

SAARC

HUMAN RIGHTS
REPORT 2006



INDIA



SRI LANKA



PAKISTAN



MALDIVES



NEPAL



BHUTAN



BANGLADESH

ASIAN CENTRE FOR HUMAN RIGHTS

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SAARC HUMAN RIGHTS REPORT 2006

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Abbreviations:

AFSPA	Armed Forces Special Powers Act
AIHRC	Afghan Independent Human Rights Commission
AL	Awami League
ANNFSU-R	All Nepal National Free Student Union (Revolutionary)
AOGs	Armed Opposition Groups
APF	Armed Police Force
ASI	Assistant Sub-Inspector
BDR	Bangladesh Rifles
BJP	Bharatiya Janata Party
BNP	Bangladesh National Party
BRAC	Bangladesh Rural Advancement Committee
BSF	Border Security Force
CBI	Central Bureau of Investigation
CCRCAP	Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh
CFA	Cease-Fire Agreement
CHTs	Chittagong Hill Tracts
CIA	Crime Investigation Agency
CID	Criminal Investigation Department
CPI (Maoists)	Communist Party of India (Maoists)
CPN-UML	Communist Party of Nepal (United Marxist Leninist)
CRPF	Central Reserve Police Force
CVICT	Centre for Victims of Torture, Nepal
CWIN	Child Workers in Nepal Concerned Centre
DB	Detective Branch
DIG	Deputy Inspector General of Police
DMC	District Monitoring Committee
EPDF	Eelam People's Democratic Front
EPRLF	Eelam People's Revolutionary Liberation Front
FATA	Federally Administered Tribal Areas
FCR	Frontier Crime Regulation
FIR	First Information Report
FNJ	Federation of Nepalese Journalists
FTCs	Fast Track Courts
HCBM	Human Rights Congress of Bangladesh Minorities
HRCM	Human Rights Commission of Maldives
HRCP	Human Rights Commission of Pakistan
HRCSL	Human Rights Commission of Sri Lanka
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IED	Improvised Explosive Device
IKNM	International Khatme Nabuat Movement
INSEC	Informal Sector Service Centre
ISI	Inter Service Intelligence
JJSO	Juvenile Justice System Ordinance
J&K	Jammu and Kashmir
JMB	Jamaatul Mujahideen Bangladesh
JRC	Judicial Reform Commission
JSC	Judicial Services Commission
JVP	Janata Vimukti Perumuna

KCP	Kangleipak Communist Party
KYKL	Kanglei Yawol Kann Lup
LTTE	Liberation Tigers of Tamil Eelam
MCC	Maoist Communist Centre of India
MDP	Maldivian Democratic Party
MIELAL	Meitei Irol Eeyek Loynsillon Apunba Lup
MoFA	Ministry of Foreign Affairs
MLA	Member of Legislative Assembly
MMA	Muttahida Majlis-e-Amal
MP	Member of Parliament
MPA	Member of Provincial Assembly
NBA	Narmada Bachao Andolan
NCM	National Commission of Minorities
NCRB	National Crime Records Bureau
NEA	Nepal Electricity Authority
NEHRP	North East Housing Reconstruction Programme
NHRC	National Human Rights Commission of India
NJC	National Judicial Council
NPU	Nepal Press Union
NWFP	North Western Frontier Province
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Officer-in-Charge
PCJSS	Parbatya Chattagram Jana Samhati Samiti
PEMRA	Pakistan Electronic Media Regulatory Authority
PLOTE	People's Liberation Organization of Tamil Eelam
PMAP	Pukhtunkhwa Milli Awami Party
PML-N	Pakistan Muslim League-Nawaz
PPC	Pakistan Penal Code
PPP	Pakistan Peoples Party
RAB	Rapid Action Battalion
RNA	Royal Nepal Army
SC	Supreme Court
SCs	Scheduled Castes
SHO	Station House Officer
SHRC	State Human Rights Commission
SI	Sub-Inspector
SLMM	Sri Lanka Monitoring Mission
SPO	Special Police Officer
STs	Scheduled Tribes
TADO	Terrorists and Disruptive Activities (Control and Punishment) Ordinance
TNA	Tamil National Alliance
ULFA	United Liberation Front of Asom
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Project
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNP	United National Party
UPDF	United Peoples Democratic Front
VDC	Village Development Committee
VHP	Viswa Hindu Parishad
VPR	Voluntary Repatriation Programme

Preface

SAARC *Human Rights Report 2006* covering the events of 2005 is the first such report by any organisation or institution in the South Asian sub-region. It also indexes human rights records of the member States of the South Asian Association for Regional Cooperation (SAARC).

Indexing human rights records of the governments is a controversial exercise as there are no foolproof or universally acceptable yardsticks to measure the records. Human rights activism follows the dictum that each and every violation of human rights deserves equal attention, condemnation and measures must be taken to prevent its occurrence. Many independent national civil society groups also feel that human rights record of their government is the worst. On the contrary, the governments are also known for defending their human rights records and some governments like Bhutan even dare to conjure up "Gross National Happiness" to beguile the international community on the absolute denial of rights.

Asian Centre for Human Rights (ACHR) does not believe that indexing of human rights records of all members of the United Nations is possible because of the complexities, lack of verifiable data and different systems of governance and administration of justice.

But, is it possible to index human rights records of the member States of the South Asian Association for Regional Cooperation (SAARC), a non performing sub-regional inter-governmental organisation? How does one index three illiberal

democracies - India, Bangladesh and Sri Lanka? Is there any difference between the quasi-military dictatorship of President General Pervez Musharraf of Pakistan and the dictatorship of President Maumoon Abdul Gayoom who has been the only Presidential candidate of Maldives since 1978? On the surface, the rule of absolute monarchy of King Jigme Singye Wangchuk of Bhutan might have appeared to be better than despotic rule of King Gyanendra of Nepal; but beneath the surface, absolute denial of many rights reigned in Bhutan. Afghanistan joined SAARC only in November 2005. With its security dependent on the authorities in Brussels and Washington DC without any mechanism for establishing accountability for the multi-national forces, Afghanistan could not be considered for indexing.

Governments across the world respond the similar way to the security challenges i.e. take draconian measures which violate human rights and the rule of law. The measures taken by the governments in the post September 11th period vouch it. Ultimately, it is the existence of institutional checks and balances and patterns of human rights violations in a particular year which make indexing of human rights records of the governments at sub-regional level possible.

ACHR's *SAARC Human Rights Violators Index 2006* is based on the analysis of the incidents and patterns of human rights violations collated, collected and documented by it. Certainly, such an indexing exercise has its flaws because of the inability to collect accurate data on

each and every case of human rights violations in the region. It must however be pointed out that no government or organisation has the capacity or systems in place to collect disaggregated data on all incidents of human rights violations. Nor is it possible to index economic, social and cultural rights (ESCRs) which are gradually realised by the States. However, outright violations of the ESCRs can be monitored. Inability to report on the outright violations

of the ESCRs remains one of the shortcomings of this report.

The *SAARC Human Rights Report 2006* is intended to increase awareness on the state of human rights in South Asia. If nothing else, the report shall remain an exercise of the right to dissent and freedom of opinion.

Suhas Chakma
Director

CHAPTER

1

Human Rights Violators Index:

Rank	Country	Political freedom	Right to life	Judiciary & administration of justice	NHRIs	Press Freedom	Violence against women	Violations of the rights of the child	Human rights defenders	Minorities/indigenous peoples	Total score	Total score (minus minorities)
1	Bangladesh	5	7	4	6	6	6	3	4	7	48	41
2	Bhutan	7	1	7	7	7	1	1	7	6	44	38
3	Nepal	4	6	5	3	5	4	7	5	3	42	39
4	Maldives	6	2	6	4	4	2	2	6	*	32	32
5	Pakistan	3	5	2	5	3	7	5	2	4	36	32
6	Sri Lanka	2	3	3	2	2	5	6	1	5	29	24
7	India	1	4	1	1	1	3	4	3	2	20	18

SAARC Human Rights Violators Index 2006

I. Indicators for ranking

In *SAARC Human Rights Violators Index 2006* covering the events of 2005, Asian Centre for Human Rights (ACHR) identified nine thematic issues for comparative assessment of the human rights records of the member States of the South Asian Association for Regional Cooperation (SAARC). These nine thematic issues are: political freedom, the right to life, judiciary and administration of justice, status or effectiveness of National Human Rights Institutions, press freedom, violence against women, violations of the rights of the child, violations of the rights of the minorities and indigenous/tribal peoples and repression on human rights defenders. Though other issues like prison conditions, refugees, internally displaced persons, measures on the war against terror and national security laws etc have been extensively covered, these were not taken into consideration for indexing purpose. The records of the governments on these issues were the same by and large.

II. Explanation about ranking

Human rights violations cannot be justified under any circumstances. Therefore, the scoring is given in negative i.e. the country having the worst record on a specific thematic issue has been given the highest negative points (7) and the country having the least bad record on the same issue has been given the lowest negative point (1).

The scoring has been awarded based on the analysis of the incidents and patterns

of human rights violations of 2005 collated, collected and documented by Asian Centre for Human Rights, though for the sake of brevity, the number of cases cited has been reduced. Afghanistan, though covered in this report, has not been included for indexing purpose.

To cite an example, with regard to the ranking on the National Human Rights Institutions (NHRIs), Bhutan has been given the highest negative score (7) because of its lack of willingness to establish such an institution. Though both Bangladesh and Pakistan failed to establish NHRIs by 2005, Bangladesh was given more negative score (6) than Pakistan (5) because Bangladesh failed to establish an NHRI despite taking the initiative wayback in 1996, while Pakistan took the initiative to establish an NHRI only in 2004 and placed a draft National Human Rights Commission Bill in February 2005. Maldives (4) has been given higher negative score than Nepal (3) as the Human Rights Commission of Maldives could not function since August 2005 because of the lack of quorum. In comparison, the NHRC of Nepal made a number of interventions. However, the independence of the NHRC of Nepal was seriously undermined after King Gyanendra issued an Ordinance in May 2005 to change the procedures of appointment of the members in order to select his own nominees as members of NHRC. Therefore, Nepal scored more negative points than Sri Lanka as the members of the Human Rights Commission of Sri Lanka were appointed more independently. India's NHRC, because of its interventions on voluminous cases - 85,661 cases between 1 April 2004 and 31 March 2005¹ - remained the most effective. The fact also remained that the Sri Lankan Government failed to identify those who set afire the office of the Sri Lankan Human Rights Commission in Colombo on 12 October

2005.² If the SLHRC can not be protected and government fails to identify the culprits, how can the SLHRC protect the victims or establish accountability for human rights violations?

III. SAARC Human Rights Violators Index 2006

Bangladesh (48 negative points) tops the *SAARC Human Rights Violators Index 2006* followed by Bhutan (44 negative points), Nepal (42 negative points), Maldives (32 negative points), Pakistan (36 negative points), Sri Lanka (29 negative points) and India (20 negative points).

As Maldives has no minorities or tribal peoples, while ranking Maldives, the respective points scored by the other SAARC nations on minorities/indigenous peoples were deducted to arrive at the aggregate score i.e. "total score minus minorities". Though Pakistan and Maldives shared the same aggregate points (32) without minorities, Maldives has been ranked above Pakistan in *SAARC Human Rights Violators Index 2006* because of the lack of political freedom and the lack of independence of judiciary in Maldives.

Bangladesh: Rank 1st

In *SAARC Human Rights Violators Index 2006*, Bangladesh scored the highest negative points with a total score of 48 points. The Royal coup on 1 February 2005 in Nepal and the subsequent human rights violations there, the lack of progress for democratic reforms in Maldives, the absolute denial of many rights in Bhutan and quasi-dictatorship in Pakistan will raise questions as to why and how Bangladesh scored highest negative points i.e. No. 1 ranking in the *SAARC Human Rights Violators Index 2006* despite having a democratically elected government.

While the Bangladesh Nationalist Party (BNP)-led government was elected democratically, Bangladesh was the only country in South Asia which formed an elite force known as the Rapid Action Battalion (RAB) in March 2002 for extrajudicial executions in the name of combating crimes. In 2005, Bangladesh had the highest number of peacetime extrajudicial executions and the RAB and other security forces were responsible for the killings of 396 persons in custody including 340 persons in alleged "crossfire", an euphemistic term for the extrajudicial executions.³ The RAB also adversely impacted political freedom as the ruling BNP used the RAB to target political opponents. The murder of lawmaker and former Finance Minister Shah AMS Kibria in a grenade attack on an Awami League rally at Boidder Bazaar in Habiganj on 27 January 2005 allegedly by the BNP activists⁴ exposed the vulnerability of the political opponents. At the end of 2005, Asian Centre for Human Rights also had a list of 63 indigenous Jumma political activists - mainly belonging to the United Peoples Democratic Front of the Chittagong Hill Tracts (CHTs) - who were detained under various laws for their political views. According to Odhikar, an NGO working in human rights, 310 people were killed, 8,979 wounded, 1216 arrested and 93 abducted in political violence in 2005.⁵

Bangladesh scored more negative points on judiciary and administration of justice because of its failure to separate the judiciary from the executive despite the Supreme Court's order in 1999 and its failure to protect the judges from the attacks of the Jihadis. Two judges were killed and dozens of innocent people and lawyers were injured in the attacks on the judges and court premises by the Jihadis in 2005.

On National Human Rights Institutions, as stated above, Bangladesh started the process of establishing an NHRI in 1996 but failed to present the Draft Bill by the end of 2005. Therefore, it has been ranked No. 2 with 6 negative points.

On press freedom, Bangladesh has been ranked No. 2 violator just below Bhutan which has absolute restrictions on the press freedom. While King Gyanendra of Nepal suppressed the press freedom with an iron hand during 2005, Bangladesh was the most dangerous place for journalists. The media persons came under repression and attacks from all quarters - the armed opposition groups, state agencies, judiciary, political parties and their cadres. At least two journalists were killed, 142 injured, 11 arrested, 4 abducted, 53 subjected to harassment, 249 received threats and 15 came under direct attacks and cases were filed against 130 journalists in 2005.⁶ The ruling Bangladesh Nationalist Party activists were responsible for majority of the attacks on the media persons.

On women, Bangladesh with 6 negative points was again ranked No. 2 violator just below Pakistan, where rape victims were further victimised under the draconian Hudood Ordinances. Rape, acid attacks, torture and dowry-related killings were common in Bangladesh. A total of 907 women were raped, of whom 126 were killed and 14 committed suicide after rape, and 382 women were tortured for dowry during 2005.⁷ Most importantly, indigenous and minority women were specific targets of the security forces, political activists and the illegal settlers in case of the CHTs.

Bangladesh has been adjudged as No. 1 violator of the rights of the indigenous /tribal peoples and minorities.

Bangladesh is the only country in

South Asia which practised a “population transfer policy” - an “ethnic cleansing programme” - to make the indigenous Jumma peoples a minority in their own land and gradually annihilate their identity. In June 2005, the government announced its decision to provide “free food rations” to 28,000 more plain settler families who had been illegally brought into the Chittagong Hill Tracts.⁸ Since 1978, the government of Bangladesh has been providing free rations of 86 kilograms of rice to each illegal settler family to sustain the conflict in the CHTs. On the other hand, indigenous Jumma peoples who have been displaced by these illegal settlers have not been provided any help.

The Hindu minorities continued to be targeted and their religious freedoms were violated. The government failed to implement Vested Properties Return Act of 2001 and the lands of Hindu minorities continued to be grabbed by force.

The government of Bangladesh failed to protect the Ahmadiyahs from attacks by the activists of International Khatme Nabuat Movement (IKNM). The security forces have been accused of colluding with the religious bigots in attacks against the Ahmadiyahs, such as in the attack at Sundarban Bazar in Satkhira district on 17 April 2005.⁹

Human rights defenders continued to face repression. Minority and indigenous human rights defenders were specifically target and their organisations were not granted permission to receive foreign grants. At least three NGO activists, including Joshi Chakma, an indigenous activist who worked with Bangladesh Rural Advancement Committee,¹⁰ were killed in Bangladesh during 2005. Offices of BRAC were bombed twice by the Jihadis and four of its staff were seriously injured.

The condition of the children in Bangladesh was assessed to be fairly better

in comparison to Nepal, Pakistan, Sri Lanka and India.

Bhutan: Rank 2nd

Bhutan’s positive records on the right to life, status of women and children have been marred by its most negative records on political freedom, judiciary and administration of justice, status of National Human Rights Institutions, violations of the rights of minorities and undeclared ban on the human rights defenders. Its *Shangrila* impression and few reports of human rights violations may raise a question as to why has Bhutan been ranked No. 2 in the *SAARC Human Rights Violators Index 2006*. If absence of reports on human rights violations were to be the yardsticks for measuring the state of human rights, Democratic Peoples Republic of Korea will be adjudged better than most democratic countries. Like in the Democratic Peoples Republic of Korea, in Bhutan too many rights have been absolutely denied.

On political freedom, Bhutan has been ranked No.1 violator as there was no political freedom or political parties in the country. It failed to release approximately 70 arrested persons, mainly ethnic Sarchops and Nepalis, who remained incarcerated in connection with political dissidence during 1991-92.

On judiciary and administration of justice too, Bhutan has been awarded the highest negative points as there is no independent judiciary. The King remained the absolute authority to grant pardon, appoint and dismiss judges. Though the Evidence Act was adopted in December 2005, Bhutan did not have necessary laws in place for administration of justice to meet the basic international standards on fair trial.

As Bhutan has no National Human Rights Institutions nor has it expressed any

intention to establish one, it has been awarded the highest negative points (7) on the status of NHRIs.

On press freedom too, Bhutan has been ranked No. 1 violator. The only newspaper, *Kuensel*, was owned and controlled by the government. In 2005, Indian and other international TV channels were frequently banned in the name of protecting Bhutanese culture.

On the violations of the rights of minorities, Bhutan has been ranked No. 2. Bhutan continued to have discriminatory laws, policies and practices against the ethnic Nepalis and Sarchops. In a further attempt to suppress cultural rights, the National Assembly of Bhutan in November 2005 made it mandatory to conduct all public meetings in *Dzongkha*, the language of the ruling Drukpas.¹¹

Given the virtual ban on independent civil society organizations, Bhutan has been ranked No.1 violator of the rights of the human rights defenders.

Although His Majesty Jigme Singye Wangchuk released a draft Constitution in March 2005 to establish democracy in Bhutan, it failed to ensure inclusiveness. Over 100,000 expelled Bhutanese refugees were denied the right to participate in the so-called democratisation process. Bhutan was assisted by the government of India to deny the right to return of Bhutanese citizens sheltered in Nepal.

Bhutan, the country which coined infamous "Gross National Happiness", ironically failed to take any measures in 2005 for the return of its subjects, who have been languishing in "Gross Sadness" for the last one and half decade in Nepal!

Nepal: Rank 3rd

Despite the Royal takeover by King Gyanendra on 1 February 2005 and subsequent reign of repression throughout the

year, Nepal has been ranked No. 3 in the *SAARC Human Rights Violators Index 2006* below Bangladesh and Bhutan. Although the pro-democracy protests were dealt with disproportionate force in Nepal, there were no politically motivated killings in the country like in Bangladesh. Bhutan did not allow enjoyment of any political freedom. In Maldives, the opposition Maldivian Democratic Party leaders were charged and convicted in politically motivated trials under terrorism offences.

Similarly, on right to life, Nepal has been given less negative scores than Bangladesh despite the fact that the security forces killed at least 815 persons and the Maoists killed at least 709 persons during 2005.¹² But in Bangladesh, the feeling of insecurity primarily came from the Rapid Action Battalion created by the government with absolute power to execute people with impunity and without having any insurgency like in Nepal.

Following the Royal takeover, independence of judiciary further dipped. The government continuously undermined courts including the Supreme Court by defying their orders. Asian Centre for Human Rights recorded the re-arrest of 55 persons by the security forces after the court ordered their release. Yet, the judiciary and administration of justice in Nepal were better than in Bhutan and Maldives. The Supreme Court of Nepal repeatedly ordered the release of the re-arrested persons, sought to ensure press freedom, stayed the implementation of the Code of Conduct on the NGOs etc. While the words of the King were final and supreme in Bhutan, Maldivian courts were merely rubber stamps of the executive and continued to deliver Kangaroo justices to opposition MDP leaders. The Supreme Court of Nepal admitted petitions challenging the constitutional validity of ordinances issued by King Gyanendra, thereby, questioning the

authority of the despotic ruler.

As NHRC of Maldives was virtually handicapped with only two members remaining with the Commission since September 2005, NHRC of Nepal was given less negative points than Human Rights Commission of Maldives.

Half of all the cases of censorship in the world in 2005 were reported from Nepal. The press faced tremendous repression under the absolute rule of King Gyanendra. At least two journalists were killed, 425 journalists were arrested, attacked or threatened.¹³ Yet, press freedom in Nepal was assessed to be better than in Bangladesh and Bhutan. While Bhutan did not have any press freedom, Bangladesh remained the most dangerous place for the journalists in South Asia, because of the attacks, mainly by the ruling BNP activists with the tacit approval of the authorities.

Nepal was the most dangerous place for children in South Asia during 2005 and therefore, it was ranked No. 1 violator of the rights of the child. While the armed opposition groups both in Sri Lanka and Nepal recruited children, there were more killings of children in Nepal during 2005. In Nepal, an estimated 58 children, including 16 girls, were reportedly killed during January - September 2005 alone. Of them, 46 children were allegedly killed by the CPN-Maoists.¹⁴ The CPN-Maoists also attacked educational institutions, paralysed the educational systems through frequent strikes by All Nepal National Independent Students' Union (Revolutionary) and abducted hundreds of children and teachers for recruitment and indoctrination.

Although human rights defenders suffered severe repression following the Royal takeover of February 1st and the government sought to impose Code of Conduct on the NGOs in 2005, the status of human rights defenders in Nepal was comparatively better than in Maldives and

Bhutan. Human rights organisations were not allowed to register in Bhutan. In Maldives, government continued to deny registration of independent human rights organisations.

Though the Dalits and indigenous peoples faced widespread societal discrimination and violence and Nepal failed to adopt national laws like India to combat discrimination, they were not targeted as in Bangladesh, Bhutan, Sri Lanka and Pakistan.

Similarly, though women in Nepal continued to face discrimination and violence, the violence against women in Nepal was not as acute as in Pakistan and Bangladesh.

Maldives: Rank 4th

Like Bhutan, Maldives' records on the right to life, status of women and children were positive. Yet, with 32 negative points, Maldives has been ranked 4th in the *SAARC Human Rights Violators Index 2006* above Pakistan with the same negative points without the minorities.

On political freedom, Maldives has been ranked No. 2 violator despite the historic step of allowing the registration of political parties on 2 June 2005.¹⁵ The registration of political parties made no difference as the candidates had to contest the first ever multi-party elections held in December 2005 as "independent candidates".¹⁶ The right to freedom of association and assembly were severely restricted and the pro-democracy activists and opposition political activists and leaders, including Mohamed Nasheed, Chairman of the Opposition MDP, were arrested under the Law on the Prevention of Terrorism in the Maldives. Activists like Jennifer Latheef were convicted under terrorism charges by Kangaroo courts.

On judiciary and administration of

justice too, Maldives has been given second highest negative ranking after Bhutan. President Maumoon Abdul Gayoom remained the judge and the jury. Maldives has, however, scored less negative points than Bhutan as President Gayoom at least took the first step towards ensuring independence of judiciary by creating Judicial Services Commission in November 2005.

On press freedom, Maldives has been ranked No. 4 violator. There was little press freedom in the Maldives and the government continued to target the only independent newspaper *Minivan*. At least a dozen journalists were arrested for exercising their freedom of expression. Cyber dissident Ahmed Ibrahim Didi who was arrested in January 2002 continued to be detained till the end of 2005. The government continued to jam broadcasting of independent Radio Station – *Minivan Radio* – which ran a shortwave service for one hour a day as well as the website of *Dhivehi Observer*, based in London.

Although King Gyanendra of Nepal brutally cracked down on the human rights defenders during 2005, Maldives has been ranked No. 2 violator of the rights of the human rights defenders. There was only one registered human rights organization, *Hama Jamiyya*, in Maldives. The *Human Rights Association of Maldives*, *Reporting Network for the Relatives of the Persons in Judicial Care*, *Maldivian Detainees Network* and *Maldives Center for Human Rights and Democracy* continued to be denied registration, according to the Home Minister Ahmed Thasmeen Ali, because of their “international contacts”!¹⁷

Pakistan: 5th

With 36 negative points, Pakistan has been ranked No. 5th in *SAARC Human Rights Violators Index 2006*.

On political freedom, despite being

ruled by quasi-dictatorship of President General Pervez Musharraf, Pakistan scored less negative points than Bhutan, Bangladesh, Maldives and Nepal. The lack of any political rights in Bhutan, organised killings of opposition political party leaders and activists in Bangladesh, the denial of political freedom including the right to contest elections by political parties in Maldives, and brutal crackdown on political freedom in Nepal comparatively improved Pakistan’s record on political freedom despite widespread violations of the right to life.

The Supreme Court of Pakistan has been blamed for validating military regimes. Yet, on judiciary and administration of justice, Pakistan scored less negative points because of judicial activism of the High Courts and lower courts against human rights violations by the security forces. ACHR documented 9 cases where bailiffs/ raid commissioners/ lower court judges themselves raided the detention centers and rescued 33 persons from the illegal detention of the law enforcement personnel. These were unprecedented in South Asia.

On NHRIs, Pakistan has been given less negative scores than Bhutan, which has no plan for setting up an NHRC, and Bangladesh which started the process of establishing a National Human Rights Institution in 1999 but failed to establish one. Though a draft National Human Rights Commission Bill was presented in February 2005, the government of Pakistan failed to adopt it till the end of the year.

Though human rights defenders who fought for equality and rights of women were specific targets of the politicians, fundamentalists and armed opposition groups; the repression on human rights defenders remained more precarious in Bhutan (7), Maldives (6), Nepal (5), Bangladesh (4) and India (3) than Pakistan (2).

