the Indian government admits to its past and present crimes, firmly resolving to improve the situation in the future.

Ratification of the UN's Torture Bill

The enactment of the Prevention of Torture Bill, 2010 has not done enough to curb instances of torture and excessive force. Though considered by Indian authorities as a step toward the ratification of the UN's Torture Convention, the Bill does not provide a comprehensive definition of what constitutes torture and suggests that excessive force would still be acceptable in some situations, without actually specifying what these situations may be.

Section 3 states:

“Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes grievous hurt to any person or danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by an act, which is inflicted in accordance with any procedure established by law or justified by law.”

The Bill serves as a justification for the Indian government to not pursue torture perpetrators when it is not convenient for them and allows officials to hide from justice. IHRAAM finds such exceptions to be unacceptable and in complete infringement of the stipulations of the Torture Convention and international norms. Clear cut definitions must be made to ensure that victims and perpetrators see justice served.

IHRAAM further calls on the Indian government to carry out independent and impartial investigations of all accusations of abuses that are made against detainees or threats made against their families. Detainees should not have to fear violence of a physical, sexual or mental nature while in custody and should be eligible for the receipt of adequate medical care. If infringements do occur, findings have to be made public and those in the authorities with involvement must be held accountable for their ill-treatment of detainees.

The Indian government is also urged to co-operate with international authorities and IHRAAM encourages authorities to accept visits from the United Nations Special Rapporteur on Torture and other cruel, inhuman and degrading treatment. This is a critical step for the monitoring of infringements and ensuring that detainees are free from threat and their personal safety is maintained while in custody. IHRAAM beckons for the appropriate legal and investigative action to be taken in cases where the treatment of detainees is under question – whether this is because of accusations of torture, ill-treatment, restrictions of medical care or forced admission – in a timely and transparent manner.