

## Asia-Pacific

### Grim Picture of Human Rights in India

By Nava Thakuria  
Special Correspondent



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India wears a grim picture on human rights record in the recent past. The ruling United Progressive Alliance led by Indian National Congress has shown significant increase in cases of custodial deaths. On the other hand, the non-state actor like the Maoists (or Naxalites) remained the worst human rights violators in the country.

Releasing its report Tuesday titled 'Torture in India 2010', the Asian Centre for Human Rights, a New Delhi based rights group, argues that impunity is the root cause of increasing torture. While the government fails to establish accountability for acts of torture perpetrated by the armed groups like the Maoists, both the Central government and the state governments also refuse to provide sanction for prosecution under section 197 of the Criminal Procedure Code, it asserted.

"Taking 2000-2001 as the base year, custodial deaths have increased by 41.66% persons under the UPA government between 2004-2005 and 2007-2008. This includes 70.72% increase of deaths in prison custody and 12.60% increase of deaths in police custody," informed Suhas Chakma, director of Asian Centre for Human Rights.

He also added that it is only the common people who are facing the torture and other inhuman and

degrading treatment. However, the UPA government has failed to address the violations of the rights of, mainly, the aam aadmi, Chakma added.

The ACHR welcomes the fact that the UPA government has taken a number of measures to address the economic rights of the 'aam aadmi' and problems of the vulnerable groups through enactment of various legislations such as the National Rural Employment Guarantee Act, the 'Unorganised Workers' Social Security Act 2008, the Right to Education Act, the Domestic Violence Act, the Commission for Protection of Child Rights Act, 2005, the Forest Rights Act and legislation for 50% reservation for women in local bodies the panchayats and the current commitment on the Women's Reservation Bill and the Food Security Bill.

The UPA government has failed to show the same alacrity to legislate against torture. Though the Cabinet approved the decision to introduce the Prevention of Torture Bill, 2010 before the parliament and ratify the UN Convention Against Torture, the Bill is being treated as 'state secret'.

"If the Union government of India can hold public discussion on the Food Security Bill, why is it treating the Prevention of Torture Bill, 2010 as a secret document? It shows that the government has more to hide as its earlier draft, Prevention of Torture bill, 2008, contained only three operative paragraphs relating to definition of torture, punishment for torture, and limitations for cognizance of offences," Chakma stated further.

The ACHR lamented the responses of the Indian Home Ministry before the parliament that puts the responsibility only on the State governments on custodial deaths. The MHA repeatedly states, "Police and 'Public Order' are state subjects under the Constitution of India. It is for the state governments to take appropriate action in every crime."

The report mentions about the Union Territories which is governed by the Central government directly, where too, New Delhi has failed to take

action against custodial deaths.

“In the decade 1999-2009, the Congress-Nationalist Congress Party ruled Maharashtra had the highest number of deaths (246 cases) in police custody followed by Uttar Pradesh (165 cases), Gujarat (139 cases), West Bengal (112 cases), Andhra Pradesh (99 cases), Tamil Nadu (93 cases), Assam (91 cases), Punjab (71 cases), Karnataka (69 cases), Madhya Pradesh (66 cases), Haryana (45 cases), Bihar (43 cases), Delhi (42 cases), Kerala (41 cases), Rajasthan (38 cases), Jharkhand (31 cases), Orissa (27 cases), Chhattisgarh (23 cases), Meghalaya (17 cases), Uttarakhand (16 cases), Arunachal Pradesh (15 cases), Tripura (9 cases), Goa (5 cases), Himachal Pradesh, Jammu & Kashmir and Chandigarh (4 cases each), Pondicherry (3 cases) and Mizoram, Sikkim, Dadra & Nagar Haveli, and Andaman & Nicobar islands (1 each),” the report said.

The Central government also refused to implement the Law Commission of India's recommendations in its 152nd Report on ‘Custodial Crimes’ to amend the Indian Evidence Act, 1872 (insertion of section 114b) to provide that in cases of custodial death, the burden of proof must lie with the police.

Among the armed opposition groups, the Naxalites or Maoists are the worst human rights violators and regularly resort to ‘violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture’ in blatant violation of the International Humanitarian Law.

“On 11 March 2009, the Maoists dragged Kedar Singh Bhotka (45 years) and his brother Ganesh Singh Bhotka from their house at Gurudih village under Katkamsandi police station in Hazaribagh district in Jharkhand. They were allegedly tied to a tree and tortured by the Maoists. Thereafter, while Ganesh was released, his brother Kedar, who was a government school teacher, was killed for being an alleged ‘police informer’,” Chakma claimed.

At the same time, Chakma further questioned, “Are we to presume that the Central government has no responsibility for the failures that led to the massacre of 76 Central Police Force Personnel in

Chhattisgarh? If that is the case why did Home Minister P Chidambaram offered to resign?"

In December 2009, the Bombay High Court asked the Maharashtra government to explain why it had rejected the state Criminal investigation Department's plea to prosecute 10 officers of Mumbai Police in the Khwaja Yunus murder case. The Maharashtra government had sanctioned the prosecution of four minor officers but let off 10 senior officials despite the CID establishing their roles in the custodial death of Yunus in January 2003.

While the decision to introduce the Prevention of Torture Bill, 2010 is welcome, the ACHR director asserted that unless Government of India takes lessons learnt from the failure of the Supreme Court judgement (D K Basu judgement) and amendment of the Criminal Procedure Code and addresses these shortcomings, torture and custodial death will continue to rise.

The ACHR recommends New Delhi to hold public discussion on the Prevention of Torture bill, 2010 with all stakeholders including the civil society groups and enact the same in 2010 itself; implement the recommendations of the Law Commission of India to make consequential amendments to the Indian Evidence Act, 1872 (insertion of section 114b) to provide that in case of custodial death the onus of proving of innocence is fixed on the police; and repeal section 197 of the Criminal Procedure Code to uphold the supremacy of the judiciary.

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