On press freedom, the government of Pakistan cracked down on the electronic media and journalists through the Pakistan Electronic Media Regulatory Authority (PEMRA). Journalists lived under severe threats. At least two journalists were killed, 1 disappeared after abduction and at least 120 journalists were allegedly attacked by law enforcement agencies, political activists and fundamentalists groups in 2005.¹⁸ Yet, press freedom in Pakistan was assessed as the third best in South Asia after Sri Lanka and India. It was because Bhutan (7) did not have independent press; Bangladesh (6) was the most dangerous place for journalists in South Asia; King Gyanendra of Nepal (5) launched witch-hunting of the journalists and imposed half of all the cases of censorship in the world¹⁹; and there was little respect for the freedom of the press in Maldives (4).

Pakistan was ranked No. 1 violator of women rights. Apart from cultural cruelties, reports of custodial rape were widespread. The application of *Sharia* law and inability of the government to confront cultural cruelties increased violence against women. Under the Offence of Zina (Enforcement of Hudood) Ordinance of 1979, a rape victim must produce at least four adult male Muslim eyewitnesses, who must be truthful persons and abstain from major sins (*kabair*) and have physically seen the act of rape in order to prove her case. If unable to prove rape, a woman can further be prosecuted under the Hudood Ordinance for adultery. About 80% of the women prisoners in the jails were victims of the Hudood Ordinance relating to adultery, rape, kidnapping and abduction.²⁰ Honour killings and rape of women at the order of *jirga* (traditional court) were common. As many as 4383 women were victims of honour killings and *karo kari* from January 2001 to December 2004.²¹ The women have been denied the right to par-

ticipation in public life and many were killed for their attempt to participate in public life.

The situation of children in Pakistan remained more pathetic than in Bhutan, Bangladesh and Maldives. There were consistent reports of sexual abuse, forced marriages of children under traditional custom of '*vani*', corporal punishments in schools and home, illegal detention, torture and maltreatment of children in prisons. According to government estimates, there were 2,200 juvenile prisoners in Pakistani jails as of December 2005.²²

Pakistan continued to remain a dangerous place for the religious minorities. On 17 March 2005, suspected Islamic fundamentalists killed five persons and injured 42 others in a grenade attack on the Protestant International Church at the Diplomatic Enclave in Islamabad.²³ The religious minorities particularly the Hindus and Christians, and Ahmadiya sect of Islam were targeted under the blasphemy laws. At least 60 persons were accused of blasphemy between January and July 2005.²⁴ Of these 60, formal charges were leveled against 53 people, while seven were acquitted.²⁵

Sri Lanka: 6th

Sri Lanka's lower ranking, No. 6th in *SAARC Human Rights Violators Index 2006* has been largely due to the fragile Cease-Fire Agreement (CFA) of 2002 between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) and its most positive record on the status of human rights defenders in 2005.

Though Sri Lanka scored less negative points on political freedoms, it must be noted that political freedoms, especially the right to freedom of association and assembly, were mainly enjoyed by the majority Sinhalese population. There was

little political freedom in the North and the Eastern parts of the country. Both the government and the LTTE violated the CFA. The Tamil armed opposition groups also carried out widespread killings and abductions, thereby negatively impacting political freedom.

Judiciary in Sri Lanka suffered from the lack of independence. The May 2005 judgement of the Supreme Court of Sri Lanka acquitting the four accused who were sentenced to death in the case of massacre of 28 Tamil youth at Bindunuwewa Rehabilitation Centre in October 2000 further established that the Tamil minorities couldn't have equal access to justice in Sri Lanka. Chief Justice S N Silva also put cold water upon the Post-Tsunami Operational Management Structure agreement between the Sri Lankan Government and the LTTE by staying its operation. Sri Lanka also adopted draconian Code of Criminal Procedure (Special Provisions) Act in May 2005 which increased the detention period from the existing 24 hours to 48 hours without producing before the judge.²⁶ Yet, the judiciary and the administration of justice was found to be better than in Bangladesh (4), where judges themselves were insecure from attacks by the Jihadis, Nepal (5), where the government continued to defy the orders of the courts, and without doubt, better than Maldives (6) and Bhutan (7), where the despotic rulers had the final say.

On NHRIs, despite being hamstrung by the failure to establish transparency in its work, lack of powers to enforce its recommendations and inadequate financial resources, the HRCSL was given less negative score than NHRC of Nepal because of King Gyanendra's interference into the appointment of the members and its functioning and the lack of quorum in the Human Rights Commission of Maldives.

The status of the media in Sri Lanka

and Pakistan was almost similar during 2005. At least 2 journalists were killed, at least 6 were physically attacked, at least 4 were detained/arrested and at least 4 journalists received death threats in Sri Lanka. However, Sri Lanka scored less negative points because of the adoption of the amendments in the Pakistan Electronic Media Regulatory Authority (PEMRA) on 16 May 2005 with power given to the authorities to seize equipment, withdraw licences and conduct investigations and empower the police to arrest electronic media journalists without a warrant. The electronic media also came under severe repression from PEMRA in Pakistan.

On violence against women, Sri Lanka was ranked No.3 violator because of the continued torture and rape of ethnic Tamil women by the security forces, though the number of cases were less than previous year because of the fragile cease-fire.

The situation of children in Sri Lanka was as precarious as in Nepal with reports of child recruitment by the armed opposition groups during 2005. However, as children in Nepal became more victims of extrajudicial killings both by the security forces and the Maoists as well as abduction, torture and denial of the right to education, Sri Lanka has been ranked No.2 violator of the rights of the child.

India: 7th

India has been given the lowest ranking in the *SAARC Human Rights Violators Index 2006*. Undoubtedly, cases reported from India were more voluminous than other SAARC countries. But, India has over one billion (1000 millions) populations in comparison to 152.6 million in Bangladesh according to 2001 census,²⁷ 132 million in Pakistan according to 1998 census,²⁸ 22.73 million in Nepal according to 2001 census,²⁹ 18.73 million in Sri

Lanka according to 2001 census,³⁰ 0.67 million in Bhutan according to 2005 census,³¹ and 0.28 million in Maldives according to 2004 census.³²

By far, India provided more political freedoms than other SAARC countries. However, it failed to ensure political freedom of the vulnerable groups. About a million people, mainly Sikhs, who migrated from Pakistan to Jammu and Kashmir in 1947 have been denied the right to vote until today. The government of India failed to ensure implementation of the Supreme Court judgement pertaining to 65,000 Chakmas and Hajongs who migrated to northeast Indian state of Arunachal Pradesh in 1964. The Election Commission of India also failed to ensure implementation of its directions pursuant to the Delhi High Court judgement on the enrollment of about 20,000 Chakma and Hajong citizens into the electoral rolls. The Dalits continued to face discrimination while exercising their political freedom – from casting of votes to denial of privileges if they were elected.

Both the security forces and the armed opposition groups were responsible for widespread violations of the right to life. The National Human Rights Commission of India received a total of 1493 cases of custodial deaths during 2004-2005,³³ and 355 civilians were killed in police firing during 2005.³⁴ During 2005, a total of 1466 civilians were reportedly killed by the armed opposition groups, including 557 in Jammu and Kashmir, 393 in the North East and 516 in the Naxalite affected States.³⁵

India's judiciary was more independent than its counterparts in SAARC and the Supreme Court has been accused of encroaching upon the jurisdiction of the executive because of its activism. Despite all the positive aspects of the Indian judiciary, judicial delay plagued the administration of justice. As on 31 December 2005,

34,481 cases were pending with the Supreme Court, 35,21,283 cases with the High Courts, and 2,56,54,251 cases with the subordinate courts.³⁶ There were 4 vacancies in the Supreme Court and as many as 141 vacancies in the 21 High Courts in the country.³⁷ Due to mounting pending cases and delay in trials, many under-trial prisoners spent half of their lives in jail without trial. In July 2005, an under-trial identified as Machang Lalung was released from jail in Assam at the order of the NHRC after 54 years of detention without trial.³⁸ Yet, judiciary and administration of justice in India was considered better, among others, because of the fast track courts, Supreme Court's order in August 2005 for judicial impact assessment for the new laws to be brought by the parliament, classification of the pending cases for speedy trial etc.

The National Human Rights Commission despite its systematic, institutional and operational flaws remained more effective than its counterparts in South Asia. It disposed off 85,661 cases between 1 April 2004 and 31 March 2005 while 49,548 cases were pending before the Commission as on 31 March 2005.³⁹

Human rights defenders did face challenges especially from the vigilante groups especially in the Naxalite affected areas.

The press freedom was more enjoyed in India than other countries in South Asia. In India, there was no government policy *per se* to repress press freedom like in Bangladesh, Bhutan, Maldives, Nepal and Pakistan.

Minorities and vulnerable groups like the Dalits and indigenous/tribal peoples continued to face gross human rights violations. The 2005 Annual Report of the National Crime Records Bureau (NCRB) reported a total of 26,127 cases against the Scheduled Castes (SCs) and a total of 5,713 cases against the Scheduled Tribes (STs). While the average conviction rate

for the crimes against the SCs was only 29.8%, the average conviction rate for the crimes against the STs was only 24.5%. About 55.1% of the total displaced persons in the country as a result of development projects were tribals though they constituted only 8.2% of the total population of India according to the 2001 census.⁴⁰ Yet, India's scored less negative points on the Dalits and indigenous/ tribal peoples largely due to the affirmative action programmes and legal protections available, though their implementation remained wanting. Other South Asian countries did not even have affirmative action programmes or legal protections in place.

The NCRB also recorded a total of 1,55,553 cases of violence against women (VAW) including 18,359 cases of rape involving 18,376 victims, 34,175 cases of molestation, 15,750 cases of kidnapping, 6,787 cases of dowry deaths and 58,319 cases of torture in 2005.⁴¹ Despite high rate of violence against women, only 24 out of

28 states in India have established State Commission for Women by 2005. A total of 1,172 cases of rape against the Scheduled Caste women and a total of 640 cases of rape of the Scheduled Tribe women were also recorded in 2005.⁴² A large number of cases of violence against women were perpetrated by the law enforcement personnel. Yet, India scored less negative points because of the existence of legal and quasi-legal mechanisms and the fact that violence against women was not as systemic as in Pakistan.

The condition of children in India was not as good as in Bhutan or Maldives but children were not as vulnerable as in Nepal or Sri Lanka.

Ultimately, it is the activism of judiciary and quasi-judicial institutions like the National Human Rights Commission, despite having flaws, which were instrumental for more enjoyment of human rights and fundamental freedoms in India. ■

CHAPTER 2

Bangladesh

I. Ranking in Human Rights Violators Index: 1st

Ruled by the Bangladesh Nationalist Party (BNP), Jamaat-e-Islami, Islami Oikkyo Jote and Jatiya Party (M) coalition, Bangladesh has been ranked No.1 violator of human rights in SAARC. Despite SAARC region having a quasi-military dictatorship in Pakistan, a Royal coup in Nepal, dictatorship of President Maumoon Abdul Gayoom in Maldives and the absolute monarchy of King Jigme Singye Wangchuk in Bhutan, Bangladesh has been ranked No.1 violator for gross human rights violations.

In 2005, Bangladesh had the most organised political killings and the highest number of “peacetime” extrajudicial executions in South Asia without any active insurgency. The government also failed to protect the judges from the Jihadis. Bangladesh was the most dangerous place for the journalists in South Asia while it also remained the only country that continued to practise population transfer policy to make the indigenous Jumma peoples a minority in the Chittagong Hill Tracts and annihilate their cultural identity.

II. Political Freedom

Apart from the use of disproportionate force against political demonstrators, Bangladesh had the highest number of political killings in South Asia in 2005. According to Odhikar, an NGO working in human rights, 310 people were killed, 8,979 wounded, 1216 arrested and 93

abducted in political violence.¹ The opposition Awami League (AL) boycotted the parliamentary sessions from 31 January 2005 in protest against the Speaker’s refusal of their demand for adjourning the sitting after the adoption of an obituary reference on lawmaker and former Finance Minister Shah AMS Kibria who was killed with four other AL activists in a grenade attack on an AL rally by the Bangladesh National Party (BNP) activists at Boidder Bazaar in Habiganj on 27 January 2005.²

The assassination of Mr Kibria demonstrated the potent risks faced by the opposition parties, their leaders and cadres. There was little improvement from 2004 when AL lawmaker Ahsanullah Master was assassinated at Tongi in broad daylight on 7 May 2004³, followed by bomb attack on Sheikh Hasina, AL chief and leader of the Opposition, at a rally on 21 August 2004 and bomb attack on Mohila Awami League meeting at Sylhet on 24 December 2004 in which AL district president Syeda Zebunnesa Haque and six others were injured.⁴

The attacks against the opposition political activists were systematic and took place throughout 2005. While Law Affairs Secretary of Dhaka City Awami League, Advocate Khorshed Alam Bachchu was gunned down by unknown assailants at Tejgaon in Dhaka on 17 May 2005,⁵ Sylhet City Mayor Badruddin Ahmed Kamran of AL luckily escaped a grenade attack during a public function in Sylhet on 2 December 2005.⁶

The involvement of Bangladesh National Party activists was clear. The

Criminal Investigation Department (CID) indicted 10 BNP activists in its chargesheet submitted in March 2005 and identified Habiganj district BNP Vice-president AKM Abdul Quaiyum as the mastermind of the grenade attack in Habiganj on 27 January 2005 that killed AL leader Shah AMS Kibria and four others.⁷

On 16 April 2005, a speedy trial tribunal court sentenced 22 people to death including Nurul Islam Sarker, a leader of Jatiyatabadi Juba Dal, the youth wing of BNP, and 6 others to life imprisonment in the high profile murder of Awami League lawmaker Ahsanullah Master at Tongi in May 2004.⁸

The Rapid Action Battalion (RAB) personnel also reportedly targeted the AL leaders. On 3 May 2005, RAB personnel killed AL leader of Meghna upazila, Mofizul Islam alias Dudh Mian in an alleged “crossfire” at Chondigaon, Dhaka.⁹ The deceased’s wife Kawsari Islam alleged that he was extrajudicially executed after being picked up from the Dhaka Judge’s Court premises on 3 May 2005. On 15 May 2005, the High Court issued an order to the government to explain as to why killing of Mofizul Islam alias Dudh Mian by the security forces should not be construed as illegal.¹⁰

On 31 May 2005, the RAB personnel killed Awami Juba League activist Suman Ahmed, son of Abdul Hakim, in an alleged crossfire at Rampura.¹¹ On 6 June 2005, Suman’s mother Amela Khatun filed a petition with the chief metropolitan magistrate’s court against the Housing and Public Works minister, Mirza Abbas, the State Minister for Home Affairs, Lutfozzaman Babar, the Home Secretary, Mohammad Safar Raz Hossain and the RAB Director General, Abdul Aziz Sarkar in connection with the killing of her son. The metropolitan magistrate ordered an inquiry into the killing.¹²

Indigenous Jumma peoples of the Chittagong Hill Tracts (CHTs) continued to be denied political freedom. Asian Centre for Human Rights was in possession of a list of 63 indigenous Jumma political prisoners, belonging to the United Peoples Democratic Front, who were detained at the end of 2005 under various false charges. Of these, 17 persons were being detained at Khagrachari Jail, 9 persons at Rangamati Jail and 37 persons at Chittagong Jail.

III. Human rights violations by the security forces

In 2005, Bangladesh had the highest number of “peacetime” extrajudicial executions in South Asia without any active armed opposition movement. Bangladesh is the only country which has formed a special force, the Rapid Action Battalion, with the power to execute people in the name of curbing crimes. While extrajudicial executions under any circumstances, including armed conflict situations, cannot be justified, the RAB and other security forces were responsible for the killings of 396 persons in custody including 340 persons in alleged “crossfire”, an euphemistic term for extrajudicial executions.¹³ Of the total 396 persons, 111 persons died at the hands of the RAB, while 258 persons died in police custody and 4 in the custody of Cobra and Cheetah, special crime busting units of police, and 23 in the custody of other law enforcement agencies.¹⁴

Bangladeshi security forces were also responsible for other gross human rights violations including torture and rape. Replying to an unstarred question, State Minister for Home Affairs, Lutfozzaman Babar informed the Parliament on 28 June 2005 that 131 policemen were arrested on various charges, including extortion, since the BNP-led government assumed power

in October 2001. The minister claimed that 23 of the arrested police personnel were sentenced to various terms of imprisonment and fined.¹⁵ However, these claims could not be independently verified.

The security forces enjoyed virtual impunity for human rights violations. Often, departmental ‘punishment’ in case of RAB personnel meant mere transfer of the accused security personnel to their parent organisations.¹⁶ In the case of torture of Abu Bakar Sultan Bidhan, executive director of Harness Level Industries Ltd, on 15 July 2005 by RAB personnel from Uttara in Dhaka for protesting their assault on an elderly man,¹⁷ an inquiry committee held 13 RAB personnel, led by ASP Ashraf Islam, responsible for torture but all the action taken was to merely sent them back to their parent departments with recommendations for departmental action.¹⁸ It was not known what actions were taken by the parent departments.

a. Right to life

Extrajudicial executions were rampant. On 1 January 2005 at around 4 am, one Manik alias Yunus was killed in an alleged ‘crossfire’ between the police and his alleged associates at Balurmath area in Dhaka. Police sent his body to Dhaka Medical College and Hospital for autopsy. The body reportedly bore four bullets in the chest, back and head.¹⁹ In a petition filed before the Chief Metropolitan Magistrate on 19 May 2005, victim’s mother, Mosammat Achhiya Begum alleged that Yunus was picked up by the police from the residence of her brother at Baithakhali in Rampura at about 6-00 pm on 31 December 2004. The police personnel demanded Rs 5 lakh from her for the release of her son, and when refused, they tortured and later killed him in a staged encounter.²⁰

On the night of 8 May 2005, one

Mohammad Sohel was reportedly shot dead by a police patrol team from point blank range after arresting him on accusation of being a mugger at Agargaon in Dhaka. The victim was going to Monipuripara in a rickshaw. According to the rickshaw-puller who was carrying the victim, some muggers had snatched a mobile phone from the victim. But instead of going after the real muggers, the police charged the victim of being a member of the gang and killed him in custody despite pleading by the rickshaw-puller that his passenger was not involved in either mugging or bombing.²¹ On 14 May 2005, Sohel’s father, Shamsul Haq Talukder filed a case against 7 policemen, including the officer-in-charge of Kafrul Police Station with the Court of Chief Metropolitan Magistrate, Dhaka.²²

On 11 May 2005, RAB claimed that Nazmul Islam Bhuiyan, alias Nazu, resident of Malita village under Palash Police Station in Narsingdi district, was killed in an encounter at the BSCIC industrial estate at Kararchar under Shibpur police station in the district when he was about to commit a dacoity with several other armed accomplices. Eyewitnesses, however, stated Nazmul was talking to two motorbikers – Dulal and Sohel – when a few RAB personnel came there in plainclothes. Failing to recognise the RAB personnel, Nazmul engaged into an altercation with them over some matter. The RAB personnel then put on their RAB jackets and identified themselves to the youths. Realizing the mistake, Nazmul got down on his knees and begged the RAB men for his life. The RAB personnel then held the three youths and dragged Nazmul to a nearby crop field. “The RAB men first fired into the air and then shot Nazmul pinning him to the ground with a foot on his chest,” a witness told *The Daily Star*. For the next couple of days, the RAB personnel randomly

patrolled the area, threatening the residents not to tell what they had seen or heard.²³

On 9 May 2005, High Court ordered a probe headed by the District Magistrate of Khustia, Jamal A Naser Choudhury into “crossfire” death²⁴ of Enamul Islam Ena, the publicity secretary of the Kushtia district motor workers union on 16 April 2005.²⁵ On 11 May 2005, the government reportedly decided to conduct executive enquiry into all deaths in “crossfire” in which RAB personnel were involved.²⁶ At the end of 2005, the inquiry could not be completed.

b. Torture

Arbitrary arrest and detention allowed the security forces to perpetrate torture mainly to extract confessions, extort money and settle personal or political rivalry.

Many cases of torture were confirmed by medical examinations. On 6 March 2005, Delwar Hossain, owner of a phone-fax shop at Mograppa under Sonargaon Police Station of Narayanganj district, who was arrested by RAB on 20 February 2005 died at Dhaka Medical College Hospital. The hospital doctors reportedly found marks of bruises on Delwar’s head, back and legs.²⁷

The doctors at the Rajshahi Medical College Hospital where Selim Sarder, general secretary of Jhalmalia Bazar Businessmen’s Association was admitted on 31 May 2005, reportedly found Selim’s toes, knees, fingers of right hand critically fractured and mussels in the back and lower part of the body mangled in several areas. After his arrest by the RAB, Sarder was allegedly tortured, hit on bone-joints with hockey sticks and batons by five policemen, including Puthia Circle Assistant Superintendent of Police, Alamgir Kabir.²⁸

Despite obtaining a bail from the

Metropolitan Magistrate’s court in a police assault case, Haji Ashraf Ahmed of Agamashi Lane under Kotwali Police station in Dhaka was arrested on the night of 10 April 2005 and severely tortured. Ashraf had to be admitted to the Dhaka Medical College Hospital with severe injuries.²⁹

During cordon and search operations in the Chittagong Hill Tracts, torture was routinely perpetrated. On 23 January 2005, army personnel led by Captain Mehedi conducted operation at Ugolchari and its nearby villages and arrested eight innocent Jumma villagers. One of the victims, Sumentu Chakma had to be admitted to Baghaichari upazila, sub-district, hospital because of torture and was later transferred to Rangamati general hospital. While five were released, Shanti Shankar Chakma alias Chipan, Tunya Chakma and Bhupati Chakma were handed over to Baghaichari police on 24 January 2005.³⁰

c. Arbitrary arrest under Section 54

A large number of indigenous Jummas were arbitrarily arrested under Section 54 of Bangladesh Penal Code, which empowers the police to arrest anyone without an arrest warrant.

The Bangladesh security forces have been acting as law unto themselves across the Chittagong Hill Tracts. Arbitrary arrests without producing the arrested persons before the court within 24 hours as required under the Constitution of Bangladesh and torture in custody were common practice.

On 26 January 2005, Uttam Mani Chakma, Suren Cakma and three other indigenous Jumma passengers were arrested at Burighat bazar under Naniarchar upazila in Rangamati district by the Bangladesh army personnel. They were tortured inhumanly. On 27 January 2005, Uttam Mani Chakma was handed over to

Kotowali police station under Rangamati district and arrested under Section 54 of the Bangladesh Criminal Procedure Code. The rest were released.³¹

On 21 July 2005, an activist of the United People's Democratic Front, Anuk Chakma was arrested by police from UPDF's Lakshmichari Unit office under Khagrachari district under section 54 of the Bangladesh Penal Code and was transferred to Khagrachari District jail. Later he was shown arrested in connection with an extortion case (case No. 2. GR 164/2005) under sections 323, 379, and 506 of the Bangladesh Penal Code filed on 18 July 2005 with Lakshmichari police station by one Yusuf Driver, an illegal plain settler.³²

On 12 November 2005, Bangladesh Rifles (BDR) personnel from Rajanagar zone and Kathaltali camp of Bagachatar under Longadu upazila arrested three innocent Jumma villagers - Bimal Kanti Karbari, Kala Kachu Chakma and Surja Kumar Chakma during a search operation at Naluya village under Longadu upazila. The BDR personnel also picked up Diganta Chakma alias Picchu and Shukramani Chakma from roadside while returning to the camp along with the arrestees. Later, the BDR personnel released all of them except Surja Kumar Chakma and Shukramani Chakma, who were handed over to the Longadu police station after fabricating false cases against them.³³

d. Arrest under false charges for quick promotion

In their bid for quick promotions, in the Chittagong Hill Tracts, the security forces had been arresting innocent persons and depicting them as hardcore anti-nationals for quick promotion.

On 15 February 2005, the army personnel led by Lt. Colonel Abdul Rob of Baghaihat zone under 203 Khagrachari

brigade arrested six innocent Jummas identified as Kulin Chakma, Buddha Dhan Chakma, Sonaiya Chakma, Nidhu Chakma, Shankar Chakma and Sneha Chakma when they were playing carom at a shop at Hajachara-Baghaihat area of Baghaihari upazila under Rangamati district. Under brutal torture, they had to confess that they were tax collectors of Jana Samhati Samiti. On 16 February 2005, the army led by Major Sourab handed over Kulin Chakma and Buddha Dhan Chakma to Baghaihari police station along with a country-made gun while the others were released.³⁴

On 29 August 2005 at 2.00 a.m., troops led by Lt Colonel Abdul Rouf Khan of 20 Bengal from Baghaihari army zone conducted search operation at B-Block village of Bongaltoli under Baghaihari upazila in Rangamati district. The army personnel conducted thorough search of the entire house of Mrs Laxmi Rani Chakma, wife of late Manindra Chakma alias Tarzen, including the roof of the house. But they did not recover any firearm. About 15-20 minutes later, another group of army personnel again led by Lt Colonel Abdul Rouf Khan came to the house and began searching the house. During the search, a soldier climbed up on the roof and declared to have found out an AK-47 rifle and 15 rounds of bullets from the roof! Following the recovery of firearms, the army arrested six Jumma peoples and implicated them in a false case.³⁵

On 14 November 2005, four PCJSS members identified as Sushil Kumar Chakma alias Sohel, s/o Shiddadhan Chakma, Gajendra Lal Chakma, s/o late Ramani Mohan Chakma, Shanti Chakma, s/o late Nalini Kumar Chakma, Ujjal Chakma alias Madbhadi, s/o Khagendra Lal Chakma were arrested from their houses in Panchari by the troops from Panchari army zone led by Major Nasim. At the

zone headquarters, the army personnel forced them to pose before the camera with country-made guns and then handed them over to Panchari police station with these weapons after brutally torturing them. A false case under the Arms Act was filed against them.³⁶

On 17 November 2005, troops from Baghaichari army Zone led by Mohammad Mojib, second-in-command of the camp arrested Gyana Ratan Chakma, Michael Chakma, s/o Pattor Chakma and Jagadish Dewan, s/o Ranjit Dewan after raiding Gangaram Mukh village under Sajek Union in Rangamati district. The army handed them over to the police claiming that they had recovered firearms including one pistol from the possession of Gyana Ratan Chakma. A case against them was lodged under the Arms Act.³⁷

On 4 December 2005, Super Jyoti Chakma, Organising Secretary of the Chittagong Hill Tracts Democratic Youth Forum, was arrested by the Bangladesh army personnel in Lakshmichari of Khagrachari district. He was taken to the army zone headquarters where he was forced to pose before the camera with a gun in his hands. Later, he was handed over to the police and a false extortion case was filed against him.³⁸ He was released on bail on 5 December 2005.³⁹

IV. Judiciary and administration of justice

Judiciary in Bangladesh suffers from lack of separation from the executive. The Supreme Court in its 12-point directives of 2 December 1999 ordered the government to make the judiciary independent of the executive. While the AL government of Sheikh Hasina (1996-2001) took seven extensions, the caretaker government of Justice Latifur Rahman took three extensions, and Khaleda Zia's government

sought time extension for the ninth time. On 16 April 2005, Supreme Court gave six months' time to the government to implement its directive.⁴⁰ On 20 October 2005, Supreme Court decided to charge the government with contempt of court.⁴¹

a. Attacks on judges

The government failed to protect the judges from the attacks of the alleged Islamic terrorists who sought to impose "Koranic Laws" against the man made laws. At least two judges - Sohel Ahmed of Sadar Upazila Court and Jagannath Pary of Nalchhiti Upazila Court were killed in 2005.⁴² On 18 October 2005, Biplob Goswami, speedy trial tribunal judge of the Sylhet division came under bomb attack at his residence at Kumarpara in Sylhet but he luckily escaped unhurt as the assailant missed the target.⁴³

Many were injured in the attacks on the court premises by the Jihadis. Two persons were killed when the Jihadis carried out bombings in the courtrooms in three districts of Laxmipur, Chandpur and Chittagong on 3 October 2005⁴⁴ and nine persons were killed when two suicide bombers blew themselves up within the court premises of Chittagong and Ghazipur on 29 November 2005. About 100 others were injured.⁴⁵

On 30 November 2005, the High Court ordered the government to submit fortnightly reports on the progress in the investigation of bomb attacks on different court-houses since 17 August 2005.⁴⁶ Instead of cooperating, the government moved the Supreme Court against the High Court order.⁴⁷

b. Judicial delay

Judicial delay plagued the administration of justice in Bangladesh. In April 2002, a 11-member high-powered monitoring cell headed by State Minister for Home

Affairs Lutfuzzaman Babar was formed to speed up investigation of the sensational cases and expedite trial and punishment of the culprits.⁴⁸

Yet, in some of the most heinous cases of rape, trial did not take place. As on 29 March 2005, no trial took place in the rape and murder case of Zahida Khatun, a college girl, who was raped and murdered in broad daylight on 5 July 2002 in Magura by a gang allegedly led by one Mamun of Dariapur. In August 2002, the police listed the case as “sensational” and handed over to the Detective Branch (DB) police for investigation. In April 2003, the DB submitted two charge sheets but the case was transferred to the Criminal Investigation Department (CID) in July 2003. The CID was asked to submit a fresh charge sheet. In March 2005, two CID inspectors were transferred before they could submit any charge sheet. A total of six Investigation Officers were changed, but no charge-sheet was submitted to start the trial of the case.⁴⁹

In another case, on 4 January 2005, a magistrate court ordered a CID probe into a gang-rape case that took place 17 years ago in Tanore. Four people, including present BNP vice president of Tanore and Chanduria Union Parishad Chairman, Mofiz Uddin, his accomplices Omar and Yaad and vice chairman of Soronjai, Mozid Mollah, had allegedly raped a 19-year-old woman in Tanore in April 1988. On 16 December 2004, two accused were arrested. But prime accused Mofiz Uddin was still on the run from police while his men were pressing the victim’s family to withdraw the case.⁵⁰

As of July 2005, the Speedy Trial Tribunals disposed of a total of 6,133 cases after their formation in October 2002.⁵¹ These were miniscule considering that about 5,50,000 cases have pending before the courts across the country.⁵²

V. Status of National Human Rights Institutions

In 1996, then Awami League government started the process of establishing a National Human Rights Institution. Three years later, the Bangladesh National Human Rights Commission Bill, 1999 was drafted but the Awami League government did not show any political will to establish the NHRC till it lost the general elections in October 2001.

When the BNP led four-party alliance came to power in October 2001, it decided to continue the process. On 10 December 2001, a Cabinet Committee on Human Rights Commission was formed under the chairmanship of Law Minister Barrister Moudud Ahmed to examine the prospect of establishing a NHRI. The Cabinet decided to re-write the Draft Bill of the AL government.⁵³ On 22 January 2004, the Cabinet Committee on Human Rights Commission approved the draft bill and sent it to the cabinet division for approval. By the end of 2005, the Bill was not approved by the Cabinet.

VI. Repression on human rights defenders

Human rights defenders, especially the minority and indigenous rights activists, were attacked by the security forces, political activists and fundamentalists. On 5 December 2005, an indigenous rights activist, Joshi Chakma working with Bangladesh Rural Advancement Committee (BRAC) was killed by a group of illegal plain settlers in Dighinala under Khagrachari district of the Chittagong Hill Tracts. The illegal settlers accosted her while she was on her way to work at a place called West Kanthal Toli and stabbed her with a sharp knife. She was seven-month pregnant.⁵⁴ No one was arrested.

Earlier, on the midnight of 28 July 2005, two employees identified as Tapan Kumar Roy and Liplal Marandi of an international NGO, the Christian Life Bangladesh, were murdered in Boalmari upazila of Faridpur district. They were reportedly threatened earlier for teaching about The Christ.⁵⁵

BRAC was also targeted by the Jihadis. On the night of 15 February 2005, BRAC's office in Porsha upazila in Naogaon district was bombed by the alleged Jihadis. Four BRAC employees - Area Manager Abdur Rashid, Programme Officer Wahiduzzaman, and employees Enamul Haq and Rezaul Karim were reportedly critically injured in the bomb attack. Earlier on 13 February 2005, the BRAC's office in Kalai upazila in Jaipurhat came under similar bomb attack.⁵⁶

In the Chittagong Hill Tracts, human rights defenders faced continued repression even for attending UN meetings. On 31 August 2005, the Parliamentary Standing Committee on the CHT Affairs Ministry threatened to take legal action against indigenous activists from the CHTs - Mangal Kumar Chakma and Mrinal Kanti Tripura of the PCJSS, Albert Mankin and Ina Hume for demanding implementation of the CHTs Accord of 1997 at the 4th session of the United Nations Permanent Forum on Indigenous Issues held in New York in May 2005.

Indigenous Jumma organisations were also forced to cancel their meeting on land rights on 23 November 2005 following a directive from the Prime Minister's Office (PMO) not to allow the meeting.⁵⁷

Earlier, on 5 August 2005, Advocate Rabindra Ghosh, President, Human Rights Congress of Bangladesh Minorities and Professor Ashok Taru Saha, Vice President, HRCBM-Dhaka, were attacked inside the "Agnibina Express" train compartment by

alleged BNP activists. They were returning from Jamalpur after completing an investigation involving torture upon Ahmadiya community under Sarishabari Police Station of Jamalpur District.⁵⁸

On 3 July 2005, the executive director of *Ain O Salish Kendra*, Sultana Kamal, was threatened by an anonymous caller hours after the organization held the publication ceremony of a book titled '*RAB: Uprooting Terrorism or Terrorism by the State*'. Ms Kamal was threatened not to write anything against the RAB.⁵⁹ Thereafter many posters were put up at different parts of Dhaka criticizing the *Ain o Salish Kendra*.⁶⁰

VII. Freedom of the press

In South Asia, journalists were the most vulnerable in Bangladesh. They came under attacks from all and sundry – the armed groups belonging to the Islamic jihadis, State agencies, judiciary, political parties and their cadres. At least two journalists were killed, 142 injured, 11 arrested, 4 abducted, 53 subjected to harassment, 249 received threats while 15 came under attacks and cases were filed against 130 journalists in 2005.⁶¹

Though Bangladesh has a number of laws restricting press freedom such as the Printing Presses and Publications (Declaration and Registration) Act, 1973, the Newsprint Control Order of 1974, Section 505(A) of the Bangladesh Penal Code,⁶² Section 99(A) of the Code of Criminal Procedure and Special Powers Act of 1974, the demand for further stringent measures was echoed by the government, the Parliament and the press authorities of the government. While Speaker of the parliament Jamir Uddin Sircar sought a new device to curtail freedom of press on 6 July 2005,⁶³ in its annual report 2004 submitted before the parliament on 23

November 2005, Chairman of Press Council Justice Abu Syeed Ahmad suggested addition of 'punitive provision' in the Press Council Act.⁶⁴

On 21 March 2005, the High Court convicted editors, publishers and reporters of two national dailies *Prothom Alo* and *Bhorer Kagoj* for publishing an article in October 2004 alleging that additional judge of the High Court Faisal Mahmud Fayeze doctored his LLB result. While Samaresh Baidya, senior reporter for *Bhorer Kagoj*, was sentenced to two months rigorous imprisonment and a fine of 2,000 Taka, publisher of *Bhorer Kagoj*, Saber Hossain Chowdhury and former editor Abed Khan, publisher of *Prothom Alo* Mahfuz Anam and Editor of *Prothom Alo*, Matiur Rahman, and reporters Ekramul Haque Bulbul and Masud Milad were fined 1,000 Taka each.⁶⁵

Judges were allegedly quick to issue arrest warrants against the journalists in the very first hearing of defamation suits. On 7 July 2005, the court issued arrest warrants against editor of *Prothom Alo*, Motiur Rahman and editor of *Janakantha*, AK Khan Masud after BNP lawmaker Nasiruddin Ahmed Pintu filed two separate defamation cases against them.⁶⁶ On 20 July 2005, Satkhira district BNP leader and Alipur Union Parishad Chairman Abdur Rouf filed similar defamation case against Publisher Al-Tamash Kabir, Acting Editor Bazlur Rahman and Staff Reporter Nazmul Haq Bellal of *Dainik Sangbad*.⁶⁷

The ruling BNP and its student wing, Jatiyatabadi Chattra Dal were responsible for most of the physical attacks on the media persons. Those who were reportedly beaten up by the BNP activists are Al-Mamun Sagar, correspondent of the national daily *Jugantar* in Kushtia district on 23 February 2005,⁶⁸ Nikhil Chatterjee, correspondent of *New Age* at Patuakhali in Barisal district on 24 June 2005,⁶⁹ Rafiqul

Islam, Correspondent of Bangla daily *Amar Desh* at Durgapur Press club on 6 July 2005,⁷⁰ Monjur Morshed, correspondent of the daily *Jugantar* on 9 August 2005,⁷¹ Anwar Hossain, correspondent of daily *Khabarpatra* at Sakal Bazaar in Jamalpur district on 17 September 2005,⁷² Badiuzzaman Mukul, a correspondent of the daily *Karotoa*, at Gabtali upazila on 20 October 2005⁷³ and Tapan Biswas, staff reporter of the daily *Janakantha* who was allegedly beaten up in the Secretariat of State Minister for Housing and Public Works, Alamgir Kabir on 20 November 2005.⁷⁴

The security forces too attacked the journalists especially for taking photos of their illegal activities. The journalists who were beaten up by the security forces included SM Gorky, chief photo journalist of daily *Jugantar* who was beaten by RAB personnel on 14 March 2005 for taking snaps of beating up three youths on the street near Baitul Mukarram National Mosque,⁷⁵ photo journalists of national dailies including Sheikh Enamul Kabir and Sheikh Mamun of *Janakantha*, Anisur Rahman of *The Daily Star*, Wahid Hossain Raja of *Bhorer Kagoj*, Mir Hossain Miru of *Jugantar*, Masud Parvez Milon of *Financial Express*, AKM Musa of *Sangram*, Shariful Islam Lenin of *Desh Bangla*, MD Sharif of *Naya Diganta*, Hasanuzzaman Tapan of *Janakantha* and Mizanur Rahman Khan of *The Independent* who were beaten up by National Security Intelligence personnel on 7 July 2005,⁷⁶ Ehsan Jewel, Chittagong University correspondent of *Janakantha*, who was beaten up by Officer-in-Charge of Hathazari Police Station Mahfuz Alam on 10 August 2005⁷⁷ and Subir Roy, the Khulna-based correspondent of news agency *BDNEWS* and a staff reporter of local daily *Purbanchal*, who was beaten up by three constables Chandan, Babul and

Farukh of the Kotwali police station on 27 September 2005.⁷⁸

The Jihadis and Maoists known as Purba Banglar Communist Party also attacked the journalists.

On 11 February 2005, Bureau Chief of daily *Sangram* in Khulna Shaikh Belaluddin died following injuries sustained in a bomb attack at the Khulna Press Club by the outlawed Purbo Banglar Communist Party (Maoists) on 5 February 2005.⁷⁹

On 17 November 2005, Gautam Das, district bureau chief of the *Daily Shamokal* was killed in an attack by unidentified gunmen at his office in Faridpur.⁸⁰

There were several failed attempts on the lives of journalists. On 4 January 2005, PBCP-Maoist cadres⁸¹ threw a homemade bomb at Khulna Bureau Chief of daily *Jugantor*, Dip Azad in Khulna but he escaped unhurt, as the bomb thrown at him did not explode.⁸² In another incident on 28 June 2005, Shafiqul Islam, Bagmara correspondent of the daily *Janakantha*, was grievously injured when JMB cadres attacked him with scythe and bamboo.⁸³

Not a single incident of atrocities against journalists has been properly investigated. The government failed to make public the probe report on police atrocities on journalists at the National Press Club in Dhaka on 21 June 1992.⁸⁴

VIII. Violations of the rights of indigenous peoples of the Chittagong Hill Tracts

Indigenous Jumma peoples in the Chittagong Hill Tracts continued to face serious human rights violations due to the non-implementation of the CHTs Accord of 1997. As stated above, at the end of 2005, at least 63 Jumma political prisoners were being detained under false charges.

The security force were given impunity for human rights violations in the CHTs and the government of Bangladesh failed to de-militarize the CHTs as per the CHTs Accord of 1997. The CHTs continued to remain one of the most militarised zones in the world. Approximately one-third of the Bangladesh military had been deployed in the CHTs and the government reportedly spends an estimated US\$125 million per year for the continued presence of the military in the region.⁸⁵

During 2005, the government of Bangladesh undertook massive militarisation programme to provide security to the plain settlers and to facilitate population transfer into the CHTs. The government continued to take away the lands of indigenous peoples for militarisation. In 2005, government of Bangladesh undertook the process to seize a total of 66,774 acres of land for military purposes, including 9,650 acres of land in Bandarban for the expansion of Ruma military cantonment, 11,446.24 acres of land in Sualok Union of Bandarban for establishing an Artillery Training Centre; 450 acres of land in Pujgang under Panchari Thana of Khagrachari district for construction of an army cantonment; 45 acres of land in Babuchara under Dighinala Thana in Khagrachari district; about 183 acres of land in Balaghata in Bandarban district; 19,000 acres of land in Bandarban for the expansion of an Artillery Training centre and 26,000 acres of land in Bandarban for establishing Air Force Training Centre.⁸⁶

The government also issued notices to acquire a total of 5,600 acres of land in Chimbuk area of Bandarban district for constructing an Eco Park and 5,500 acres of land in Sangu Mouza of Bandarban district. In addition, indigenous peoples have been intimidated to lease away 40,071 acres of land in Lama, Nikky Chari,

Alikadam and Bandarban Sadar to private individuals for rubber and tea plantation.⁸⁷

The Land Commission established under the CHTs Accord of 1997 to resolve the land disputes met only once in eight and half years on 8 June 2005 after the signing of the Accord.⁸⁸

Bangladesh also continued the policy of ethnic cleansing of indigenous Jumma peoples by transplanting illegal settlers into the CHTs. By 2005, there were at least 50,000 illegal settlers living in the cluster-villages in the three hill districts of Rangamati, Bandarban and Khagrachari. The illegal plain settlers were being kept in the cluster villages until they could forcibly occupy the lands of the indigenous Jumma peoples and permanently settle down. The government provides 86 kilogram of rice to per settler family per month, in addition to other amenities to sustain the illegal settlers and the conflict with local indigenous peoples.⁸⁹

In June 2005, the government further decided to provide “free food rations” to 28,000 more illegal plain settlers in the Chittagong Hill Tracts (CHTs)⁹⁰ who were brought under the government sponsored transmigration programmes from 1978 to 1983.

IX. Violations of the rights of minorities

Islam is the state religion of Bangladesh. Though the constitution of Bangladesh guarantees freedom of religion under Article 2A and Article 41, in reality, the religious minorities who constitute about 12 per cent of Bangladesh’s 152.6 million populations,⁹¹ have been facing severe repression. According to a whitepaper on the repression of minorities in Bangladesh released on 10 October 2005 by the *Ekatturer Ghatak Dalal Nirmul Committee* (the Committee for

Annihilation of Collaborators of 1971), more than 10,000 incidents of communal violence including murder, rape, torture, destruction of places of worship and forced conversion into Islam have taken place against the minorities since 2001.⁹²

a. Violence against Ahmadiyas

Ahmadiyas faced physical threats from activists of International Khatme Nabuat Movement (IKNM) which intensified after the government failed to respect the High Court’s order of 21 December 2004 temporarily suspending the ban imposed by the government in January 2004 on all publications of the Ahmadiya community, including the Koran and any translation or interpretation of it.⁹³ Despite announcement made by IKNM activists on 10 April 2005 that they would attack the Ahmadiyas on 17 April 2005, government failed to take any measure to protect the Ahmadiyas at Sundarban Bazaar of Shyamnagar upazila in Satkhira district.⁹⁴

The approval of violence by the authorities only encouraged the IKNM activists. On 18 April 2005, three Ahmadiyas were attacked and one Faruk, son of Daud Moral was abducted. On 19 April 2005, Ahmadiyas were further attacked in broad daylight and dozens of houses were looted in the night. About 20 families fled their homes and villages. Fuljan Bibi, wife of Alam Sheikh and their sixth grade student daughter Jasmine were physically assaulted and threatened with rape if they did not leave the village.⁹⁵

Throughout the year the Ahmadiyas faced attacks. These included attacks on the Ahmadiya mosque in Chittagong on 28 May 2005,⁹⁶ setting fire to an Ahmadiya mosque in Ahmadiya-inhabited area in Brahmanbaria on 24 June 2005,⁹⁷ vandalization of an under-construction Ahmadiyya mosque in presence of police at Dakshin Khan under Uttara police sta-

tion in Dhaka on 18 July 2005⁹⁸ and bombing of an Ahmadiya house at Brahmanbaria on 15 August 2005.⁹⁹

b. Persecution of non-Muslim minorities

Minority Hindus, Christians and Buddhists faced serious persecution including physical attacks, killing, abduction, threat, torture, rape, destruction of temples and grabbing of their land by the Islamic fundamentalists and the ruling party leaders.

A large number of Hindu temples were attacked and properties destroyed. These include destruction of a Hindu temple and three idols by one Rashid s/o Nurul Islam alias Kina and several of his accomplices in Lalbagh on 25 January 2005,¹⁰⁰ rampaging of two Hindu temples and idols at Sandira village of Adamdighi upazila in Bogra on 17 March 2005,¹⁰¹ vandalisation of a Durga temple at Palora village in Manikganj on 15 September 2005,¹⁰² and attacks on three puja mandaps in Khulna, Faridpur and Jessore on 6 October 2005.¹⁰³

A Hindu priest identified as Gopal Barman of Narsingdi town was murdered on 21 October 2005.¹⁰⁴ The Jihadis forced Grace Presbyterian Bible College to move out of Khulna after attacking it twice in 2005.¹⁰⁵

The lands of the religious minorities continued to be grabbed by the political party leaders and thugs. In February 2005, 'Siddique Bahini' men tortured and forcibly occupied the land of 14 poor Hindu families at Kapalipara village in Patuakhali.¹⁰⁶ On 27 March 2005, the BNP thugs attacked the Hindu families at village Chhoto Shanta in Debhata upazila, Satkhira and grabbed 42 bighas of land. At least 10 persons were injured when they tried to resist the attackers.¹⁰⁷

Eviction of the minorities on frivolous grounds was common. On 22 June 2005,

about 300 people of 65 families, most of them belonging to Hindu and indigenous communities, were evicted by Mostafapur Union Parishad chairman and BNP leader, Samsuddin Mondal from a 10-acre government land at Baradal village in Mostafapur union in Parbatipur upazila in Dinajpur district for a rehabilitation project for the landless.¹⁰⁸ On 25 and 26 June 2005, 17 more minority families were evicted from Baradal village.¹⁰⁹

X. Violations of the prisoners' rights

Prison conditions were deplorable in Bangladesh. While hardcore criminals were allegedly allowed to use cell phones, eat the food of their choice and carry out illegal activities like murder and extortion from their prison cells,¹¹⁰ ordinary prisoners, including the under-trials were deprived of basic necessities like proper food, water, toilet facilities and medical attention.

In 2004, Bangladesh's 64 jails housed more than 74,000 prisoners, including more than 2,000 female inmates. As of March 2005, a total of 1028 under-trial prisoners had been reportedly languishing for years, ranging from 10 to 16 years in some cases, across the country without being produced before any court for trial. The decision of the Cabinet Committee of 20 December 2004 to take measures for releasing the under-trial detainees remaining in jail for five years or more for minor offences has not been materialized.¹¹¹

The Dhaka Central Jail lodged more than 11,000 inmates, over 300 of them were women. On an average, 300-350 prisoners lived in each room - many times higher than the sanctioned capacity.¹¹² Meherpur district jail reportedly housed nearly 300 convicts as against sanctioned

capacity of 36. During the night it was reportedly difficult for prisoners even to sleep. There were little facilities for water supply and toilet. The food was substandard and inadequate.¹¹³ In Kishoreganj district jail, about 800 prisoners were huddled against the capacity of 249 without any basic facilities.¹¹⁴ In Chuadanga district jail, there were 600 prisoners against its capacity of 96.

Torture and other abuses were rampant in jails.

Many of the allegations of torture were brought to the attention of the courts. On 18 January 2005, one Israyel Munshi filed a case with Jhenidah District and Sessions Judge's court alleging torture of his son Rabiul Islam and his fellow inmates by the jailor, one Havildar and two jail guards Alim and Miraz in Jhenidah district jail when they refused to pay Taka 300 as bribe for allowing food into the jail from outside.¹¹⁵ Similarly, a convicted prisoner Mohammad Shariful Islam complained before a Dhaka court that deputy jailer Mohammad Reza and jail guard Mohammad Kalim of Kashimpur jail in Gazipur tortured him and threatened to kill him in Kashimpur jail on 25 February 2005. He also showed evidence, marks of bruises all over his body before the Judge Mohammad Shamsul Alam Khan of the First Additional Metropolitan Sessions Judge's Court.¹¹⁶ On 28 May 2005 an investigation was ordered by the court.¹¹⁷

Many prisoners died due to alleged torture and lack of medical treatment. Some of the prisoners who died while in prison in 2005 included Shahabul of Sylhet Central Jail on 29 March 2005;¹¹⁸ Shyamol Sarkar of Jessore jail on 2 April 2005,¹¹⁹ Abul Hossain of Nilphamari District Jail on 22 May 2005;¹²⁰ Sayed Ali of Narsingdi jail and Babul Bepari of Munshiganj jail on 5 June 2005,¹²¹ Pannu Sheikh alias Selim of Madaripur District Jail on 10 June 2005;¹²²

Abdur Razzaque who died at Bogra Mohammed Ali Hospital on 16 June 2005;¹²³ Anwar Hossain of Nilphamari District Jail on 11 August 2005;¹²⁴ Abdur Razzaque of Bogra jail on 16 June 2005;¹²⁵ Sultan and Iaruddin of Dhaka Central Jail on 27 August 2005;¹²⁶ Mozammel Huq of Chuadanga jail on 10 November 2005;¹²⁷ and Alamgir Mridha of Barisal central jail on 21 November 2005.¹²⁸

XI. Violence against women

Rape, acid attacks, torture and dowry-related killings were common in Bangladeshi society. According to Odhikar, a total of 907 women were raped, of whom 126 were killed and 14 committed suicide after rape in 2005. During the same period, 382 women were tortured for dowry. Of them, 227 were killed, 13 were thrown acid and 19 committed suicide.¹²⁹ Odhikar also claimed that about 4,200 women and children were raped, 467 of the rape victims were killed while 45 others committed suicide after rape and 740 women were killed and 283 tortured for dowry between 1 January 2001 and 31 December 2004.¹³⁰ According to the Bangladesh National Women Lawyers' Association, out of total 5,225 rape incidents between 2000 and 2004, only 2,715 incidents i.e. 51.96 per cent had been reported to the police.¹³¹

The security forces were also responsible for abduction and rape. On the night of 28 July 2005, a 17-year-old girl was raped by a policeman identified as Nurul Islam of Riot Police at a hotel in Farmgate area in Dhaka.¹³²

Many police personnel were arrested for rape. Some of them were constables Rajendra Kumar, Kong Eng Murang and Yunus who were arrested in Manikganj on charge of gang raping a girl on 24 June 2005,¹³³ constable Sirajul Islam and his

friend Nasir who were arrested on the charge of raping a 13-year-old girl at Gulshan in Dhaka on 12 May 2005,¹³⁴ and two Ansar personnel identified as Kausar Ali and Jahurul Islam posted at Bhitabolla police camp in Bagherpara upazila in Jessore district who were arrested on the charge of raping a girl of 9th standards in Jamdia village on 13 March 2005.¹³⁵

a. Status of minority and indigenous women

Minority women were victims of rape and assault. Some of the incidents of violence against indigenous and minority women include rape of a 22-year-old tribal woman on 2 March 2005 at Balutila village of Dantmara union in Fatikchhari,¹³⁶ gang rape and murder of Sabina Bashki, a Santal tribal woman on 16 April 2005 in Baderganj,¹³⁷ torture of a pregnant indigenous woman after hanging her from a tree by a Union Parishad member Abdul Zabbar in Thakurgaon on 16 June 2005¹³⁸ and abduction and gang rape of a Hindu girl by Mahidul Islam, chairman of Dariapur Union Parishad in Sreepur upazila in October 2005.¹³⁹

Even when the culprits were identified, no action was taken. On 26 October 2005, Miss Painu Sing Marma (15 years), daughter of Keja Aung Marma of Mewa Para village of Rajvilla under Bandarban district was abducted and gang raped by six illegal plain settlers while she was going to Bandarban Buddhist orphanage. She was kidnapped in a motorcycle whose owner was identified as Mr. Kamal, a leader of ruling Bangladesh Nationalist Party. The police failed to arrest and prosecute anyone of them.¹⁴⁰

Instead of taking action against the rape of an indigenous woman, Ms. Kabla Tripura, wife of Ratnadhan Tripura of Alutila Madyam Para village under Matiranga upazila in Khagrachari district

by an army personnel of Hriday Member Para army camp in the CHTs in August 2005, the Commanding Officer of the Khedachara zone put pressure upon the relatives of the victim to compromise with the accused.¹⁴¹

In the Chittagong Hill Tracts, whenever indigenous peoples protested against sexual harassment of their women and girls, the illegal plain settlers and security forces attacked their villages. On 25 July 2005, the army along with illegal plain settlers attacked Harangi Para, a Marma inhabited village under Kaukhali upazila in Rangamati district following the beating of a plain settler Md. Jabbar Ali who along with another settler Md. Yakub Ali, tried to rape a Jumma girl identified as Sanu Bhai Marma (15 years), d/o late Chaprue Marma. About 23 indigenous villagers were injured in the attacks.¹⁴²

In a rare case, on 19 June 2005, Additional Session Judge SM Solaiman of the Special Court on prevention of women and child repression, in Bhola sentenced five ruling partymen to life imprisonment for raping two women of the minority community in Lalmohon upazila on 3 October 2001 after the elections.¹⁴³

However, none has been punished for violence against women in the Chittagong Hill Tracts since the armed conflict began in 1975.

b. Trafficking of women and children

Bangladesh has been “a country of origin and transit for trafficking of women and children for the purposes of sexual exploitation, involuntary domestic servitude, and debt bondage”.¹⁴⁴ Thousands of women and children have been allegedly trafficked from Bangladesh each year to India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates. Every month an estimated 200 to 400 Bangladeshi women and children are trafficked to Pakistan and

an estimated 10-15,000 are trafficked to India every year.¹⁴⁵ Most women and children have been trafficked for forced marriage, prostitution, domestic work, and factory labor. Many of the children trafficked to the Middle East have been used as camel jockeys.

The government reportedly rescued and rehabilitated 338 victims of trafficking and brought 155 camel jockeys home during the period from 15 June 2004 to 1 December 2005. Three traffickers were sentenced to death and 80 others to life imprisonment.¹⁴⁶

XII. Violations of the rights of the child

According to Odhikar, a total of 1,235 children were subjected to torture in 2005. In addition, 308 were killed, 319 raped, 96 trafficked, 37 acid attacked and 85 remained missing.¹⁴⁷

Indigenous Jumma children have been victims of torture, rape and other sexual abuses at the hands of the security forces and the illegal plain settlers. On 23 January 2005, a 9-year-old boy named Bandachya Chakma, son of Pagana Khulo Chakma of Dojar area was sexually abused by an army personnel. The victim and his friend had gone to the forest to collect forest products when the army personnel encountered them. The accused sent the victim's friend to buy him food, and sodomised the minor boy. Later, the accused gave Taka 50 note to the victim to not to disclose the matter.¹⁴⁸

There were no juvenile correctional homes in the Chittagong Hill Tracts and the juveniles were often put in prisons along with adults. On 6 August 2005, the army arrested two teenaged supporters of UPDF, identified as Santo Chakma (14 years) and Iron Chakma (16 years) from Machalong Baghaichhari upazila in

Rangamati and sent them to Rangamati district jail. The army claimed that they were arrested during a raid at Machalong forest areas and sophisticated arms and ammunitions were recovered from them.¹⁴⁹

According to the first National Child Labour Survey conducted by Bangladesh Bureau of Statistics in 1995-96, there were about 6.3 million child workers of 5-14 years among 34.4 million children in Bangladesh.¹⁵⁰ The second National Child Labour Survey (2002-2003) found that there were 4.9 million working children (excluding economically active children who are unemployed) which comprised 14.2 per cent of the total 35.06 million children in the age group of 5-14 years. The total working child population in the age group 5- 17 years was estimated at 7.9 million. In the age group of 5-17 years, the proportion of boy and girl child workers is 73.5 per cent and 26.5 per cent respectively.¹⁵¹

XIII. Status of refugees

There were about 20,572 recognised¹⁵² and 14,000 unrecognised¹⁵³ Rohingya refugees in Bangladesh. In addition, there were some 250,000 to 300,000 stateless Biharis or "stranded Pakistanis" living in 66 camps across the country.¹⁵⁴

a. Plight of the stateless Biharis

At the end of 2004, there were 250,000 to 300,000 Bihari muslim refugees living in 66 camps throughout Bangladesh.¹⁵⁵ They are the descendants of Urdu speaking Bihari Muslims who moved from India to then East Pakistan in 1947. The last repatriation of Bihari Muslims from Bangladesh to Pakistan took place in 1993 when Pakistan accepted 53 Bihari families.¹⁵⁶

The camps had been disproportionately overcrowded and they lacked basic civic facilities. In Rangpur camps, there had been several instances where 12 or more

family members sleep huddled together in a single room no larger than eight by ten feet.¹⁵⁷ In some of the camps, the inmates have to co-habitat with animals. During the monsoon, the camps become inhospitable. In Mirpur's Millat Camp, there was only one latrine for 6,000 people as in December 2004.¹⁵⁸

Skin disease, water-borne illness, upper respiratory infections and gastrointestinal disorders etc were common among the camp inmates.¹⁵⁹

On 5 May 2003, 10 Bangladesh-born Bihari residents of the Geneva Refugee Camp at Mohammadpur were granted voting rights by the High Court.¹⁶⁰ Yet, there was no further advancement towards granting of citizenship right to all Bangladesh-born Bihari refugees. No further initiative has been taken both by Pakistan and Bangladesh governments to address their plight.

In absence of nationality, the "stranded Pakistanis" have been denied their basic rights to livelihood and the right to live with dignity, besides enjoyment of other political and social rights. Children of the Bangladesh-born parents have also been deprived of admission in educational institutions.¹⁶¹

b. Plight of the Rohingya refugees

In early 1990s, a total of 2,50,877 Rohingya refugees, mostly of Muslim faith, crossed into Bangladesh to escape persecution at the hands of military junta in Myanmar. Of them, 2,36,597 were repatriated to Myanmar under the supervision of United Nations High Commission for Refugees (UNHCR).¹⁶² A total of 20,572¹⁶³ refugees were officially provided shelter in two recognized camps at Kutupalong in Ukhia and Nayapara in Teknaf in the Cox's Bazar district. In November 2005, the UNHCR started the process of registering the remaining Rohingya refugees in the

two camps.¹⁶⁴ Only 92 refugees reportedly returned in 2005 while 210 had returned in 2004.¹⁶⁵ An estimated 14,000¹⁶⁶ others were also living illegally in slums, mostly at Dumdumia under Teknaf in Cox's Bazar district.

There were reports of lack of adequate food, clothes, medical facilities, sanitation or safe drinking water. During the rains, the roofs leak, making camp conditions inhospitable. Penury and neglect forced the refugees to illegally sneak out of the camps and work in the local community – pulling rickshaws, fishing, making bricks or working in the nearby salt fields at cheap rate.¹⁶⁷

Many Rohingya refugees have been settled in the lands of the indigenous peoples in Ukiha para in the Chittagong Hill Tracts, thereby further contributing to the pauperisation and exploitation of the indigenous communities.¹⁶⁸

XIV. Status of Internally Displaced Persons

The internally displaced persons were mainly concentrated in the Chittagong Hill Tracts of Bangladesh. The CHTs Accord defined "internally displaced persons" as the indigenous populations who have been displaced (Clauses D.1 and D.2 of the CHT Accord). In June 1998, the Task Force defined "internally displaced people in the CHTs" as "all tribal peoples from the three districts who had been compelled to leave their village, land or house during the conflict from 15 August 1975 (date of assassination of Sheikh Mujibur Rahman) to 10 August 1992 (date of unilateral ceasefire declared by PCJSS) and forced to take shelter in other areas of the Chittagong Hill Tracts". However, the definition was soon thrown out of the window.

In 2000, the Task Force under the chairmanship of Dipankar Talukder prepared the list of 1,28,364 IDP families,

including 90,208 indigenous and 38,156 non-tribal families.¹⁶⁹ In effect, the government sought to declare “illegal plain settlers”, who in the first place were brought into the Chittagong Hill Tracts for ethnic cleansing of indigenous Jumma peoples, as IDPs. In addition, upto 10,000 tribal IDP families were not counted, nor were the refugees who had become internally displaced after repatriation from India were included in the task force’s IDP list.¹⁷⁰

There were about 100,000 indigenous displaced families including 43,000 Jumma refugees who had returned to CHTs from Tripura State of India after the peace accord was signed in 1997. About 40 villages of returnee refugees were under the occupation of the illegal settlers and over 3,000 families did not get their land back.¹⁷¹

The internally displaced indigenous peoples, especially those living in forest areas, were also deprived from using forest products and even collection of firewood was prohibited. They were also not provided any rehabilitation or food aid, educational facilities, health care services, sanitation and safe drinking water. In 2005, about 20 children died due to lack of health care and clean drinking water facilities.¹⁷²

Among the Jumma IDPs, only those who were repatriated from India have been given food assistance. The other indigenous Jumma IDPs do not receive any assistance, although the government of Bangladesh have been providing free food ration to the illegal plain settlers, who have been settled on the lands of the Jumma IDPs, since 1978.

XV. Violations of International Humanitarian Laws by Armed Opposition Groups

The near simultaneous explosion of

459 time bombs in 63 out of 64 districts¹⁷³ on 17 August 2005 in which 2 persons were killed and over 100 were injured, put Bangladesh on the spotlight of terrorism. According to Odhikar, at least 62 people died in bomb and grenade attacks in 2005.¹⁷⁴

Jihadi terror activities have been posing serious threat as reflected from the murderous attack on liberal writer, Professor Humayun Azad in Dhaka on 27 February 2004,¹⁷⁵ the bomb attack on British High Commissioner to Bangladesh, Anwar Choudhury on 21 May 2004 in Sylhet,¹⁷⁶ the assassination attempt on Sheikh Hasina on 21 August 2004,¹⁷⁷ the assassination of former Finance Minister AMS Kibria on 27 January 2005,¹⁷⁸ the bombing of the BRAC office in Naogaon district on 15 February 2005,¹⁷⁹ etc. On 23 February 2005, Finance and Planning Minister M Saifur Rahman even called Islamic militancy a ‘foul propaganda’ by a section of the media.¹⁸⁰

The BNP led government was accused of colluding with the Jihadis. On 26 September 2005, BNP’s International Affairs Secretary Syed Najibul Bashar Maizbhandari resigned from the party, protesting the government’s ‘failure to act’ against Jamaat-e-Islami.¹⁸¹ In November 2005, BNP expelled lawmaker Abu Hena from the party for his statement that there was hand of the party in emergence of the outlawed JMB.¹⁸²

Instead of cooperating with the judiciary, the government challenged the High Court order of 30 November 2005 which directed the government to submit fortnightly reports on the progress in the investigation of bomb attacks on different court-houses since 17 August 2005.¹⁸³ Of the 1,296 cases filed for alleged terrorism charges, charge sheets were filed only in 94 cases.¹⁸⁴

Former Islamic Foundation Director

Moulana Fariduddin Masud, detained for suspected links to the August 17 blasts, pointed out involvement of Minister of Industries and Jamaat-e-Islami leader Maulana Matiur Rahman Nizami in the blasts.¹⁸⁵ However, no investigation was done. On 13 December 2005, Rapid Action Battalion arrested Aatur Rahman Sunny, chief of the military wing of the Jamaatul Mujahideen Bangladesh (JMB) and brother of its chief, Shaikh Abdur Rahman. Aatur Rahman Sunny used to be an activist of the Islami Chhatra Shibir, student wing of Jamaat-e-Islami Bangladesh.¹⁸⁶ A number of other arrested members of the Jihadi groups reportedly confessed to having close ties with Jamaat-e-Islami Bangladesh.¹⁸⁷ On 7 December 2005, police also arrested Mohiuddin Faruqi, suspected regional commander of JMB's Khulna division and Islami Oikya Jote leader.¹⁸⁸

There were also reports of involvement of security forces with the Jihadi groups. On 16 February 2005, the Additional Superintendent of Police of Khulna, Mofazzel Hossain, was arrested for allegedly harboring an outlawed jihadi operative.¹⁸⁹ On 3 October 2005, police arrested Abu Taleb alias Babul Ansari, assistant security officer of the parliament secretariat, in Dhaka for his alleged links with the Jamaatul Mujahideen Bangladesh.¹⁹⁰ According to officials of the Joint Interrogation Cell, Babul Ansari allegedly confessed that he was a leader of Allah's Dal, an Islamist militant outfit, and reportedly disclosed the names of 20 leaders of Allah's Dal.¹⁹¹ On 7 December 2005, police arrested a former National Security Intelligence official, Nesar Uddin for rent-

ing his house to prime suspect of Gazipur blast and JMB member, Walid Elahi Jewel, who was arrested by the security forces on 5 December 2005.¹⁹²

Majority of the cadres of terrorist groups were drawn reportedly from madrasas across the country and Islamic Chatra Shibir, the student wing of the Jamaat-e-Islami.¹⁹³ On 18 September 2005, Masud bin Ishaque, a member of the JMB, arrested in Khulna for suspected links to the August 17th serial blasts, reportedly confessed before the chief metropolitan magistrate in Khulna of having trained the Islamist militants in firearms and bombs in the mosques in Khulna under the supervision of Islamic terrorist leaders including Siddiqui Islam alias Bangla Bhai.¹⁹⁴ Similarly, on 25 September 2005, an arrested JMB militant Faisal Ahmed told a Dhaka court that the capital's Kakrail Mosque had been used to train bombers involved in the August 17 serial blasts.¹⁹⁵

During the BNP-Jamaat rule, the state support to madrasas increased exponentially. According to Bangladesh Economic Review, from 2001 to 2005, the number of madrasas increased by 22.22 per cent in comparison to the 9.74 per cent growth of the general educational institutions. The number of teachers in general schools and colleges increased by 12.27% against 16.52% per cent increase in madrasas. The number of students in general educational institutions rose by 8.64 per cent while the madrasas saw 10.12 per cent rise. These figures related to about 9,000 government registered madrasas.¹⁹⁶ There were about 64,000 madrasas in Bangladesh in 2005 and majority were unregistered. ■

Bhutan

I. Ranking in Human Rights Violators Index: 2nd

Ruled under the absolute monarchy of His Majesty Jigme Singye Wangchuk, Bhutan which coined the infamous “Gross National Happiness”, has been ranked 2nd in the *SAARC Human Rights Violators Index 2006*.

A landlocked and closed country, little information on the human rights violations was available. The serious restrictions on the freedom of movement in the name of preserving the so-called “Shangrila” made collection, collation and analysis of human rights violations in Bhutan the most difficult in South Asia. In more ways than one, the absence of a written constitution, political parties, freedom of association and assembly, press and independent judiciary made Bhutan No. 2 human rights violator in South Asia. However, if absence of reports on human rights violations were to be the yardsticks for measuring the state of human rights, the Democratic Peoples Republic of Korea will have a better human rights record than most democratic countries.

II. Political freedom

There were no political parties in Bhutan. Bhutan also failed to release any political prisoner, approximately 70 arrested persons mainly from the ethnic Sarchops and Nepalis, who remained incarcerated in prison connection with violence associated with political dissidence

during 1991-92.

However, there were no reports of political killings.

On 26 March 2005, His Majesty Jigme Singye Wangchuk released the draft Constitution with 34-articles for public review. The draft constitution was nothing more than a replica of the condemned 1998 Constitution of Maldives.

The draft constitution proposed establishment of two houses of parliament – a 25-member National Council and a 75-member National Assembly – with the King as the head of State. If adopted, the Constitution would replace the royal decree of 1953 that gives the king absolute power and turn Bhutan into a two-party parliamentary democracy.¹ The proposed Constitution also provided 22 fundamental rights, including the right to life, right to freedom of speech, opinion and expression, freedom of the press, right to information, right to privacy, right to freedom of thought, conscience and religion etc.

On 17 December 2005, on the occasion of Bhutan’s 98th National Day, His Majesty Jigme Singye Wangchuk announced that he would abdicate the throne in favor of his eldest son, Crown Prince Jigme Khesar Namgyel Wangchuk and hold country’s first national elections in 2008 to establish full-fledged parliamentary democracy in Bhutan.²

If the proposed constitution of Bhutan were to be adopted, His Majesty would enjoy the same powers as that of the President of Maldives under the 1998 Constitution. Apart from being the Head of the State, His Majesty would have the

power to appoint and dismiss the Chief Justices and other judges of the Supreme Court and the High Court, the Chief Election Commissioner and other Election Commissioners, the Auditor General, the Chairperson and members of the Royal Civil Service Commission, the Chairperson and members of the Anti-Corruption Commission, the heads of the Defence Forces, the Attorney General and the Council of Ministers, among others. His Majesty shall enjoy absolute immunity under Article 2 (15) unless a National Referendum decides otherwise.

III. Right to life

There were no reported cases of violations of the right to life.

IV. Judiciary and administration of justice

Bhutan did not have an independent judiciary. His Majesty remained the supreme head of the judiciary and the only authority to grant pardon, and appoint and dismiss the judges. His Majesty exercised these powers in the name of National Judicial Commission. Only judges for the Dungkhang (sub-district) Courts are appointed by the Chief Justice of the High Court.³

The draft Constitution of Bhutan proposed setting up of Supreme Court headed by the Chief Justice of Bhutan. But under article 2(19) of the proposed constitution, the King would appoint the Chief Justice and other judges of the Supreme Court, and the Chief Justice and other judges of the High Court and have the power to remove them. Article 21(15) states that the judges of the Supreme Court and the High Court would enjoy independence “provided that a Drangpon [judge] may be censored or suspended by

a command of the Druk Gyalpo [i.e. the King of Bhutan] on the recommendation of the National Judicial Commission for proven misbehaviour, which, in the opinion of the Commission, does not deserve impeachment”. The members of the National Judicial Commission were also appointed by the King under Article 21(17). Moreover, the draft constitution does not define what constitutes “misbehaviour”, and any act or sign of defiance of the King by the judge could be construed as misbehaviour leading to his/her removal by the King.

The judiciary would continue to remain subservient to the King in Bhutan.

In December 2005, the 84th session of the National Assembly passed “The Evidence Act of Bhutan, 2005”. The Act for the first time laid down several significant provisions with the objective that “no person shall be convicted on the basis of suspicion, doubt or hearsay until the charges are proven and supported by witnesses or evidences”. The Act identified evidence as all types of proof presented and permitted by the court of law at a legal proceeding including testimonials, documents, electronic records and other physical evidence related to matters under inquiry in the court of law.⁴ The Act contained 13 chapters on various clauses related to the presentation of evidence in the court of law from its relevancy and admissibility, and types of evidences such as oral, physical and documentary to questioning of witnesses and criminal confessions.

V. Status of National Human Rights Institutions

Bhutan did not have a National Human Rights Institution. The government of Bhutan had not expressed any intention to establish such a Commission in the future.

VI. Repression on human rights defenders

Bhutan did not allow registration of human rights organisations. The exiled leaders ran human rights organisations and political parties from India and Nepal.

The Human Rights Council of Bhutan, headed by exiled refugee leader Teknath Rizal and the Bhutanese Refugee Repatriation Representative Committee were based in Nepal. Some of the prominent political parties in exile were Bhutan People's Party, Druk National Congress, and Bhutan Gorkha National Liberation Front.

VII. Freedom of the press

There was no freedom of speech and independent press. The only newspaper, *Kuensel*, was controlled by the government.

Although television was introduced in 1999, the government of Bhutan continues to impose restrictions on many TV channels, including news channels, on the ground that they were not good for the health of Bhutanese culture.

In March 2005, Bhutan banned some of the Indian TV channels such as *Zee News*, *Aaj Tak*, *Sun TV* and international TV channels such as *MTV*, *FTV* and *Ten Sports* on the ground that a media impact study carried out by Bhutan Communication Authority during 2003-2004 concluded that many foreign channels were a "bad influence" on Bhutanese social and cultural values.⁵ Many Indian TV channels were again banned in July 2005 on the ground of cultural invasion.⁶

VIII. Violations of the rights of minorities

Despite Bhutan-Nepal Joint Verifica-

tion Team recognising hundreds of refugees as citizens of Bhutan, during 2005, Bhutan failed to take back a single refugee. Over 100,000 refugees have been sheltered in eastern Nepal. Bhutan took full advantage of the political turmoil in Nepal.

a. India's obstruction for exercising the right to return

Bhutan was helped by India in the suppression of rights of the refugees. India repeatedly prevented the return of the Bhutanese refugees throughout 2005 though they have the right to travel through India under Indo-Bhutan Friendship Treaty of 1950. In fact, in 1990s, when the ethnic Nepalis were fleeing from Bhutan, Indian authorities put them on trucks and other vehicles and dumped them to Nepal.

Frustrated by the procrastinated repatriation process, the Bhutanese refugees made attempts at self-repatriation under the Volunteer Homeland Return and National Reconciliation Programme supported by Bhutan Gorkha National Liberation Front and Human Rights Organization of Bhutan since August 2005. Such self-repatriation bids continued even after the warning by UNHCR that it was risky and against the agreement between Nepal and Bhutan. The UNHCR also clarified that since it was not a party to the bilateral dialogue between Bhutan and Nepal, it was "not capable of monitoring repatriation and rehabilitation of the refugees in their home country."⁷

The refugees were prevented by the Indian security forces from entering into India.

On 3 August 2005, Indian and Nepalese police prevented 323 Bhutanese refugees (from 4 months to 75 years of age), including 157 women from the Beldangi camps from crossing the Nepal-India border at Mechi Bridge to enter Panitanki in West Bengal state of India en

route to Bhutan. While nine persons were detained, Nepal police took others back to their camps in Jhapa in two trucks and a bus.⁸

On 14 August 2005, a group of about 100 Bhutanese refugees reached Phuentsholing, a Bhutanese town along the India-Bhutan border to hand over a letter addressed to King Jigme Singye Wangchuk but were forcibly sent back to India by the Bhutanese police. About a dozen refugees were detained by the Bhutanese police for six hours before handing them over to the Indian authorities.⁹

On 4 October 2005, a group of 21 persons belonging to five families from Beldangi refugee camps led by Bhutan Gorkha National Liberation Front vice-president, Dalli Ram Katel were reportedly arrested by the Bhutanese Police while attempting to enter the kingdom at the gateway to Phuentsholing. They were later handed over to the Indian police.¹⁰

On 28 November 2005, the Bhutanese police arrested 4 Bhutanese refugees who entered Bhutan through Kakadvitta transit.¹¹

On 10 December 2005, Indian police prevented around 300 Bhutanese refugees from seven refugee camps from crossing the Mechi Bridge at the Nepal-India border en route to Bhutan. Nepal police drove them back to their camps.¹²

On 17 December 2005, Indian security personnel barred Bhutanese refugees from entering India at the Mechi Bridge on their way to Bhutan. A confrontation between the Indian security personnel and the Bhutanese refugees resulted in the injury of nine refugees.¹³

In December 2005, the Association of Press Freedom Activists, Bhutan, alleged that the government of Bhutan resettled people belonging to the ruling tribe on the lands of the ethnic Nepali refugees at

Dagana, Punakha, Samdrup Jongkhar, Sarpang, Samtse, and Tsirang. It also alleged that Samdrup, Jongkhar and Sarpang Chief Districts Offices had already submitted proposal to allocate the refugees' lands to so-called landless people from dominant tribes.¹⁴

b. Deplorable conditions of the refugees

UNHCR provided essential food and non-food items, shelter, medical care and education to the Bhutanese refugees living in seven refugee camps in Nepal. The UNHCR have been managing the camps with support from the United States, European Commission, Japan, Germany, United Kingdom and France.¹⁵ However, facilities being provided to the refugees were not adequate by any means. Global rise in oil price further forced UNHCR to reduce the already limited aid provided to the refugees.

UNHCR had substantially reduced facilities such as ration, kerosene, medical facilities, education aid and allowance for maintenance of the camps' roofs in the later part of 2004. Association of Medical Doctors of Asia and the UNHCR were sponsoring health service to the refugees and education up to the 12th grade for their children. However, during 2005, it was reported that only the first aid health service and school level education were available to the refugees.¹⁶ The refugees also complained of inadequate food quota.¹⁷ Supply of vegetables and fruits was also severely lowered and other staple food reduced during 2005.¹⁸

In absence of electricity, kerosene had been the main cooking and lighting fuel for the Bhutanese refugees in the seven camps. Due to rise in the price of kerosene, UNHCR cut down its supply in January 2005.¹⁹ The reduction of kerosene quota forced the refugees to cook their food with firewood. This created conflicts with the

local people as the refugees collected fallen trees, dried leaves and wigs from the nearby forests, which was resented by the local community.²⁰

The refugees also lacked adequate shelter. In big families, unmarried adults and married couples were compelled to live in the same tiny plot of hut area allocated to the respective families. Leaking of roofs made life further difficult for the refugees during the rainy days.²¹

The refugees did not have any job opportunity, as paid work is officially not allowed both inside and outside the camps. However, some of the women refugees did casual jobs like weaving,²² and in some camps they were allowed to crush stones from the dry Timai River bed to sell to local construction contractors.²³

There have been reports of rising number of suicides in the refugee camps.²⁴ Frustration and domestic violence are believed to be the main factors.

c. Denial of cultural rights

On 19 November 2005, the National Assembly directed the Ministry of Home and Cultural Affairs to issue a nationwide notification that all conferences and public meetings must be conducted in the national language, *Dzongkha*, pursuant to a 1993 Kasho (edict) issued by His Majesty the King. However, if the meetings were meant specifically only for foreigners they could be conducted in English.²⁵ The minorities like Nepalis or Sarchops have no right to their language.

Bhutan also failed to address discriminatory laws such as Bhutan Citizenship Act of 1985 which provides for termination of citizenship of any naturalized citizen at any time if he or she “has shown by act or speech to be disloyal in any manner whatsoever to the king, country, and people of Bhutan”. Bhutanese were virtually discouraged from marrying non-Bhutanese

under the Marriage Act of 1980.

IX. Violence against women

Women in general enjoyed freedom and equality. Yet, literacy rate among the women is only 48.7% in comparison to 69.1% among males.²⁶ According to Bhutanese Women and Youth Empowerment Programme, about 52% of refugees from Bhutan in Nepal were women and they are denied their rights.

Though Bhutan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1981 and established a National Commission for Women and Children in 2004, it failed to address discrimination against women under the Inheritance Act of 1980 and the Marriage Act of 1980 (amended in 1996). Under the Marriage Act those who marry non-Bhutanese are deprived of benefits including promotion in Government job with effect from 11 June 1977, termination of services from the national defence department or in the Ministry of Foreign Affairs, deprivation of governmental welfare services and schemes, including distribution of land, cash loans, various grants, and educational and training facilities.

In addition, the Citizenship Act of 1985 was strictly enforced to target the ethnic Nepalis of Bhutan whom the government officially recognizes as foreigners.

X. Violations of the rights of the child

Bhutan was one of the first countries to ratify the Convention on the Rights of the Child on 23 May 1990. The government amended the Marriage Act of 1980 in 1996 and enacted the Rape Act in 1993. But, Bhutan failed to adopt the draft Administration of Juvenile Justice Act and

draft Immoral Traffic Act.

A large number of children of the Bhutanese refugees living in Nepal have been denied the right to nationality. Bhutan failed to take any measure to ensure return of the refugees and ensure the rights of the children.

About 78 % of the populations reportedly had access to safe drinking water. Yet, six out of ten children in rural Bhutan suffered from diarrhoea, worms, and skin and eye infections largely due to lack of safe drinking water and poor environmental sanitation.²⁷ Both infant mortality (60.5 per 1,000 live births) and maternal mortality (255 per 100,000 live births) were high.²⁸ The government has been providing universal, free, and compulsory primary school education upto 11 years. The primary school enrollment increased 4.4 percent per year since 1995, with enrollment of girls increasing at 5.6 percent.²⁹ Gross Primary school enrolment rate was 72%.³⁰ Yet, about 3 out of every 10 children of school-going age did not go to school, especially in the remote areas.³¹

Many students in rural areas have to travel long distances to reach the nearest school. Lack of schools in several rural

areas forced children to leave home to attend the school regularly. Some parents built small mud huts for their children near the school, away from the home. Lack of electricity made it difficult for the children to study at night.³²

There was no accurate data on child labour in Bhutan as of 2005. In 2000, the ILO projected 124,000 economically active children in the age group of 10-14 years, representing 51.1% of this age group. Of them, 69,000 were boys and 55,000 were girls.³³

Bhutan also failed to withdraw the draconian rule introduced in 1990 under which all Nepali-speaking citizens need to produce a No Objection Certificate or Police Clearance Certificate or Security Clearance Certificate from the police stating that none of their relative had taken part in the pro-democracy movement against monarchy during September-October 1990 in order to get admission in schools or sit for examinations.³⁴ Under this draconian rule the children of Nepali-speaking community, especially those whose relatives were living in refugee camps in Nepal, as well as some Christian children continued to be denied access to education. ■

CHAPTER 4

Nepal

I. Ranking in Human Rights Violators Index: 3rd

Throughout 2005, Nepal was ruled directly by King Gyanendra Bir Bikram Shah Dev following the Royal coup on 1 February 2005. Despite the Royal coup, suppression of political freedoms and increased violations of human rights and fundamental freedoms, Nepal has been ranked No. 3 in the *SAARC Human Rights Violators Index 2006*.

II. Political freedom

Following the Royal takeover by King Gyanendra on 1 February 2005, human rights situation further deteriorated throughout the country. Peaceful political movements for restoration of democracy and fundamental rights were crushed. Any event such as meeting, conference, workshop or interaction programme which “undermine the Kingdom’s sovereignty and integrity, disturb the law and order of the country or cause any adverse effect on the current state of emergency” was banned.¹

About 3,000 political leaders, student activists, human rights defenders, journalists, professionals and civilians were either put under house arrest or arrested during the emergency rule from 1 February to 28 April 2005. King Gyanendra lifted the emergency on 29 April 2005 but political rallies and demonstrations were suppressed, and hundreds of political leaders and activists were arrested and detained throughout 2005.

The government used the national security laws such as the Public Security Act, Public Offences Act and revised Terrorists and Disruptive Activities (Control and Punishment) Ordinance (TADO) of 2004 against the pro-democracy activists, including the political activists. While the Public Offences Act allowed preventive detention for disturbing the peace, vandalism, rioting, and fighting, the Public Security Act allowed preventive detention of any person who allegedly threatens the “sovereignty, integrity or public tranquility and order and amicable relations with other States”. Both the Acts allowed detention up to 90 days without any charge.

The most draconian was the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) of 2004 which provided for preventive detention of up to 90 days “upon appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and disruptive act”. Under Section 9 of the TADO of 2004, the Chief District Officer could detain any suspect upto six months, which could be further extended by another six months subject to approval from the Ministry of Home Affairs.

TADO was revised in 2005 to put the onus on suspects to prove their innocence, ban members of the public from attending trials and deny the defence lawyers’ access to any case documents in clear violation of the cardinal principles of criminal jurisprudence. The new provisions were applied for the first time on 1 December 2005 in

the case of Maoist leaders Matrika Prasad Yadav and Suresh Ale Magar when their lawyer Surendra Mahato was not allowed to have the copies of legal documents of the case.²

While the middle ranking political leaders and pro-democracy activists were arrested under various national security laws, senior political leaders were targeted by the Royal Commission for Corruption Control or were put under house arrest.

On 14 July 2005, six student leaders – Pradip Poudel, Narayan Bharati, BP Regmi, Pushpa Shahi and Saroj Thapa of Nepal Students' Union and Thakur Gaire of All Nepal National Free Students' Union were arrested during a protest demonstration at New Baneshwor, Kathmandu against the government's decision to introduce a 'nationalist education system'. On 15 July 2005, Kathmandu District Administration Office charged them under the Public Offence Act and slapped a 10-day jail term.³ Their detention was further extended to a week.⁴ They were released on 9 August 2005 following an order from the Supreme Court, which termed their detention "illegal".⁵

III. Human Rights Violations by the Security Forces

Human rights violations by the security forces including arbitrary arrest, detention, torture, use of disproportionate force, extrajudicial executions and rape intensified across Nepal during the direct rule of King Gyanendra.

a. Extrajudicial killings

According to Informal Sector Service Centre (INSEC), the security forces killed 815 people, including civilians in 2005. This was despite the fact that ceasefire was in place from 3 September 2005 till the end of the year. The number of killings in the

previous years also vouches their utter disregard for the people's right to life. The security forces had killed 1606 in 2004, 1217 in 2003, 3296 in 2002, 243 in 2001 and 180 in 2000.⁶

The victims were killed in custody, shot at while participating in pro-democracy demonstrations or due to arbitrary use of powers by the security forces.

The most gruesome extrajudicial executions took place from 17 to 23 February 2005 in which 22 alleged Maoists were lynched and about 700 houses of the alleged Maoists sympathisers were torched in Kapilavastu district by RNA-backed village vigilante groups. On 21 February 2005, the state owned Nepal Television had telecast a visual where three ministers - Home Minister Dan Bahudur Shahi, Minister for Labour, Ramnarayan Shing, and Minister for Education, Radhakrishna Mainali - were seen encouraging the crowd who were holding baton on their hands to beat the dead Maoists.⁷

Human rights activists also investigated a number of extrajudicial executions. In the case of extrajudicial execution of Rupen Rai at Soyang area of Illam district on 2 May 2005, the RNA claimed that he was a Maoist rebel and was killed in encounter.⁸ However, a probe conducted by Human Rights Monitoring Coordination Committee found that "injured Rai could have well been taken into custody after the forces fired at him. However, the security personnel continued firing at him, thereby killing him outright." They also stated that there was no retaliation from the Maoists' side.⁹ With regard to the execution of alleged Maoist rebel Bir Bahadur BK who was executed by the RNA on 19 September 2005, an investigation report concluded that security personnel could have taken Bir Bahadur BK into custody after he fell on the ground but they fired three more rounds of bullets at him.¹⁰

On 25 August 2005, Manoj Basnet, an employee in the office of Sijuwa VDC, Morang, was killed by the police after arresting him from Dhankute Lodge, Biratnagar along with Santosh Chaulagain, resident of Sijuwa. Police claimed that Basnet was shot at while trying to escape. Police also said they spared Santosh Chaulagain because he had surrendered.¹¹ In his FIR, the victim's father Govinda Prasad Basnet claimed that there were scars on Manoj's genitals and his dead body was swollen and soaked with blood.¹²

The National Human Rights Commission confirmed a number of extrajudicial executions by the security forces. On 3 October 2005, NHRC stated that the security personnel killed Maoist cadres Eknath Subedi and Nabin Singh Paudel after arresting them at Pidariguthi in Parsa district.¹³

The indiscriminate use of fire-arms was rampant. On 14 December 2005 at around mid-night, an off-duty RNA soldier Bashu Dev Thapa allegedly opened indiscriminate firing at a crowd killing 12 persons including himself and injuring 19 other villagers following a scuffle with some villagers during a religious festival at a temple premises at Chihan Danda in Nagarkot in Bhaktapur district.¹⁴ Royal Nepal Army's probe panel headed by Brigadier General Netra Bahadur Thapa submitted its report to the Government on 24 December 2005¹⁵ but it was not made public till the end of 2005.

b. Involuntary disappearances

In 2004, according to the United Nations Working Group on Involuntary Disappearances, Nepal had the highest number of enforced or involuntary disappearances in the world.¹⁶ Though precise figures were not available on disappearance, in 2005 about 1,000 people were reported to be missing after they were

arrested by security forces.¹⁷ A government committee looking into disappearance cases revealed the whereabouts of 580 people arrested by security forces as on 15 August 2005.¹⁸ On 30 August 2005, NHRC stated that 986 persons more were still missing, including 888 persons from government custody and 98 after abduction by the Maoists.¹⁹ Impunity enjoyed by the security forces contributed to such large-scale enforced disappearances.

The government of Nepal often did not acknowledge detention of the arrestees. Incommunicado detention of Krishna KC, former vice president of the All Nepal National Independent Students' Union (Revolutionary), is a clear example. He was listed as disappeared after his arrest by the security forces from Kathmandu on 13 September 2003. He was produced before the Supreme Court (SC) only on 22 September 2005 but the security personnel immediately re-arrested him from the SC premises defying the court order to release him.²⁰

Similarly, student leader Govinda Ghimire, 21 years, was arrested on 29 August 2003 from his residence in Chabahil, and was booked under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. On 12 October 2003, the police, army, Home Ministry, Defense Ministry and the district authorities told the Supreme Court that Ghimire had not been arrested. In response to a habeas corpus writ petition filed by the Advocacy Forum, the Supreme Court on 17 June 2005 ruled that Ghimire was detained "illegally" and ordered for his immediate release in the presence of the District Judge. Following the Supreme Court order, the student leader was released on 22 June 2005. But plainclothes security personnel defied the SC order and re-arrested him at the Kathmandu District Court premises.²¹

The Armed Police Force (APF) personnel reportedly lied to the OHCHR-Nepal that the two Maoist cadres arrested by them on 5 June 2005 were not in their custody. But subsequent enquiries by the OHCHR led to the APF admitting that the two Maoists were under their detention.²²

c. Torture and use of disproportionate force

During his visit to Nepal from 10 to 16 September 2005, the UN Special Rapporteur on Torture, Manfred Nawak confirmed that the security forces brutally tortured detainees in order to extract confessions and to obtain intelligence reports. Methods of torture in detention include beatings with bamboo poles and plastic pipes, kicking with boots, electric shock to the ears, rolling rods over the thighs, jumping on thighs and legs, maintenance of stress positions, being bound to a pole and hung upside down and beaten, especially on the soles of the feet, and prolonged periods of being blindfolded and handcuffed.

Torture is not defined as a crime in Nepal. After the Royal takeover, police suppressed pro-democracy protests using disproportionate force. Women protestors were allegedly bitten, beaten up and poked batons at their sensitive organs, sexually abused by the security forces during arrest as well as under security detention.²³

Leading medical experts in Nepal asked the authorities not to use tear gas on demonstrators as this can cause serious complications like chest pain, cancer and loss in reproductive capability in the long run.²⁴ Yet, the riot police continued to use tear gas shells not only against demonstrators on the open streets, but also within school and hospital premises. On 20 September 2005, Office of the High Commissioner for Human Rights in Nepal expressed serious concern, among others, over “the use of teargas guns in close prox-

imity to demonstrators and in the vicinity of hospitals and schools”.²⁵

On 1 August 2005, five students, three of them seriously, were injured in police beating near Putalisadak at Shankar Dev Campus. Student activist Chandra Silwal reportedly lost a finger while Subharam Basnet and Ramesh Kunwar sustained serious injuries. They had to be admitted to Kathmandu Model Hospital.²⁶

Even religious devotees were not spared. On 28 August 2005, at least two-dozen people were injured when police used disproportionate force against devotees in a religious festival ‘Gaura’ at Tundikhel in Kathmandu.²⁷ Similarly, during the Chhath puja celebration in Jaleswor, the headquarters of Mahottari district on 8 November 2005, over 10 people were injured in beatings by the RNA personnel. One Birendra Mandal had to be admitted to the district hospital in Jaleswor with serious injuries and later referred to the BP Koirala Institute of Health Sciences, Dharan. The RNA claimed that it had taken “departmental action” against the guilty soldiers;²⁸ but the claims could not be verified. NHRC ordered a probe;²⁹ but its report too was not made public.

On 13 September 2005 at around 3 pm, Shiv Bohora, Acting President of Nepal Students Union at Mahendra Ratna Campus, was arrested by the police from the campus premises on the charge of pelting stones at police personnel. Three policemen reportedly beat him with batons, hit with the butts of their rifles and kicked him with boots inside the police van and then at Kalimati Police Office. As he fell unconscious because of the torture, he was shifted to Bir Hospital for treatment. He was released from custody on 14 September 2005. The police beating reportedly left him with two broken teeth, five stitches on his forehead and seven stitches

on his upper lip. He also suffered multiple bruises on his back, hands and legs.³⁰

On 10 December 2005, plainclothes security personnel from Kohalpur camp allegedly mal-treated and beat up innocent villagers of Khadakbar VDC in Banke district. The villagers told representatives of the NHRC on 12 December 2005 that the soldiers had asked them to identify Maoist cadres or show their whereabouts and threatened to shoot them if they failed to do so. The security personnel beat up several villagers including 77-year-old Kul Bahadur Oli, who could hardly walk on his own due to old age.³¹

d. Impunity

Security forces enjoyed virtual impunity for the human rights violations perpetrated. Despite recommendations by the NHRC, the Government failed to order an inquiry into the killings of 22 alleged Maoists at Kapilavastu from 17 to 23 February 2005. On its part, the NHRC, which investigated Kapilavastu killings also failed to mention the number of persons killed or identify the culprits. Rather, NHRC passed the buck on the government to conduct a probe.³²

Under the Compensation Relating to Torture Act of 1976, compensation for the gravest cases of torture can be a maximum of Nepali Rupees 1,00,000 (one lakh). Since the Torture Compensation Act came into force, compensation has actually been paid out only in one case to date, although courts ordered the authorities to pay compensation to the victims or their kin in several cases.³³

The security personnel who gang raped and killed Reena Rasaili (18) after her arrest from Pokahari Chauri-4, Kavre District in February 2004³⁴ were given absolute impunity. In October 2005, Chief of OHCHR-Nepal, Ian Martin stated that OHCHR received “no information that

would indicate that charges have been lodged, despite the ample evidence and eyewitnesses testimony that is available indicating RNA involvement” into the case of torture.³⁵

Similarly, the accused in the gang rape and custodial killing of 15-year-old Maina Sunuwar, daughter of an eyewitness to the killing of Reena Rasaili after her arrest by the security forces on 17 February 2004, were also spared. In March 2005, the army publicly admitted that Maina’s death had been a “mistake” but the accused army officers were systematically let off. On 1 October 2005, the Ministry of Defense stated that three RNA officers - Colonel Bobby Khatri and Captains Amit Pun and Sunil Adhikari were punished by putting them for six months in solitary confinement in army custody from 14 March 2005 to 9 September 2005, in addition to suspension of their promotion for two years and payment of fine of Rs 100,000 to the victim’s family as compensation for killing Maina Sunuwar.³⁶ In fact, all the three army officers were released immediately on the ground that the time they had spent in the barracks while awaiting trial should count towards their sentence.³⁷

The so-called punishment meted out for the rape and killing of Maina Sunuwar was extremely lenient and shields the culprits. Civil Code (11th amendment) of Kingdom of Nepal, provides for 10 to 15 years punishment in case a victim is under the age of 10 years, imprisonment of 7 to 10 years in case a victim is above the age of 10 and under the age of 16 years and imprisonment of 5 to 7 years in case a woman is 16 years or above. The code provides for additional punishment of 5 years imprisonment for the crime of gang rape and also for the rape of a pregnant or disabled woman.

In many cases of abuse committed by its personnel, the RNA ordered enquiries;

but such inquiry reports were rarely made public. For example, the army ordered an inquiry³⁸ into the extrajudicial killing of three school children identified as Narayan Bahadur Kanauji Magar (17), Tek Bahadur Gaha (15), and Dal Bahadur Darlami (15) on 22 March 2005 by the army personnel; but the report was not made public.

IV. Judiciary and administration of justice

Article 96 of the Constitution of Nepal makes order and decisions of Court binding on the government. Section 2 of Article 96 specifically states that “Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of hearing of a suit shall be binding on His Majesty’s Government and all offices and courts”.

The judiciary in Nepal had virtually collapsed even before the Royal takeover. By the end of 2003, the workload in 19 hill district courts dropped drastically with less than 50 cases per year.³⁹ The Supreme Court also failed to inspect the Appellate and District Courts in the country during the year 2002 and 2003 “owing to bad law and order situation” though it was required to inspect the subordinate courts every year as per the Judicial Administration Act of 1991 and Supreme Court regulations.⁴⁰ Only the Supreme Court in Kathmandu was willing to accept habeas corpus petitions prior to the Royal takeover.

Following the Royal coup of 1 February 2005, the independence of judiciary dipped further. The Supreme Court refused to entertain writ petitions even on non-suspended rights under the “pretext of emergency”. On 21 February 2005, Chief Justice Hari Prasad Sharma publicly defended the rejection of writ petitions saying that the issue was “political”. This was despite the fact that during the emer-

gency in 2001-2002, the Supreme Court had admitted over 400 writ petitions seeking legal remedy under Article 88 (1) and (2).⁴¹

There was lack of cooperation of the government with the judiciary. On 27 May 2005, the Supreme Court had to issue a special stricture to the government asking it to follow court orders as per Article 95 relating to duty of the government to extend cooperation and Article 96 relating to orders and decisions of the courts to be binding.⁴²

The government’s apathy and non-cooperation with the court hindered the dispensation of speedy justice to the people of Nepal. As many as 1,838 writ petitions filed before April 2004 have reportedly remained unheard in the court as different ministries, organizations and offices have not responded to the apex court orders issued in the preliminary hearing of the petitions. Altogether, 2,768 writ petitions were pending at the Supreme Court as on 12 June 2005. Different government agencies including the Secretariat of Cabinet and Council of Ministers, Ministry of Land Reform and Management, Ministry of Finance, Home Ministry, Police Headquarters, tax collection offices, Guthi Sansthan, municipal offices and district administration offices were allegedly not submitting the required documents despite repeated requests by the court. According to the Civil Code related to Court Management, the Supreme Court can only slap a paltry fine of Rs 50 each time the concerned offices fail to respond to each letter asking for the necessary documents.⁴³

Despite repeated orders of the Supreme Court to furnish the agreement signed between the government of Nepal and the United Nations on the peacekeeping force of the RNA, the Ministry of Foreign Affairs (MoFA) and the RNA failed to furnish the same. In response to

the petition filed by Ex-Army Welfare Council alleging misuse of the RNA Welfare Fund, the Supreme Court had directed the MoFA and the Headquarters of the RNA several times to furnish a copy of the agreement. On 23 August 2005, the Supreme Court issued a fresh directive to the concerned parties to furnish a copy of the agreement within 15 days or face contempt of court action. But the court failed to get a reply.⁴⁴ On 21 November 2005, the MoFA submitted a copy of the said agreement before the apex court.⁴⁵ Earlier, the MoFA had told the Supreme Court that no pact on peacekeeping was signed with the UN.⁴⁶

Nothing more reflected the contempt of court than re-arrest of accused after their release by the courts including from the premises of the Supreme Court. In 2005, Asian Centre for Human Rights recorded the re-arrest of 55 persons after the court ordered their release.

On 26 April 2005, former minister Jaya Prakash Prasad Gupta was re-arrested from his residence in Sinamangal, Kathmandu by plainclothes security personnel without any reason. He was earlier released by the Supreme Court on 19 April 2005.⁴⁷ On 5 May 2005, the Supreme Court once again held Gupta's arrest as illegal and ordered his release. But he was re-arrested again in defiance of the SC's order.⁴⁸ The authorities had to release him on 27 May 2005 following another Supreme Court order.⁴⁹

On 5 May 2005, Gagan Thapa, former General Secretary of the Nepal Students Union was re-arrested by the police from inside Kathmandu District Police Office soon after his release at the order of the Supreme Court.⁵⁰ Following repeated orders of the Supreme Court,⁵¹ the government released him on 25 May 2005.⁵² But he was re-arrested on 27 July 2005 by plainclothes policemen⁵³ on charges of

sedition.⁵⁴ On 14 August 2005, the Supreme Court again ordered the release of Gagan Thapa ruling that there was no ground to keep him in custody as charges brought against him were not clear.⁵⁵

On 16 May 2005, former president of ANNFSU, Rajendra Rai was re-arrested by the police immediately after his release from the Kathmandu district court premises following a Supreme Court order.⁵⁶ On 20 May 2005, the government released Rajendra Rai following another order of the Supreme Court.⁵⁷

On 27 May 2005, former minister and standing committee member of the CPN-UML, Ishwor Pokharel was re-arrested by the police without any arrest warrant immediately after his release in Rajbiraj following a Supreme Court order.⁵⁸

On 8 June 2005, plainclothes policemen re-arrested Karna Bahadur Thapa Magar, a farmer by profession who had been booked under the TADO on 8 October 2004, from the premises of Kathmandu District Court soon after his release on the order of the Supreme Court.⁵⁹ Earlier on 4 July 2005, he had to flee in a vehicle escorted by two UN vehicles to escape re-arrest.⁶⁰

On 15 June 2005, plainclothes security personnel re-arrested Nawaraj Subedi, general secretary of Jana Morcha Nepal, within a few hours after the Supreme Court ordered for his release. He was first arrested from Tribhuvan International Airport on 14 May 2005 on his way to Pakistan to participate in a conference.⁶¹ On 22 June 2005, the government in a written reply to the Supreme Court denied having rearrested Nawaraj Subedi.⁶² But on 23 June 2005, a team of the National Human Rights Commission found Nawaraj Subedi in detention at District Police Office, Lalitpur.⁶³

On 24 July 2005, police re-arrested Nishan Bishwakarma of Baglung Amalachaur, from court premises in

Pokhara immediately after his release following a Supreme Court's order.⁶⁴

On 4 August 2005, police re-arrested Guna Ram Damai soon after he was released on a court order in Baglung.⁶⁵

On 12 August 2005, plainclothes security personnel re-arrested Raj Kumar Pariyar from Kathmandu District Court soon after he was released vide a Supreme Court order which declared his detention on the charges of being a Maoist as illegal.⁶⁶

On 22 September 2005, Krishna KC was re-arrested from the premises of the Supreme Court immediately following his release.⁶⁷

On 19 September 2005, 11 detainees identified as Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhimi were re-arrested immediately after being released by the Kanchanpur District Court in Mahendranagar in western Nepal as per the order of the Supreme Court.⁶⁸

On 21 October 2005, a division bench of the Supreme Court ordered the release of detainee Rajendra Phuyal in the presence of a Kathmandu district judge. But the government defied the SC and did not release Phuyal.⁶⁹

On 20 November 2005, police re-arrested Aiendra Bikram Begha, alternative central committee member of All Nepal National Independent Students' Union - Revolutionary (ANNISU-R) after he was released following the order of the Appellate court at Biratnagar.⁷⁰

On 22 November 2005, police re-arrested Krishna Chaulagain, resident of Bayarban in Morang district, after he was released by Appellate court of Biratnagar.⁷¹

On 24 November 2005, police re-arrested secretary of ANNISU-R, Sunsari district, Lochan Dhamala and Him Prasad

Mishra – both residents of Dangihat VDC of Morang district – from the premises of the appellate court Biratnagar immediately after the court released them.⁷²

On 27 November 2005, plainclothes police personnel re-arrested three alleged Maoists- Shyam Sundar Dhungana, Bhola Thapa and Sukram Lama - immediately after they were freed from the premises of the Parsa District Court. On 24 November 2005, the Appellate Court Hetauda had ordered their release.⁷³

On 4 December 2005, Khem Raj Dahal of Hardiya-5 in Saptari district was re-arrested by plainclothes security personnel from the Appellate Court premises in Rajbiraj.⁷⁴

On 19 December 2005, plainclothes security personnel re-arrested former general secretary of the Maoist-affiliated All Nepal National Independent Student Union - Revolutionary, Himal Sharma, from the Supreme Court premises soon after the SC released him. The security personnel also beat up human rights activists, lawyers and journalists while re-arresting the student leader.⁷⁵

Under the direct rule of King Gyanendra, the lawyers also faced arbitrary arrests and detention. On 1 February 2005, former President of Nepal Bar Association, Sindhu Nath Pyakurel was arrested from his office in Kathmandu and held incommunicado for nine days. He was released on 14 February 2005 following Supreme Court's intervention.⁷⁶ On 18 February 2005, advocate Kalam Bahadur Khatri was arrested by the police and was illegally detained for three weeks under the Public Security Act.⁷⁷

V. Effectiveness of National Human Rights Institutions

Following the Royal takeover on 1 February 2005, King Gyanendra confined

the members of the NHRC within the Kathmandu valley. On 5 March 2005, security forces barred a team of the National Human Rights Commission (NHRC) from visiting Kapilavastu district to investigate the clashes between the locals and the alleged Maoists from 17 to 23 February 2005.⁷⁸

On 18 May 2005, King Gyanendra introduced an Ordinance amending section 4(2) of the Human Rights Commission Act to change the composition of the Recommendation Committee to dispense with the requirement of the approval of the Prime Minister and the Leader of the Opposition in the lower house of parliament under the National Human Rights Commission Act of 1997 for appointment of new members. As the Parliament was dissolved in May 2002, the appointing committee could not be established. On 27 May 2005, while retaining Commission's Chairman Nayan Bahadur Khatri, King Gyanendra arbitrarily nominated other new members, who were alleged royalists.⁷⁹

The government of Nepal allowed newly appointed members to visit Kapilavastu to investigate the killings. The NHRC in its report of August 2005, however, failed to mention the number of persons killed and identify the culprits. The NHRC passed the buck on the government to order another probe.⁸⁰

The ineffectiveness of the NHRC of Nepal was evident from the fact that despite meeting Krishna K C, former vice president of the All Nepal National Independent Students' Union (Revolutionary), in RNA custody, the NHRC members suppressed the fact and did not disclose his whereabouts. Krishna KC was listed as disappeared after his arrest by the security forces from Kathmandu on 13 September 2003. Finally, he was produced before the Supreme Court and released on 22 September 2005. But he was re-arrested

from the Supreme Court premises as soon as he was released.⁸¹

VI. Repression on Human Rights Defenders

Human rights defenders faced repression from the government. Dozens of activists were arrested, detained in the Kathmandu Valley and prevented from fulfilling their mandate for monitoring human rights situation. Krishna Pahadi of Society of Human Rights and Peace who was arrested by the security forces on 9 February 2005 was detained for the longest period.⁸² He was released on 4 July 2005.

On 10 November 2005, the Social Welfare Council introduced a 15-point Code of Conduct for Social Organisations-2005⁸³ to regulate and control the National and International Non-Governmental Organizations with a view to make them ineffective.⁸⁴ The government imposed the code of conduct on the NGOs. In December 2005, the Food Management Committee, an agency of the government in Jumla, allegedly threatened the NGO workers in Jumla district to deny their basic right to food if they failed to fall in line with the code of conduct.⁸⁵ The Supreme Court stayed the implementation of the NGO Code of Conduct on 26 December 2005.⁸⁶

VII. Freedom of the press

The media faced tremendous repression under King Gyanendra. According to Reporters Sans Frontiers, at least 425 journalists were arrested, attacked or threatened during 2005 in Nepal and half of all the cases of censorship in the world took place in the kingdom.⁸⁷ Journalist Mahesh Pahari died on the night of 4 October 2005 allegedly due to lack of treatment while being detained in Pokhara jail.⁸⁸

a. Attacks following the Royal coup

The media persons faced the most serious repression under the direct rule of King Gyanendra. On 3 February 2005, King Gyanendra “banned for six months any interview, article, news, notice, view or personal opinion that goes against the letter and spirit of the Royal Proclamation of 1 February 2005 and that directly or indirectly supports destruction and terrorism”.⁸⁹ The RNA personnel who were stationed at the newsrooms edited all news items before being published in print or electronic media. Most Indian Television channels were banned in Kathmandu valley.⁹⁰ It was only on 8 June 2005 that the Nepal government decided to resume airing of Indian news channels.⁹¹ The government also banned three websites - *www.insn.org* and *www.samudaya.org* on 30 June 2005, and *www.gorkhanews.com* in September 2005.⁹²

The electronic media, especially the FM Radios suffered under “Ordinance Amending Some Nepal Acts related to Media-2062” promulgated on 9 October 2005. The Ordinance banned criticism of the King, barred private radio stations from broadcasting news and empowered the government to revoke journalists’ press accreditation, arrest and prosecute them, and imposed higher fines for defamation, among others.⁹³

Over 2,000 radio journalists were rendered jobless due to the ban. The broadcasting of *BBC World Service* on 103 FM remained off the air from April to November 2005.⁹⁴

In a further order on 27 May 2005, the Ministry of Information and Communication, in a one-sentence letter, ordered the *Communication Corner*, a radio program production center for FM and community radios, to close down accusing it of “illegal operations”.⁹⁵ On 7 June 2005, the Supreme Court stayed the

government order.⁹⁶ But in early August 2005, the Ministry of Information and Communication threatened Nepal FM 91.8 with closure for airing news.⁹⁷ On 10 August 2005, the SC stayed the government order to close down the Nepal FM 91.8⁹⁸ and further extended the stay order on 7 September 2005.⁹⁹

At the midnight of 21 October 2005, armed policemen raided the office of *Kantipur FM* radio station in Lalitpur and forcibly seized its transmission equipment resulting in the disruption of services.¹⁰⁰ The government returned its transmission equipment only on 20 December 2005.¹⁰¹

On 23 October 2005, the Ministry of Information and Communications summoned more than a dozen representatives of FM stations and reportedly issued directions to stop broadcasting news oriented programs with immediate effect from 23 October 2005.¹⁰²

On 27 November 2005, the police raided the *Radio Sagarmatha*, the first community radio in South Asia, and closed down the radio station for “attempting to carry a BBC Nepali service relay broadcast that included the interview of Maoist leader Pushpa Kamal Dahal alias Prachanda.” The police seized transmission equipment, and detained five staff.¹⁰³ In its interim orders on 29 November 2005¹⁰⁴ and 30 November 2005,¹⁰⁵ the Supreme Court allowed the *Radio Sagarmatha* to resume its operations, but the Ministry of Information and Communications continued to harass the management and staff of the radio station.¹⁰⁶ On 7 December 2005, the Supreme Court again ordered the government to allow *Radio Sagarmatha* to air the BBC Nepali service broadcast.¹⁰⁷ But the government did not return equipments of the radio station till 14 December 2005.¹⁰⁸

In order to harass the print media, in August 2005, the government introduced

Government Advertisement One-Door Policy, 2062 BS that, among others, ruled out providing any government advertisement to those newspapers which did not show respect to the monarchy.¹⁰⁹ In May 2005, the government had reportedly suspended 4.5 million rupees assistance to the Federation of Nepalese Journalists.¹¹⁰ In December 2005, Minister of State Shrish Shumsher JB Rana asserted that government advertisements would be provided as per the Government Advertisement One-Door Policy to only those newspapers which showed respect to the monarchy.¹¹¹

b. Torture and arbitrary detention

Dozens of journalists were beaten up and detained, and editors of several newspapers including *The Kathmandu Post* and *The Kantipur* were summoned by the authorities and warned of action if they did not toe the government line.

The media persons were detained enmasse. While riot police detained 58 journalists from Bhrikuti Mandap in Kathmandu on 8 June 2005,¹¹² at least 48 journalists were arrested during a peaceful demonstration at Ratna Park in Kathmandu on 13 June 2005.¹¹³ On 22 June 2005, another 10 journalists were arrested in Kavre.¹¹⁴

Those others detained or arrested included *Reuters* photo journalist Rupak De Chaudhary on 14 March 2005,¹¹⁵ Kushal Babu Basnet of *Nepal Samacharpatra* on 21 March 2005,¹¹⁶ Krishna Prajapati of *Sandhya Times* daily on 7 April 2005, Kashinath Yadav, editor of *Brahmastra* daily and Rabindra Singh of *Kalaiya* weekly on 8 April 2005,¹¹⁷ Himal Dhungel, president of FNJ Ramechhap district branch, and Nawaraj Pathik of *Nepal Samacharpatra* on 27 May 2005,¹¹⁸ Kishor Karki, editor of *Blast Time* daily on 23 June 2005,¹¹⁹ Nepal Press Union president Murari Kumar Sharma, vice president Bindu Kanta Ghimire, central committee members Kiran

Pokhrel and Shital Koirala and Nuwakot district unit president of the NPU, Shiva Devkota on 29 June 2005,¹²⁰ Bhadrnath Adhikary, editor and publisher of *Grameen Samachar* on 8 July 2005,¹²¹ Harihar Singh Rathour of *The Kathmandu Post* on 19 September 2005,¹²² and Yam Birahi of *Rajdhani* daily on 19 December 2005.¹²³

Many journalists were beaten up while taking part in peaceful protests or covering the protests. On 9 June 2005, at least ten journalists were injured in police beatings during a peaceful demonstration at Kalaiya, district headquarters of southern district of Bara. Secretary of the Federation of Nepalese Journalists, Bara district, Guru Prasad Gautam was injured seriously as he was hit with the butt of a gun on his stomach.¹²⁴

On 22 August 2005, police thrashed journalists Ajaya Babu Siwakoti of *Image Channel* and Narendra Shrestha of *The Kathmandu Post* while they were covering a demonstration at Baneshwor.¹²⁵

On 6 September 2005, at least a dozen journalists including photographer Rosan Rai of *The Himalayan Times*, Bhimsen Rajbahak of *Communication Corner*, Kiran Nepal of *Himal Media*, Bimal Gautam of *World News Online*, J P Gupta of *Disha Nirdesh* and Bharat Sahi of *Chuli Weekly*, were injured in police assault at New Road area, Kathmandu.¹²⁶

c. Attacks by the Maoists

The Maoists also targeted the media. The State Television and State Radio stations were specifically targeted. While state run Nepal Television's regional programme production and broadcasting centre in Kohalpur in Banke district was set ablaze on 24 February 2005,¹²⁷ a transmission station of Nepal Television in Palpa was bombed on 17 May 2005.¹²⁸ On 19 May 2005, armed Maoists looted transmission equipment from Ghodaghodi FM sta-

tion at Attariya in Kailali.¹²⁹

The Maoists shot at the editor and publisher of *Dharan Today* newspaper, Khagendra Shrestha while he was working at his office in Dharan. He succumbed to gunshot injuries on 1 April 2005.¹³⁰

The Maoists abducted many journalists including JB Pun Magar of the *Himal Khabarpatrika* on 8 March 2005,¹³¹ Som Sharma, an Illam-based journalist associated with *Ankha* in May 2005,¹³² Bikram Giri, Darchula-based reporter of *The Kathmandu Post* on 3 June 2005¹³³ and Chandra Mani Kattel, a Biratnagar-based reporter of the *Blast Times* on 22 November 2005.¹³⁴

The Maoists even put journalists under house arrest. In June 2005, Maoist insurgents warned Illam-based reporter of *Radio Nepal*, Umesh Gurung to quit his job and join the Maoist war¹³⁵ and put him under house arrest.¹³⁶

VIII. Violence Against Women

In Nepal, domestic violence was widespread. According to Deputy Inspector General of Police Kumar Koirala, violence against women went up from 567 reported cases in 2003 to 1022 cases in 2004.¹³⁷ But the cases of domestic violence were largely unreported as the women were vulnerable and absolutely dependent on men.

Women were also targeted both by the security forces and the Maoists because of their gender. During pro-democracy uprising, many women demonstrators were subjected to sexual harassment and torture.¹³⁸

On 3 July 2005, plain-clothes security personnel shot dead Rama Adhikari in front of her husband at their residence in Taghandubba-7 in Jhapa district, accusing her of having “fed Maoist cadres”.¹³⁹ The security forces also threatened to kill the other five members of the family and tried to bury her secretly. Later, an officer from

the District Police Office asked Devi Prasad, the husband of the deceased, to sign a paper.¹⁴⁰ A fact-finding team consisting of HimRights LifeLine, INSEC, CWIN, CVICT and Advocacy Forum also found that Rama Adhikari was summarily executed.¹⁴¹ The army instituted a court of inquiry into the killing¹⁴² but the report was not made public.

Although the RNA claimed it has a ‘zero tolerance’ policy on sexual violence against children and women,¹⁴³ six -months in army custody was the only punishment, besides suspension of their promotions and imposition of fines, given by RNA to three of its officers - Colonel Bobby Khatri, Captain Sunil Adhikari and Captain Amit Pun for raping and killing Maina Sunuwar in custody in February 2004.¹⁴⁴

The Maoists were also responsible for increased violence against women including rape. On 1 April 2005, Puni Devi Bohora, 26, a mother of five children, was allegedly raped by a Maoist cadre ‘Suman’ in the presence of a dozen other Maoists at her home at Shibalunga VDC in Baitadi in absence of her husband.¹⁴⁵ On 18 August 2005, Maoists raped a Dalit woman at gun point at Jagatpur-4 in Saptari district. The National Human Rights Commission confirmed the rape by the Maoists.¹⁴⁶

Many women were killed by the Maoists. On 23 July 2005, Maoists beheaded a woman identified as Sabita Karki, a local of Bahini VDC-6 in Morang district on charges of spying on them.¹⁴⁷ On 1 November 2005, Maoists mercilessly beat to death one Januka Bhandari, resident of Shimle area of Terhathum district.¹⁴⁸

Many women were also abducted and killed by the Maoists. The victims included one Nirmala Basnet of Ramche Gaighat VDC-9 in Udayapur district who was killed after abduction on 4 November 2005¹⁴⁹ and a pregnant woman of Chatara VDC-4 in Bajura district who allegedly

died on 25 December 2005 in Maoists' custody when she was forced by the Maoists to undergo militia training.¹⁵⁰

A girl who escaped from the Maoists' captivity in December 2005 reportedly told journalists that nine other school girls including Chandra Lohar, Dambari, Dhana Bhattarai, Nirmala and Shusila, who were abducted from various areas of Dadeldhura district were being held hostage by the Maoists. The girl alleged that they had to carry stones, dig pits, cut grasses, cook food for the cadres, and wash their clothes in the labor camps, and forced to join the rebel guerrillas.¹⁵¹

IX. Violations of the rights of indigenous peoples

According to official estimate, indigenous nationalities consist of 42% of the total population of Nepal.¹⁵² The National Foundation for Development of Indigenous Nationalities Act, 2002 AD identified 59 "Indigenous Nationalities" in Nepal. These included 18 Indigenous Nationalities in Mountain (Himalaya) region, 23 in Hills, 7 in Inner Terai and 11 in Terai.¹⁵³ Despite being majority, they continued to remain marginalized in the Nepali society. More than 70% of the indigenous peoples lived below the poverty line.¹⁵⁴

Indigenous nationalities have been the canon fodder of the Maoists conflict in Nepal by the sheer majority they constitute as cadres in the Maoists as well as the soldiers in the security forces. Though no disaggregated data exists on the ethnic origin of over 12,000 persons killed in the conflict, indigenous nationalities have been both the victims and perpetrators.

X. Violations of the rights of the Dalits

The Dalit population in Nepal is esti-

mated to be 4.5 million, representing 20 per cent of the total population of Nepal. About 80% of the Dalit population live below the poverty line.¹⁵⁵

The Dalits continued to be victims of atrocities including physical violence and denial of access to public places and services. On 3 January 2005, a large group of upper caste people from the Mandal community, armed with spears, spades and axes reportedly attacked the Dalit settlement at Parhai area of Koiladi Madhepura village in Saptari district after a minor Dalit boy had plucked some leaves of green vegetables from the farm of an upper caste family. Over two-dozen Dalits, including women and children, were injured in the incident. The upper caste people also allegedly looted whatever they found inside the Dalits' houses including food grain, bicycles, utensils, radio sets, etc and set fire on 40 Dalit houses.¹⁵⁶

In a landmark judgement, on 21 April 2005, the Supreme Court ordered the government to promulgate an Act to ban the practice of "untouchability" and other caste discrimination practices prevalent in the country.¹⁵⁷

In June 2005, Dal Bahadur BK, a Dalit peasant, was severely beaten up by three upper caste people identified as Sher Bahadur Bista, Prem Bista and Dal Bahadur Bista for touching a public water tap at Durgamod VDC-6 in Doti district.¹⁵⁸

In October 2005, the upper caste people reportedly imposed a blockade on a Dalit hamlet in ward-2 at Sarakpura VDC in Saptari district. The six Chamar (Dalit) families in the VDC were prohibited from using the public path and denied access to the rice mills, medical shops and public water taps. Some Dalits even fled the village.¹⁵⁹

In March 2005, 11 Dalit families were reportedly denied access to the forests and

forest products at Ramechhap Sukajaur VDC - 7 in Ramechaap district. As a result, the Dalits were prevented from entering the forest next to their houses to fetch firewood and fodder for their cattle. They had to fetch firewood and fodder for their cattle from a distant forest after walking several hours on foot.¹⁶⁰

In August 2005, the upper caste people reportedly prevented the Dalits from using the public water tap at Bidari Gaun at Syuchatar VDC in Kathmandu.¹⁶¹

XI. Violations of the rights of the child

Nepal was the most dangerous place for children in South Asia in 2005. According to INSEC, 341 children have been killed from 13 February 1996 to 30 November 2005 – 172 children at the hands of the state and 169 at the hands of the Maoists.¹⁶² CWIN put the figure of children deaths at 419 (295 boys and 124 girls) during the 10-year-old conflict.¹⁶³ An estimated 58 children (42 boys and 16 girls) were killed during January - September 2005 alone. Of this, 46 children (35 boys and 11 girls) were killed by the Maoists and 6 (4 boys and 2 girls) children were killed by the security forces, while 6 (4 boys and 2 girls) died in cross fires between the security forces and the Maoists.¹⁶⁴

Over 140 children were reportedly injured by the security forces and the Maoists during 2005. Of them, at least 80 sustained injuries in bomb explosions by Maoists.¹⁶⁵

On 22 March 2005, three school children – Narayan Bahadur Kanauji Magar (17) of Class IX, Tek Bahadur Gaha (15) of Class VIII, and Dal Bahadur Darlami (15) of Class VI – were shot dead by plainclothes security personnel suspecting them to be Maoists. The children were in their

school uniform. The Royal Nepal Army ordered an inquiry into their killings following massive protests¹⁶⁶ but the report was not made public.

The provisions of the Children's Act, 1992 have not been fully implemented. Instead, juvenile justice continued to be treated as a section of criminal justice system in Nepal in practice. The government also failed to evolve a consistent and uniform definition of the child. The Children's Act, 1992 defines "Child" as every human being below the age of 16 years. But, the Labour Act, 1992 puts the age limit of the child at 14 years whereas the Nepal Citizenship Act, 1963 considers a person below 16 years of age as minor. Similarly, the Civil Code (Muluki Ain), 1963 considers the legal age of marriage for boys at 18 years and for girls at 16 years with parents' consent and 21 years for boys and 18 years for girls respectively with no consent of parents.

The government of Nepal also failed to establish any "Children's Correction Home". Since the announcement of the establishment of the Juvenile Bench at district courts in April 2000, no record has been found about their enactment in any district in the country. Children are hardly given different treatment when they are brought to the attention of the justice system. They are often kept in custody together with adults, and the processes and jurisdiction applicable to the investigation, remand, bail and judicial custody are similar to that of adults. There is no separate court for juvenile offenders.

Children were also specific targets of the Maoists. On 16 November 2005, Maoists abducted two children – 12-year-old Netra Kumal and his 15-year-old elder brother, Jhak Bahadur, from Bhimad bazaar in Tanahun district, accusing them of spying on the rebel outfit, and tortured them in custody. They were released on 29

November 2005. According to the victims, they were selling bananas in the bazaar when suddenly three armed men, who identified themselves as security personnel, approached them and abducted them at gunpoint. Jhak Bahadur alleged that the Maoists tied his hands with a rope and hit him several times with a cane. Bruises were visible all over his body. According to the locals, the Maoists had earlier manhandled the boys' parents on the same charge.¹⁶⁷

XII. Violations of the prisoners' rights

Prisons and detention centers in Nepal have been known for the lack of even the basic sanitation and healthcare such as proper ventilations, adequate food, safe drinking water, toilet etc, and the prisoners were denied access to medical treatment, radio, newspapers,¹⁶⁸ family members and lawyers.

The prison conditions further deteriorated as thousands of political prisoners were arrested and detained. Following the arrest of pro-democracy activists after the Royal coup, in Morang jail, there were reportedly as many as 611 prisoners against its sanctioned capacity of 200 inmates. At least 80 prisoners were made to sleep in one room, which lacked proper ventilation. According to former parliamentarian Lal Babu Pandit, who was detained in Morang jail for sixteen days following the Royal takeover, his cell in Morang jail was so overcrowded that one had to wait for a turn to stand up. The inmates had to wait for at least two hours in queue to get their turn to take bath or to go to the toilet. In Prasi jail, the inmates had to sleep by turn due to lack of space.¹⁶⁹ In Kharipati Electricity Training Center in Bhaktapur, there was reportedly no sufficient space for the inmates to sleep, and

there was reportedly only one toilet to be used by 60 detainees including females!¹⁷⁰

No proper medical treatment was provided to the ailing inmates. Despite suffering from kidney problems, severe back pain and losing sensation in some parts of his body, Vice Chairman of the People's Front Nepal Lila Mani Pokharel was denied treatment, even on the family's own expenses. Instead, the police allegedly threatened to lock up Pokhrel in the prison toilet.¹⁷¹ Similarly, Nepali Congress Central Committee leader Ram Chandra Poudel who was detained for 147 days until his release on 28 June 2005 on the orders of the Supreme Court and was repeatedly denied medical facilities.¹⁷² The situation was worse in the custody of the armed forces.

There were reports of torture of the inmates. On the night of 5 May 2005, Nepali Congress Rajbiraj district president Ram Kumar Chaudhary, and party workers – Brij Kirshore, Umesh Mishara, Bikeshwar Yadav and Shusil Seva were allegedly beaten up by the security personnel in the Rajbiraj jail for demanding facilities, including proper medical treatment.¹⁷³

But, visit by international monitoring missions to the prisons were banned. In May 2005, International Committee of the Red Cross was forced to suspend its visits to the barracks after the RNA allegedly failed to abide by the terms of an agreement with ICRC with regard to its worldwide working modalities.¹⁷⁴ In June 2005, NHRC accused the government of not implementing its recommendations, including reforms in the detention centres.¹⁷⁵

XIII. Status of internally displaced persons

Around 100,000 to 200,000 people have reportedly been internally displaced

due to armed conflict with the Maoists since 1996. In addition, over two million people have reportedly fled to India.¹⁷⁶ There was only one small camp for the entire IDP population, known as Regina camp located near the town of Nepalganj in western Nepal¹⁷⁷ with around 200 families.¹⁷⁸

The IDPs fled their villages to escape from being targeted for being political party activists, being forcibly recruited into the CPN-Maoists under their 'one person from each household' policy, torture, abduction, killings, destruction of homes and properties, threats, confiscation of land, extortion and looting by the Maoists, and torture, arbitrary arrests and killing by the security forces.¹⁷⁹

The 1990 constitution of Nepal only recognised the internally displaced persons as a result of developmental projects, economic opportunities and natural or man-made calamities and not because of the conflicts.

The government practiced a flawed mechanism for classification and registration of IDPs. To be identified as an IDP and get the benefits, one has to return to the place of origin to be registered as an IDP at the office of the Chief District Officer. This process makes the IDPs vulnerable from the Maoists and the security forces, and therefore, many refuse to identify themselves as IDPs.¹⁸⁰

The government's assistance to IDPs was very limited. The government set up compensation and resettlement funds for victims of the conflict, such as the Victims of Conflict Fund under which IDP families were entitled to an equivalent of US\$1.30 per day, but most of the money was spent by July 2002. All those displaced after July 2002 were therefore excluded from assistance and official recognition. Moreover, the government provided assistance to only the people displaced by the Maoists, and

not to those displaced by the security forces.¹⁸¹

Instead of providing humanitarian assistance, in 2005, the government dealt violently with the conflict induced IDPs. On 4 June 2005, a Maoist victim identified as Dal Bahadur Gharti, 33, died of injuries he sustained in disproportionate use of force by the police at a protest programme organized by the Maoist Victims Association on 3 June 2005.¹⁸²

The use of disproportionate force against the IDPs was common. On 15 May 2005, police used disproportionate force to disrupt the "peaceful sit-in" programme of the Maoist victims and arrested over 200 of them, including "sick women and children" from in front of the Singha Durbar and areas around it.¹⁸³

On 26 May 2005, security personnel arrested over 150 Maoist victims, including women and children, in the capital from a protest rally demanding food and shelter. Over 40 protesters, including a small child, were seriously injured in the police lathi charge.¹⁸⁴

XIV. Status of the Tibetan refugees

An estimated 2,500 to 3,000 Tibetan refugees enter Nepal every year after a dangerous journey through the Himalayan passes from the Chinese Autonomous Region of Tibet.¹⁸⁵

On 21 January 2005, the government of Nepal shut down the Tibetan Refugee Welfare Office which has been helping to ensure the safety and well-being of Tibetans refugees. It sheltered some 1,000 Tibetan refugees at the time of its forcible closure.¹⁸⁶ The arbitrary closure order also made it difficult for the United Nations High Commissioner for Refugees, which has worked closely with the Tibetan Refugee Welfare office, to provide protec-

tion to the Tibetan asylum seekers in Nepal.¹⁸⁷

Many Tibetan refugees were arrested. On 24 September 2005, a Tibetan exile returnee, Norbu Tsering, was arrested at the Nepal-Tibet border while on his way back to his native village in Kyidong (Ch: Jilong Xian) County, Shigatse Prefecture, Tibet Autonomous Region. On 28 September 2005, he was handed over to the Nepalese Immigration Department, which imposed a monetary penalty of Nepalese Rupees 28,651. Failing to pay the fine, as he was too poor, Norbu Tsering was sentenced to three years and three months imprisonment in Dilli Bazaar Jail, Kathmandu.¹⁸⁸

Another Tibetan refugee, Sonam Tsering was sentenced to three years imprisonment on 9 October 2005 after being arrested from Swayambunath area in Kathmandu on the night of 7 October 2005 for the failure to pay Rs 27,000 penalty imposed by the Immigration Department of the Nepalese Home Ministry.¹⁸⁹

On 27 November 2005, 18 Tibetans, including two women, were reportedly arrested by the Nepal Police in Bara district after they crossed into Nepal through Solukhumbu from China without legal documents.¹⁹⁰ They were sent to the Central Jail in Kathmandu the next day as they failed to pay the fines. They were freed on 8 December 2005 after the Tibetan government-in-exile in India and Tibetan Reception Centre (TRC), a Kathmandu-based non-governmental organization, paid Rs 8500 (US\$121) on behalf of each of 18 Tibetans.¹⁹¹

XV. Violations of International Humanitarian Laws by the Maoists

The CPN-Maoists were responsible

for violations of international humanitarian laws by resorting to indiscriminate killings, abduction, rape, torture, and attacks on educational institutions, health-care systems and destruction of public properties in the country.

a. Arbitrary killings

According to INSEC, Maoists killed at least 709 persons in 2005.¹⁹² The killing of 38 civilian passengers and three security personnel and injuring 72 others including children in a land mine explosion by the Maoists in Madi area of Chitwan district on 6 June 2005¹⁹³ showed blatant violations of international humanitarian laws. On 24 February 2005, suspected Maoists shot dead central member of the World Hindu Youth Federation, Chandra Prakash Rathaur in Birendranagar municipality in Surkhet district.¹⁹⁴

Those who opposed or were suspected of opposing the Maoists were specifically targeted. On 25 February 2005 night, Maoists shot dead an alleged anti-Maoists activist identified as Ghar Baran Teli in Labani VDC of Kapilvastu district. The Maoists also killed another three civilians, Bedullah Jolha, Maksoor Alam and Mohammed Hakik on the night of 26 February 2005 in Jahari VDC of Kapilavastu.¹⁹⁵ Similarly on 23 April 2005, the Maoists killed five villagers including Janardan Yadav and Laxman Murao of Marchawar Semari, and Prahlad Loth and Dwarika Loth of Thumahawa - on the charges of being members of the anti-Maoist "resistance group" in Marchabar Semari and Thumahawa villages in the southwestern Rupandehi district. The victims were dragged out of their homes and shot dead.¹⁹⁶

The Maoists targeted the civilians indiscriminately. On 15 April 2005 night, Maoists gunned down 10 civilians - Ariman Yadav, Dinesh Yadav, Dinesh

Chaudhary, Rajendra Chauhan, Densh Kunwar, Bharat Chaudhary, Dibya Chaudhary), Chandraman Baretha, Bijaya Chaudhary and 14-year old boy Amlesh Yadav in cold blood at Baragdawa of Somni VDC in Nawalparasi district. The Maoists reportedly barged into their houses while they were asleep, pulled them out of the houses and shot them dead, suspecting them of being members of the Maoists' Resistance Committee.¹⁹⁷ An NHRC team went to Nawalparasi to probe the incident.¹⁹⁸ On 5 May 2005, the government announced compensation of Rs.150, 000 to each of the families of the deceased.¹⁹⁹

Even the elderly or physically disabled persons were not spared. On 23 July 2005, the bullet ridden body of an elderly Ramadhar Thakur was recovered in Sohadawa VDC in Banke district three days after his abduction by the Maoists.²⁰⁰ On 23 July 2005, Maoists allegedly killed a handicapped man identified as Ram Prasad Bhattarai after abducting him.²⁰¹

The government officials have been specific targets of the Maoists. The victims included Deputy Superintendent Officer Mahesh K.C. of National Investigation Regional Department in Pokhara who was killed on 30 March 2005,²⁰² Chairman of Sindhuli Chamber of Commerce and Industries, Narayan Kumar Shrestha who was shot dead at his residence at Dhungrebas of Kamalamai Municipality on 31 March 2005,²⁰³ Balanand Kafle, acting Chief District Officer of Bardia who was killed on 11 April 2005,²⁰⁴ Bhagawan Das Shrestha, coordinator of the District Monitoring Committee, Chitwan who was killed on 9 May 2005²⁰⁵ and Ajaya Raj Singh, coordinator of the District Monitoring Committee (DMC), Banke who was shot dead on 24 August 2005.²⁰⁶

The Maoists also indiscriminately used land mines and improvised explosive

device (IED) thereby killing innocent civilians. On the morning of 9 March 2005, a laborer identified as Kali Sada of Gaushala VDC-3 reportedly died and five others including a minor were injured when a Maoist-planted bomb went off on Gaushala-Aurahi road. The laborers were working on the road and the bomb exploded as they removed a post installed on it.²⁰⁷

A large number of minors were killed in bomb explosions by the Maoists. The victims included Saroj Yadav (10), his 14-year-old brother Ashok and 15-year-old Mahesh Yadav who were killed at Mujeyliya of Janakpur, Dhanusha district on 27 March 2005,²⁰⁸ Bam Bahadur Karki (9) who was killed at Padampur of Latikoili VDC in Surkhet on 10 April 2005,²⁰⁹ Lok Raj Bhattarai (6) who was killed at Toligaon area in Dadeldhura district on 22 May 2005,²¹⁰ 5-year-old Dipak Nepali who was killed at Hariharpur VDC in Surkhet district on 4 June 2005,²¹¹ Sumitra Rajali (17) and Basanti Rajali (13) who were killed at Siddadhara VDC-5 of Arghakhanchi district on 13 June 2005,²¹² 5-year-old Neha Gadariya of Kanpur, India, who was killed at Tribhuvan Chowk, Nepalgunj on 23 June 2005,²¹³ Santosh Poudel (13) and Mohan Neupane (13) who were killed at Amkhaiya Jungle in Kailali on 11 July 2005,²¹⁴ four-year-old child Lokendra at Tudidhara, Manakot VDC of Bajura district on 2 August 2005²¹⁵ and 13-year-old Prem Sunar who was killed at Salleri VDC-9 of Dailekh district on 24 August 2005.²¹⁶

c. Illegal confinement and torture

While the autocratic regime of King Gyanendra put several political leaders under house arrest and in prison, Maoists did not lag behind. Twenty five civilians including social workers, local leaders and women, were placed under "house arrest" by the Maoists for nearly one month in

Dailekh, accusing them of initiating a UN development project at Lakandra VDC in the district without their consent.²¹⁷ They were released on 3 July 2005 only after interventions by human rights and civil society organizations.²¹⁸

On 1 July 2005, Maoists allegedly abducted 70-year-old Harilal Dhakal of Kalimati village and 31-year-old Krishna Koirala of Khursanibari village in Dailekh and inhumanly tortured them. While Harilal Dhakal's legs and rib were reportedly broken, Krishna Koirala was blindfolded and severely beaten that broke his right leg.²¹⁹

c. Abduction

According to INSEC, Maoists abducted 46,718 persons between 13 February 1996 and 30 November 2005. Of them 38,052 were released, including 1099 women.²²⁰ According to Amnesty International, Maoists abducted a total of 8,057 people from at least nine districts during the first four weeks of the declaration of unilateral ceasefire on 3 September 2005. Many of them were children and teachers.²²¹

The Maoists also forced civilians to undergo militia training or participate in their programmes. The Maoists imposed "1 house 1 Militia" policy throughout rural Nepal. Often, abduction of innocent villagers, especially school children and teachers became a part of the policy.

Among the prominent cases of abduction included Arun Chand, the son of former Prime Minister Lokendra Bahadur Chand and Managing Director of Basuling Sugar Mills in Chuha in Kailali district. He was abducted on 27 October 2005. According to reports, Chand was released only after he agreed to pay Rs.30 million as ransom, which the Maoists claimed he owned to the local farmers.²²²

On 29 November 2005, Maoists held

hostage a group of journalists and tourism entrepreneurs in Sikaicha VDC in Taplejung district for 22 hours. They were taken there by the UNDP Tourism for Rural Poverty Alleviation Program to study the potential for tourism development in the region.²²³ On 2 December 2005, Ram Dahal, Coordinator of the Programme was released and the audio-visual equipment snatched from them was returned.²²⁴

d. Economic blockade and its consequences

The Maoists regularly imposed violent economic blockade to oppose the royal takeover affecting normal life. On 20 February 2005, Nripad Kumar Parveji, a truck driver from Nagpur of India was shot dead by the Maoists at Charaudi Bazaar area on Prithvi Highway for defying the economic blockade. He was returning to India after delivering goods in Kathmandu.²²⁵

On 17 February 2005, Maoists reportedly torched at least 13 goods carriers, burning 58 live buffaloes loaded in two of the trucks, at Jogimara section of the Prithvi Highway. The vehicles included a tanker loaded with kerosene, while the rest of the trucks were carrying commodities such as rice, cement, coal and iron rods.²²⁶

Even the ambulances were not spared. On 22 February 2005, Maoists reportedly bombed and set on fire an ambulance run by a non-profit organisation near Khaireni along the Kohalpur-Lamahi section of the Mahendra highway "for defying the blockades."²²⁷

During the Maoists' economic blockade, the people in the remote hill districts of the mid-western region suffered from acute food shortage as the authorities failed to supply the required quota of food grains to these districts. Jumla, Humla, Kalikot, Dolpa and Mugu districts²²⁸ and Ilam, Panchthar and Terhathum had inadequate

access to basic commodities.

e. Destruction of public properties

The Maoists were responsible for destruction of public properties worth hundreds of millions of Nepalese rupees.

These included the bombing of a sub-station of Nepal Electricity Authority (NEA) at Kohalpur of Banke district which was destroyed on 20 February 2005;²²⁹ two government office buildings used by the Department of Survey and Revenue Office in Hetauda on 26 February 2005;²³⁰ burning down of half-a-dozen government offices including the District Administration Office, District Irrigation Office, District Education Office, District Development Committee, District Land Revenue Office, District post office and District Drinking Water Office at the headquarters of Argakhachi district on 3 March 2005;²³¹ bombing of state-owned Nepal Telecom Company, District Survey Office and District Forest Office at Inaruwa in Sunsari district on 16 March 2005;²³² bombing of the building of the Employees' Provident Fund Regional Office in Banke on 21 March 2005;²³³ bombing of the control room of NEA in Dhangadi on 2 June 2005;²³⁴ and setting fire to Jyoti Spinning Mills on 17 August 2005.²³⁵

f. Attacks on the educational institutions

The Maoists systematically targeted the educational institutions throughout the year.

Several schools were bombed.

Suspected Maoists bombed Ratmata Secondary School, Solawang Secondary School, Kailideu Lower Secondary School, Thurpunge Lower Secondary School, Dangdunge Primary School and Garadhunga Primary School in Musikot, the district headquarters of Rukum on 14 February 2005;²³⁶ Mahendra High School, Modern Public School, Mangal Secondary School, Chandra Mewal Secondary

School and Bheri Technical School on 20 February 2005,²³⁷ Mahendranagar Medical College in Khairbhatti on 10 March 2005,²³⁸ the Dipendra Police Boarding School at Guleriya in Dang district on 2 April 2005,²³⁹ Sun Shine Boarding School in Siddharthnagar in Rupandehi district on 1 May 2005,²⁴⁰ Deepshikha Boarding School in Dang on 9 June 2005,²⁴¹ two private schools in Myagdi – Lokdeep Residential Secondary School at Mangalaghat and New Best Point Higher Secondary School at Kalipur on 16 June 2005,²⁴² Nobel Academy at New Baneshwore in Kathmandu on 22 June 2005,²⁴³ and M M Academy in Khalanga, the district headquarters of Salyan on 25 June 2005,²⁴⁴ etc.

On 2 May 2005, alleged Maoists set afire Lakshmi Adarsha Higher Secondary School at Sishuwa, Lekhnath-7 in Kaski district, damaging the library and laboratory sections of the school.²⁴⁵

The Maoists, its student wing ANNF-SU-R and teacher wing All Nepal National Teachers' Organization imposed "educational strikes" affecting hundreds of thousands of students. The Maoists have totally paralyzed the educational institutions across the country. Thousands of school and college students were deprived of appearing in examinations due to forcible closure of educational institutions or bandhs.

In February 2005, 371 schools remained closed due to an indefinite educational bandh enforced by the Maoists in Bardiya and Chitwan districts. The bandh affected over 100,000 students in Bardiya district and over 70,000 students in Chitwan district.²⁴⁶

On 13 May 2005, ANNF-SU-R forcibly closed down schools and colleges across the country in protest against "repressive" action of the government to oust the ANNF-SU from Ratoghar.²⁴⁷ Over

25,000 students were affected when over 225 community schools in Ilam district remained shut for days since July 2005 due to warnings from the Maoists.²⁴⁸ More than 150,000 students had been affected after ANNISU-R forced all educational institutions, including 120 private schools, to close down in Chitwan district from 21 August 2005.²⁴⁹ Some 5,000 students were also affected due to closure of all the private and government schools in Udayapur district for days since 11 August 2005.²⁵⁰

In October 2005, over 50 out of 190 community-run schools were shut down following threats from ANNISU-R in Morang district. Over 25,000 students were reportedly affected.²⁵¹

In November 2005, the Maoist cadres forcefully shut down schools in Banepa in Kavre district, 60 km east of Kathmandu, depriving over 10,000 students their right to schooling.²⁵² Around 25,000 pupils in 20 government schools in Dharan have been affected by forcible closure of government schools in Dharan by the ANNISU-R since 13 November 2005.²⁵³

In Pyuthan district, ANNISU-R activists seized examination question papers for the Naitik (Moral Education) subject for grades six, seven and eight at Bagdula, ahead of the examination scheduled to start from 15 November 2005. ANNISU-R maintained that the moral education subject was “nothing but mere glorification of the royal family”.²⁵⁴

On 6 December 2005, ANNISU-R locked out Harihar Higher Secondary School in Pokharathok VDC in Arghakhanchi.²⁵⁵

On 7 December 2005, the Maoists cadres reportedly locked a community school, Bhadaure Primary School, at Kathjor VDC-2 in the same district in protest against the transfer of the management of the school to the community. At least 300 students, who were preparing for second terminal examination, were affected due to the lockout.²⁵⁶

The Maoist affiliated All Nepal National Teachers’ Organization (ANNTO) called a closure of schools at Ramechhap district from 11 December 2005 to 15 December 2005 putting forth various demands. Around 50,000 students of 400 schools have been directly affected by the closure. The District Examination Committee postponed the quarterly examinations till 15 December 2005 due to the closure.²⁵⁷

On 11 December 2005, Maoists forcefully locked a higher secondary school in Bhaluwai area in Sindhuli district.²⁵⁸

As of 16 December 2005, some 150 children had been deprived of primary education after Maoists padlocked six child development centers (CDC) for the last three months in the rural areas of Rupendehi district. Gyankunj, Budhajyoti, Udaya, Jhutthur, Dishanirdesh and Santideep CDCs from Amawa, Manmatoriya and Khadgavan VDCs of the district have been padlocked by the cadres.²⁵⁹ ■

CHAPTER 5

Maldives

I. Ranking in Human Rights Violators Index: 4th

With a population of 0.28 million, Maldives has been ruled with an iron hand by President Maumoon Abdul Gayoom since 1978. Despite submission of 31-point proposals for constitutional amendments to the People's Special Majlis by President Gayoom on 14 February 2005, granting permission to register political parties in June 2005 and the ratification of the "Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" on 14 September 2005, Maldives has been ranked No. 4th in the *SAARC Human Rights Violators Index 2006*. In practical terms, there was no improvement of human rights situation in 2005.

II. Political freedom

On 2 June 2005, the parliament of Maldives, known as the Peoples' Majlis, unanimously passed a motion to allow registration of political parties.¹ Although Article 27 of the 1998 Constitution of Maldives provided for freedom of association, registration of political parties had been banned earlier.

After June 2, four political parties, Maldivian Democratic Party (MDP), Dhivehi Rayyithunge Party (DRP) of President Maumoon Abdul Gayoom, Islamic Adhaalath Party (IAP) headed by Dr. Abdul Majeed Abdul Bari and Islamic Democratic Party (IDP) led by Umar

Naseer were registered.² There were allegations against President Gayoom of using civil servants and state resources to recruit members into the DRP.³ Many Maldivian businessmen in tourism and trade had reportedly been forced to join the DRP.⁴

Though political parties were allowed, political activities were virtually banned. On 6 September 2005, the government temporarily suspended all political rallies till 20 September 2005 following alleged attack on policemen at an MDP rally on the night of 5 September 2005.⁵ On 8 September 2005, however, the government withdrew the suspension.⁶ On 1 November 2005, Foreign Minister Dr Ahmed Shaheed threatened the opposition MDP stating that "inciting rebellion" through "peaceful disobedience" was an "offence" and could result in prison terms.⁷

Peaceful gathering critical of the government was suppressed violently in clear violation of Article 26 of the 1998 Constitution that provides for the right to peaceful assembly and Article 27 that provides for the right to freedom of association.

In the early morning of 1 August 2005, a large number of people who had gathered in front of the Majlis Building to observe the proceedings of the session of the Majlis were brutally beaten up with sten guns and electric shock batons by the Elite Star police.⁸ Several people were arrested and charged with unlawful assembly.⁹

Mr Mohamed Nasheed, Chairperson of the MDP, was arrested on 12 August 2005 by the riot police along with four other MDP activists – Jennifer Latheef,

Ahmed Abbas, Latheefa Umar and Aminath Shareef during a peaceful protest at the Republican Square in Male on the occasion of the first anniversary of pro-democracy uprising.¹⁰ The police claimed that Mohamed Nasheed was taken into custody for his own safety and to help disperse a 600-strong crowd.¹¹ But Nasheed was later charged with terrorism under Article 6(b) with reference to Article 2 (g) of Law No. 10/90 i.e. Law on the Prevention of Terrorism in the Maldives and sedition under Article 29 of the Penal Code. Mr Nasheed was initially held in Dhoonidhoo Detention Centre and later placed under house arrest in Male on 1 November 2005.¹² He was not released by the end of 2005.

The sentences were disproportionate to the crimes purportedly committed by opposition political activists. The sentencing of Ms Jennifer Latheef, Councilor and Human Rights Coordinator of MDP, to 10 years' imprisonment under the Law on the Prevention of Terrorism in the Maldives on 18 October 2005 for allegedly throwing a stone towards a policeman in 2003 was an apt example of disproportionate sentences.¹³

Registration of political parties had no effect, as in the by-elections for the Special Majlis, the Constituent Assembly in three vacant seats of Male, Addu and Shaviyani¹⁴ held on 24 December 2005, political parties could not field their candidates. Candidates supported by the opposition political parties had to contest the by-elections as "independent candidates"!

Arbitrary arrest, detention and intimidation of political leaders and cadres opposed to President Gayoom continued unabated.

On 22 January 2005, Ahmed Falah, an MDP photographer, was arrested for filming a protest by voters at a polling station in Male during the elections for the Majlis.

He was charged under section 58 of the Penal Code for "committing an act in a public place that would disturb the peace," which was lessened to "disobedience to order" under 88(a) of the Penal Code on 9 March 2005. While in detention, the authorities brought forward a case that alleged his involvement in assaulting a prison inmate in November 1998 (Lawsuit nos: 889/JC/2003 and 890/JC/2003). He was transferred to house arrest on 21 March 2005. In June 2005, he was convicted and sentenced to six months in prison.¹⁵ He was sentenced based on his confessional statement extracted under torture by the police. He was released on 8 December 2005 after serving his sentence.¹⁶

On 4 August 2005, pro-democracy activists Ibrahim Shiham, Moosa Haleem, Mohamed Siddeeqe and Hussain Rasheed were arrested on the charge of participating in an "unlawful assembly" in the Republican Square in Male on the same day. Ibrahim Shiham was produced in the court on 18 August 2005. He told the court that he was arrested at 4:30 pm on 4 August 2005 and was taken straight to Dhoonidhoo Detention Centre, and therefore he could not possibly have taken part in the unlawful assembly later that evening in Male. The second hearing into Ibrahim Shiham's case took place on 21 August 2005 which also reportedly ended abruptly after the State Attorney Abdullah Nasheed failed to establish charges against him.¹⁷

On 16 August 2005, senior MDP member from Addu, Abdulla Rasheed was arrested at Addu Atoll along with a large number of MDP supporters including Mohammed Saeed, Ibrahim Zadhee, Mohammed Saeedh, Abdulla Sodig, Hussein Shahid, Zahidh Hussein, Saudhullah Hameed, Mohammed Habeeb, Mohammed Sharmeel, Ibrahim Jamaal, Mohammed Zubair, Ibrahim Rasheed, Ahmed Sattar, Sobree, Shammi and Azleem.¹⁸

III. Human rights violations by the security forces

The security forces were responsible for gross human rights violations including violations of the right to life, torture and other inhuman and degrading treatment.

Muaviath Mahmood who was arrested along with Fathimath Suzana, Ahmed Zuhor and Shamoon Rasheed on alleged drug offences on 4 March 2005 died on 9 March 2005 at Dhoonidhoo jail allegedly because of torture in police custody. Mahmood's father lodged a complaint with the Human Rights Commission of Maldives (HRCM) alleging that he had seen traces of maltreatment on the body of his son. Police summoned Mahmood's father twice on 24 and 25 March 2005 for lodging the complaint.¹⁹ Co-accused and co-detainee Ahmed Zuhor and Samoon Rasheed in their written statements before the HRCM submitted on 28 March 2005 corroborated that Muaviath Mahmood was tortured to death.²⁰

Ahmed Zuhor alleged that the police wrung his arms backwards and clipped them together, hung him up and physically abused him severely during the investigations. He had to be admitted to Indira Gandhi Memorial Hospital on 13 and 15 April 2005 respectively following physical assault by police officers on 4 April 2005. He was taken back to Dhoonidhoo Detention Centre on 15 April 2005 and kept in solitary confinement until his release without charge on 24 May 2005.²¹ Another detainee, Shamoon Rasheed also complained to the HRCM that police "kicked and punched" him while conducting the investigation and forced him to sign a confessional statement admitting that he used and sold narcotics.²²

Ibrahim Mohamed, who was arrested for alleged possession of drugs on 7 March 2005, alleged that policemen running from

a distance gave flying kicks at his chest and stomach, hit his head with chairs, banged his head against walls, pulled his hair and hit him on the chest with elbows, among other abuses. He reportedly had several visible bruises, swelling and wounds, including cuffed marks, bruises on his neck as a result of strangling and bruises on his back, arms, chest, stomach and knees. On 12 March 2005, he had to be taken to Indira Gandhi Memorial Hospital because of excessive bleeding from his genitals and anus.²³

Arbitrary arrests were rampant in Maldives. At the midnight of 23 January 2005, one Mohamed Fauzi was arrested by the police without any warrant and taken to Dhoonidhoo Detention Center.²⁴

On 24 April 2005, the Indian authorities deported one Ibrahim Asif to Maldives after arresting him on the charge of trying to carry out alleged terrorist activities. He was released on 12 August 2005 only to be re-arrested on 22 August 2005 under Law on the Prevention of Terrorism.²⁵ In early November 2005, Asif was transferred from Dhoonidhoo Detention Centre to house arrest.²⁶ On 20 November 2005, he was produced before the Criminal Court on the grounds that "the Indian police had said he was connected to al-Qaeda." Although Asif strongly denied the charge and the police could not produce any evidence against him, the judge arbitrarily ordered that he be put under house arrest.²⁷

IV. Judiciary and administration of Justice

There is no independence of judiciary in Maldives. President Gayoom is the head of the judiciary²⁸ and has the power to appoint²⁹ and dismiss judges at his whims³⁰. There is no Supreme Court and the appeals are heard in the High Court, and the president being the final arbiter of appeals.³¹

The President is the judge and jury in Maldives.

On 11 November 2005, a ten-member Judicial Services Commission (JSC) was established to ensure independence of judiciary from the executive. The JSC is mandated to advise the President on the appointment and dismissal of judges.³² However, the opposition MDP alleged that all the ten members of the JSC including the Chief Justice and three other judges, the Attorney-General and the Minister of Justice, and four other members were President Gayoom's cronies.³³

No substantive legal reforms were undertaken to implement the recommendations contained in the report titled "Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform" in 2004. The report was prepared at the request of the Maldivian Government for the United Nations Development Programme as part of President Gayoom's reform proposals. Professor Robinson, the author of the report, stated that "the Maldivian criminal justice system systematically fails to do justice and regularly does injustice".³⁴

The conviction of Jeniffer Latheef showed that judiciary often acts as the rubber stamp of the executive. Her conviction rested on a claim by a police officer that she had hit him in the shin with a stone, while he was walking away from her in September 2003. Thousands of people had participated in the demonstrations on September 2003 and there was no evidence to suggest that Ms Latheef was involved in any violent activity. Of the seven witnesses against Ms Latheef, six were fellow police officers, whose statements reportedly contradicted with each other. But Judge Fahmy of the Criminal Court completely ignored the inconsistencies in the statements given by the State's (prosecution) witnesses to the police as well as in the

court. The judge held that given the 'lapse of time' between police statements and court hearing, the contradictions were insignificant but he also completely ignored vital defence arguments. Ms Latheef was ultimately sentenced based on her alleged confession to the police, and on the basis of undated photographs of her taken by anonymous sources.

In fact, the government admitted that 97% of cases in 2003 and 64% of the cases in 2004 were adjudicated based on confessional statements of the accused.

Earlier on 2 October 2005, Abdulla Alexander, Abdulla Shabir and Ahmad Moosa, who were also charged for committing acts of terrorism for participating in the September 2003 civil unrest, were each sentenced to 11 years jail. Another pro-democracy activist Ikleel Ibrahim was given 10 years sentence.³⁵

The lawyer of the Chairperson of MDP Mohamed Nasheed, Husnu Suood alleged that "equal opportunities had not been given to the defense and the prosecution" by the trial judge during the hearings.³⁶

V. Effectiveness of National Human Rights Institutions

The Human Rights Commission of the Maldives was established on 10 December 2003 by special decree of the President. On 21 July 2005, the People's Majlis (Parliament) passed the Human Rights Commission Bill which was aimed at reducing the investigative powers of the Commission.

In response to the Bill, the Human Rights Commission of Maldives submitted 13-point recommendations for amendment of the Human Rights Commission Bill. Among others, the HRCM sought amendment to Article 4 of the bill that provided for seven full-time members in the

Commission; Article 6(a) that provided that one must be a Muslim for appointment as a member of the Commission; Article 9, which, according to HRCM, “may have a negative influence on the Commission because of the Chairperson”; Article 13(a)(3) which provided that each member of the Commission should actively participate in all aspects of the investigations; Article 19(a) which provided that the Commission should ensure that any complaint has to be filed with the prior consent of the victim; Article 21(b)(3) which was amended to deny power to the Commission to have access to documents such as victim’s statement given to the police or National Security Service personnel; Article 28(c) which provides that financial records shall be maintained in accordance with the guidelines set by the Auditor General who is appointed by the President, which may, in the words of the Commission, “give the opportunity to the President to influence the work of the Commission”.³⁷

None of the recommendations of the HRCM were accepted. President Gayoom ratified the bill, without any change, on 18 August 2005. In protest, the Chairperson of the Human Rights Commission of the Maldives, Ahmed Mujuthaba resigned on 12 September 2005.

The Human Rights Commission of Maldives had already been suffering because of lack of members. Out of total nine members, three members resigned during 2004. As no new member was appointed, the HRCM started the year with only 6 members. Out of the six members, Mohamed Waheed Deen resigned on 14 July 2005 following his appointment as the Minister of Atolls Development, Dr. Fathimath Shafga resigned on 22 August 2005 due to family problems and Ms. Aishath Ali Naaz resigned on 7 September 2005 for higher studies abroad. Since

Chairperson of HRCM, Ahmed Mujuthaba himself resigned in protest of the Human Rights Commission Bill on 12 September 2005, only 2 members - Mr. Ahmed Saleem and Mr. Mohamed Waheed were left with the Commission till the end of 2005.³⁸ The Human Rights Commission could not function since August 2005 because of the lack of quorum.

VI. Repression on Human Rights Defenders

Human rights defenders continued to face repression. Only those individuals close to the regime were allowed to register NGOs. The biggest NGO in the Maldives, Society for Health Education, is headed by First Lady, Nasreena Abdul Gayoom.³⁹

In 2005, there was only one local registered human rights organization, Hama Jamiyya headed by *Adduvas* editor Aishath Velizinee.⁴⁰

The government denied registration to four NGOs, namely, Human Rights Association of Maldives, Reporting Network for the Relatives of the Persons in Judicial Care, Maldivian Detainee Network and Maldives Center for Human Rights and Democracy. Home Minister Ahmed Thasmeen Ali informed the parliament that the organizations were denied registration because they have international contacts!⁴¹

Human Rights defenders were at risks of arrest and intimidation. On 19 March 2005, Ahmed Nazim Sattar, chief organizer of the “Reporting Network for the Relatives of the Persons in Judicial Care” was summoned to the Police Station for unspecified charges and was accused of advising Mrs Sakeena, mother of Ahmed Zuhoor who was arrested on 5 March 2005 and ill-treated in custody, to approach the Human Rights Commission of the Maldives.⁴²

VII. Freedom of the press

Article 25 of the 1998 Constitution of the Maldives provides for freedom of expression “unless prohibited by law in the interest of protecting the sovereignty of the Maldives, of maintaining public order and of protecting the basic tenets of Islam”. The Penal Code also prohibits inciting citizens against the government.⁴³

The government consistently misused these provisions to silence press freedom. At least a dozen journalists were arrested for exercising their freedom of expression. Cyber dissident Ahmed Ibrahim Didi who was arrested in January 2002 continued to be detained till the end of 2005.

The government controlled all the electronic and print media. The government continued to jam broadcasting of independent Radio Station – *Minivan Radio* – which ran a shortwave service for one hour a day as well as the website of *Dhivehi Observer* based in London.

In July 2005, the government allowed registration of four newspapers *Minivan*, *Dhuvas*, *Iruvaru* and *Hafthaa Kulhivaru* and four magazines *Vaguthu*, *Fanvai*, *Galan* and *Best of Maldives*.⁴⁴ The *Minivan* daily became the only registered daily which was not directly controlled by President Gayoom. The others - *Haveeru* is controlled by the former minister for youth and sport, while daily *Aafathis* is owned by the brother-in-law of President Gayoom, and *Miadhu* daily is directly controlled by President Gayoom and has Information minister, Ahmed Abdullah, as the head of the editorial team.⁴⁵

Minivan and its staff bore the brunt of the onslaught of the State against freedom of expression.

Despite acquiring permission to produce a print edition in July 2005, the print edition of *Minivan* ceased to appear following alleged threats from the govern-

ment thugs to the printer of the newspaper at the end of August 2005. The newspaper had to continue its circulation in photocopied form.⁴⁶

The government continued to intimidate *Minivan* and its editor Aminath Najeeb. Najeeb was twice detained by the police and threatened with prosecution and potential jail term. On 20 September 2005, government-controlled media announced that six articles published by *Minivan* titled “unrest created in Male are planned by certain people” published in the newspaper on 17 August 2005; “Torture out of control” and “thanks performed” published on 21 August 2005; “Government instills fear on students calling for the resignation of the President” published on 15 August 2005; “the secret of dis-education policy” published on 25 August 2005; and an article titled “He may do anything to remain in power” published on 18 September 2005⁴⁷ were sent to the Attorney-General for criminal prosecution by the Ministry of Information.

Many reporters of *Minivan* were arrested on frivolous charges. These included *Minivan*’s correspondent Shuaib Ali who was arrested on 13 August 2005⁴⁸, *Minivan*’s photo journalist Imran Zahir who was arrested while covering an MDP rally in Male and taken to Dhoonidhoo Detention Centre on 4 September 2005⁴⁹ and *Minivan* reporter, Abdulla Saeed (Fahala) who was taken into custody on 13 October 2005.

There was little space for the right to freedom of expression. On 5 May 2005, Mohamed Didi, an MDP leader, was arrested in Addu Atoll for the interviews he gave to *Minivan Radio* regarding the unrest in Addu Atoll in April 2005 following the arrest of Zahid, a prominent member of the MDP from Feydhoo on terrorism charges. He was transferred to house arrest on 19 May 2005.⁵⁰ On 13 October 2005, Colonel

Mohamed Nasheed, a leading columnist with *Minivan* newspaper, was arrested hours before he was due to speak at an MDP rally.⁵¹

The government maintained complete control over the internet. All dissident websites were blocked by the government controlled Internet Service Provider (ISP), *Dhiraagu*. *Dhivehi Observer*, a London-based website, which primarily focused on human rights violations in the Maldives, had been banned in the Maldives since it was launched in early 2004.⁵²

On 1 May 2005, Ismail Faiz, the system manager of *Dhiraagu*, and another *Dhiraagu* employee, Mohamed Zahid were arrested by the police on the charge of collaborating with *Dhivehi Observer*. Ismail Faiz was later accused of having links with the militant group Jamatul Muslimeen. He was held in solitary confinement until his release on 6 June 2005.⁵³

Even the journalists of government-run media were not spared. On 1 August 2005, *Adduvas* weekly photographer Ali Fahudhu was arrested by police near Mercury Light area in Male for taking pictures of police crackdown on protestors, who were demanding release of political detainees.⁵⁴ This was followed by arrest of Ibrahim Rasheed, the managing director of the state-owned weekly *Adduvas*, on 14 August 2005.⁵⁵

VIII. Violations of the prisoners' rights

Prison conditions remained deplorable in Maldives. Though the government of Maldives signed an agreement with the International Committee of the Red Cross on 5 October 2004 to provide access to visit the places of detention, there has been little improvement of the prison conditions. The visit of the HCRM to Dhoonidhoo jail on 9 March 2005 and

Maafushi jail on 10 March 2005 exposed the deplorable prison conditions. The HRCM representatives were not allowed to hold private meetings with detainees.

There were no trained prison guards.⁵⁶ In Dhoonidhoo jail, there were a total of 118 prisoners including 8 children. The HRCM reported that the cells in the new building constructed for accommodating detainees "are not fit for accommodating people" as there were risks of "health problems". The cells and toilets are so dark that the prisoners "complained of not being able to differentiate between night and day."⁵⁷

The quality of food was poor. Medical facilities were non-existent despite the fact that the detainees included a large number of alleged drug addicts. Many prisoners complained of beating and being kicked with boots on various parts of the body during interrogation. They were handcuffed with the hands behind their backs. Injury was inflicted to the sexual organs of both male and female inmates.⁵⁸

In Dhoonidhoo jail, 11 persons were detained without being produced before the court. These included 1 person for 39 days, 2 people for 25 days, 1 person for 14 days, 4 people for 9 days and 1 person for 5 days.⁵⁹

In the Maafushi jail, there were a total of 376 prisoners. Although the jail was designated to hold people serving sentences, the undertrials (208) exceed those convicted (168). There was no segregation of the convicted from the undertrials.⁶⁰

There were 6 cells in "D Block" of Maafushi jail where 78 undertrials were kept. The Human Rights Commission of Maldives held that the place was "in no way fit to accommodate humans". The cells were so congested that it was not possible to walk or move about within the cells. The cells were hot and water leaked through the roof in some cells. Toilets were absolutely

unhygienic. The detainees had no access to reading and writing materials.⁶¹

IX. Violations of the rights of the child

Maldives ratified the United Nations Convention on the Rights of the Child on 13 March 1991 with reservation to Articles 14 and 21 and adopted Law on the Protection of the Rights of the Child in 1991.

There were reports of neglect and sexual abuse of children. Boys are favoured over girls.⁶² Parents generally curtailed education for girls after the seventh grade. The Ministry of Gender and Family Development reported continued child abuse, including sexual abuse during 2005. Children were engaged in agriculture, fishing, and small commercial activities, including in family enterprises.⁶³

Children in particular suffered from severe malnutrition. The Food and Agriculture Organization of the United Nations statistics revealed that 44 per cent of children in Maldives suffered from malnourishment.⁶⁴ According to UNICEF, a quarter of children under the age of 5 suffered stunted growth, which is one of the worst malnutrition rates in South Asia.⁶⁵

Article 8 of the Law on the Protection of the Rights of the Child provides for rehabilitation of juvenile delinquents without punishment. Article 9 further provides that “A special procedure must be established for the investigation, adjudication of and the imposition of punishment, wherever necessary, for offences committed by children. Further, preference shall be given to rehabilitation of children, who are considered minor in Shari’a, without imposing punishment on such children.”

However, children faced harsh punishment from the courts. On 9 March 2005, Shaneez Hashim was sentenced to

life imprisonment for “possessing drugs kept for the purpose of selling” by Juvenile Court Judge Abdulla Didi although he was a minor when he committed the alleged crime. Shaneez Hashim was arrested in August 2004 for alleged possession of drugs. According to his mother who lodged an appeal in April 2005, Shaneez Hashim was a minor when he committed the alleged crime but the Judge gave him a full adult sentence because he had since turned 18 years. Shaneez Hashim’s mother alleged that her son did not have a lawyer and the Unit for the Rights of Children under Ministry of Women’s Affairs and Social Security failed to supervise the case on the ground that the accused was now an adult. This was despite the fact that the case was heard at the Juvenile Court.⁶⁶

Police also tortured children in custody. Following the unrest in Addu Atoll on 30 April 2005,⁶⁷ the police arrested a group of minor boys and allegedly tortured them in custody. One of the boys from Hithadhoo stated that he and his co-detainees were slapped by the police before asking any question and were threatened to confess their involvement in the unrest. When the boys did not speak, they were allegedly given electric shocks a couple of times.⁶⁸

X. Violence against women

Traditionally women have played a subordinate role in Maldivian society, although they now participate in public life in growing numbers and gradually have been participating at higher levels. In 2001, women constituted 38 percent of government employees, and about 10 percent of National Security Service (NSS) personnel.⁶⁹ In 2005, 2 women members were elected while 4 other women members were appointed by the President in the

50-member People's Majlis and 1 woman member was elected and 4 other women members were appointed by the President in the 50-member Special Majlis.⁷⁰

Though "gender equality in relation to national development, law, and politics" was one of the seven main features of the 9 June 2004 Constitutional and Political Reforms of President Gayoom,⁷¹ women, however, were still not eligible to become the President of the country but might hold other government posts.

The literacy rate of women was 98 percent⁷² but women suffered in the administration of justice particularly because of the application of the *Sharia* in matters such as divorce, education, inheritance, and testimony in legal proceedings. Under the *Sharia* law, in the absence of any mutual agreement to divorce, husbands may divorce their wives more easily than vice versa. Shari'a law also governs interstate inheritance, granting male heirs twice the share of female heirs. Under the country's Islamic practice, the testimony of two women equals that of one man in matters involving Shari'a, such as adultery, finance, and inheritance.⁷³

Women rights advocates in the Island nation maintained that cultural norms, not the law, inhibit women's education and career choices. In many instances, educa-

tion for girls is curtailed after the seventh grade, largely because parents do not allow girls to leave their home island for an island having a secondary school. Due largely to orthodox Islamic background, there is a strong strain of conservative sentiment especially among small businessmen and residents of the outer islands who opposed an active role for women outside the home.

Maldives has not yet adopted any law pertaining to sexual harassment as well as domestic violence against women.

There were allegations of severe violence including sexual harassment against female detainees during detention. On 25 June 2005, police arrested one Ameelia Mohamed after having been accused by a third party of being a drug addict. The police allegedly forced her to sign a statement after severe beating. She was also subjected to sexual harassment and verbally abused with filthy language.⁷⁴

On 12 August 2005, about thirty armed and masked policemen surrounded the peaceful protestors at the Republican Square at Male who were observing the first anniversary of pro-democracy uprising and arrested Ms. Aminath Shareef along with many others. Ms Shareef alleged that the police personnel kicked her and dragged her away from the Republican Square.⁷⁵ ■

CHAPTER 6

Pakistan

I. Ranking in Human Rights Violators Index: 5th

Ruled by quasi-military dictatorship of President General Pervez Musharraf, Pakistan continued to face democratisation problems with President Musharraf showing no interest to shed his uniform. While the constitutional court i.e. the Supreme Court had been accused of validating the military regime, the High Courts and the subordinate courts were found to be quite active in redressing violations of fundamental rights of the citizens. Such contradictions in the face of gross and widespread human rights violations put Pakistan at No. 5 SAARC *Human Rights Violators Index 2006*, behind Nepal, Maldives, Bhutan and Bangladesh.

II. Political Freedom

Repression of the political opponents by the ruling parties has been a part of the military regimes. Thousands of activists of the opposition Alliance for Restoration of Democracy (ARD) were subjected to arbitrary arrest and detention by the regime of General Pervez Musharraf. Former chairman of ARD, Mr Makhdoom Javed Hashmi who was arrested, tried in a Kangaroo court and convicted on 13 April 2004 for 23 years jail term on various counts in an alleged sedition case, continued to remain in prison.

The administration of President Pervez Musharaff continued to deny the right to freedom of association and assembly to the opposition political parties. On

31 March 2005, police baton charged and arrested two leaders, Dr Arshad and Malik Muhammad Husain, Nazim of New Satellite Town, and about 18 activists of the Muttahida Majlis-e-Amal (MMA) from the Shaheen Chowk in Sargodha in Punjab for staging a motorcycle rally and distributing handbills in favour of their proposed wheel jam strike on 2 April 2005.¹ Over 2,000 MMA activists, including two Members of National Assembly and two Members of Provincial Assembly were arrested by law enforcement agencies all over Sindh and in Islamabad in raids during the night of 1 April 2005 as a 'pre-emptive action' in connection with the MMA's call for a nationwide strike on 2 April 2005 against inflation and unemployment.² On 1 April 2005, police reportedly arrested Senator Raza Mohammad Raza of Pakhtoonkhawa Milli Awami Party (PkMAP) along with 27 other political activists in Peshawar for observing a complete strike on a call given by Pakistan Oppressed Nations Movement (Ponam) to protest against price-hike, Kalabagh dam and for the restoration of provincial autonomy.³

On 13 April 2005, Punjab Police reportedly launched a crackdown against activists and leaders of the Pakistan People's Party (PPP) in Lahore and arrested around 700 of them, including President of the Lahore Chamber of Commerce and Industry, Misbahur Rehman and 75-year-old Paras Jan under Section 16 of the Maintenance of Public Order. Police also raided the homes of PPP leaders, Member of Provincial Assembly (MPA) Azma

Bukhari, MPA Faiza Malik, Naveed Chaudhry, Munir Khan, Hur Bukhari, Altaf Qureshi and MPA Samiullah Khan.⁴

On 15 April 2005, Pakistan People's Party claimed that over 50,000 of its activists, including women, were arrested all over the country and the army had been deployed in Sindh to block the super highway to prevent the PPP workers and supporters from welcoming Asif Ali Zardari, husband of former prime minister and chairperson of the PPP, Benazir Bhutto, at the Lahore airport on 16 April 2005. Besides, the party offices were sealed in Lahore, Islamabad and Karachi.⁵ On 18 April 2005, the courts granted bail to hundreds of PPP activists. However, on the ensuing night, the police added Section 7(a) of the Anti-Terrorism Act in the FIRs, charging them of anti-state activities in order to deny them bail.⁶

Raja Asad Khan, a Member of National Assembly (MNA) of Pakistan Muslim League-Nawaz party from Jhelum alleged in September 2005 that the government had implicated him and his family members in a murder case because he did not defect to the ruling Pakistan Muslim League.⁷

The arrest, detention and torture of political activists continued throughout 2005.

Local elections were held in August-October 2005 but these were not free and fair. Ruling party contestants allegedly harassed the opposition contestants. They forced the opposition contestants to withdraw nominations⁸ and many were implicated in false cases for not doing so.⁹

Many opposition leaders were kidnapped to prevent them from contesting elections. On 17 September 2005, the joint opposition consisting of the PPP, Pakistan Muslim League-Nawaz (PML-N) and MMA leaders demonstrated outside the Lahore Press Club in protest

against alleged kidnapping of their candidate for Nishtar Town, Dr. Zahid Akram Nutt by Punjab government.¹⁰

On 15 September 2005, proposer Syed Shabbir Shah and seconder Aziz Soomro of PPP's Awam Dost candidate for Nazim district in Thatta, Arbab Muhammad Din, were allegedly kidnapped by ruling party thugs to cause rejection of nomination of Mr Din. Their absence on the day of scrutiny of the nomination papers due to the kidnapping led to rejection of Mr Din's nomination.¹¹

On the night of 4 December 2005, nine political leaders including Attaullah Qasmi, the former Pakistan ambassador to Norway, Dr Farid Parracha, Khwaja Saad Rafique, a PML-N leader, Habibullah Shakir, a Pakistan People's Party Parliamentarians leader, Chaudhry Mumtaz Ahmad Jujja, Samiullah Chaudhry, a member of Punjab Assembly, Sohail Warrich, Hassan Murtaza, PPP Bahawalnagar district president, Aqeel Najam Hashmi were arrested under the Maintenance of Public Order (MPO) Ordinance for speaking against the army at the launching ceremony of renowned journalist and *Geo TV* anchor Sohail Warraich's book, *Generaloon Ki Siyasat*, *The Rule of Generals*.¹²

Proceeding in a writ petition by former union council nazim, Naimat Ali, a political rival of the NWFP Chief Minister Akram Khan Durrani, challenging his detention under the Maintenance of Public Order Ordinance, on 31 August 2005, a two-member bench of the Peshawar High Court comprising Chief Justice Tariq Pervez and Justice Jehanzeb Raheem ruled that the provisions of Maintenance of Public Order Ordinance could not be invoked in an arbitrary manner without sufficient material on record against a detainee.¹³

III. Human rights violations by the security forces

Security forces were responsible for serious human rights violations including torture, rape and extrajudicial executions, with virtual impunity. About 600 suspected terrorists were detained incommunicado under anti-terror laws since September 2001 and hundreds were handed over to the United States for interrogation. In a petition before the Sindh High Court, Mohammad Arif submitted that his son-in-law Mohammad Jamil Memon, who went to Swat on a *Tablighi* visit in January 2005, was allegedly arrested by law enforcement agencies in connection with the US consulate car bombing and conspiracy to assassinate President Pervez Musharraf.¹⁴

a. Arbitrary, summary and extrajudicial executions

The security forces were responsible for a large number of extrajudicial executions. Many victims were killed because of indiscriminate use of fire-arms by the security forces.

On 16 January 2005, a civilian identified as Farooq died in arbitrary firing by a police constable posted at Pak Colony in Karachi. The bullet hit three people - Nasir, a truck driver and two passers-by Farooq and Tahir. All injured were taken to hospital, where Farooq died.¹⁵

Inability to pay bribes and extortion demands proved fatal. In early June 2005, Assistant Sub-Inspector Hafeez Rind and police constables Mushtaq Rind and Mehar Ali Shahi of Buchheri police post, Daur police station reportedly shot dead Rustam Ali Sehto, a PCO owner in Buchheri town for demanding the money for the telephone calls made by the assailant policemen.¹⁶

A few cases of extrajudicial executions were taken up before the courts. On 28 January 2005, the district and sessions

judge, Khairpur issued notices to the District Police Officer of Sukkur, Town Police Officer, three Station House Officers and a doctor of the Sukkur Civil Hospital to appear in the court on 3 February 2005¹⁷ in a case of alleged extrajudicial execution of Shah Dost and Kariman on 18 January 2005 in indiscriminate firing.¹⁸

In another incident on 28 March 2005, the Lahore High Court ordered a Deputy Superintendent of Police to book 17 officers, including Station House Officer, Gulam Sarwar, Sub-Inspectors Muhammad Inayat, Muhammad Imanat, Mehdi Khan, Shaukat and Shafiq and Assistant Sub-Inspectors (ASIs) Ijaz, Rashid, Arshad Cheema, Muhammad Tufail and Khadim Hussain for alleged extrajudicial execution of Ghulam Mustafa on 2 March 2005.¹⁹

In a few cases, court interventions resulted into the arrest of the accused police personnel. On October 2005, the court ordered the arrest of four policemen - Sub Inspector Tahseen Ahmed, Assistant Sub Inspector Shamas, Head Constable Zulfiqar and Constable Abdul Sattar of Khosar police station in Islamabad for allegedly torturing to death Amjad Masih, a suspect in an abduction case. Masih, a resident of France Colony in Islamabad was declared brought dead in a hospital²⁰ and the preliminary medical report confirmed his death as a result of torture.²¹

On 8 September 2005, Additional Sessions Judge Shaukat Iqbal ordered exhumation of the dead body of Daawat-i-Islami leader, Naeem Mehmood Qadri who was allegedly tortured to death and secretly buried by the police. Medical examination reportedly confirmed physical torture. The deceased was picked up by a police team led by ASI Mohammad Aftab Baig from Rahamania police check post in Mandi Bahaudding district of Punjab on 20 May 2005.²²

Departmental inquiries were ordered in a number of cases of alleged extrajudicial executions including execution of one Anees, a garment trader in Rampura on 28 July 2005 by six policemen from Batapur police station in Lahore district of Punjab while searching for his brother, Asghar, an alleged dacoit.²³

An autopsy on the body of Sajid Ali who was arrested and detained at Machiwal police station in Vehari district of Punjab on 27 May 2005 reportedly confirmed marks of torture on the chest, shoulder and foot. The four accused policemen—SHO Rana Tanveer and constables, Haq Nawaz, Imam Ali and Bagh Ali were reportedly suspended.²⁴

Police also used disproportionate force while arresting people. In late November 2005, a team of policemen from Gujjarpura police station in Lahore led by Assistant Sub Inspector Ahmad Din Butt reportedly beat up Minority Councilor Chaman Masih's wife when she tried to prevent arrest of Mr Masih. She was severely injured and had to be rushed to hospital where doctors declared her dead.²⁵

b. Arbitrary arrest and illegal detention

Arbitrary arrest and unlawful detention were common in Pakistan. In 2005, maximum number of cases were reported from Punjab and Sindh provinces. Security agencies, including police were found to have unlawfully detained citizens for multiple reasons. Many were unlawfully detained at the behest of influential rivals, many for extracting illegal gratification, and many others for just to settle personal scores. In the process, the detainees have been denied their constitutional rights and guarantees. Most often, they were tortured and held incommunicado.

The courts in Pakistan, especially Lahore and Sindh High Courts were found to be very sensitive to cases of unlawful

detention. While proceeding in a habeas corpus petition by one Iqbal Bibi of District Jhang in Punjab, Justice Sheikh Abdul Rashid of the Lahore High Court remarked on 13 September 2005 that his court would hold the District Police Officer (DPO) concerned responsible in case any citizen was found illegally detained in any police station within his/her jurisdiction.²⁶

However, the situation did not improve despite such stringent orders of the courts as the executive continued to abuse their powers. On its part, the federal and provincial governments in Pakistan were found to be creating more provisions for arbitrary arrest and unlawful detention especially in the name of war against terror, controlling crimes, maintaining law and order etc. Punjab Chief Minister Chaudhury Pervaiz Elahi announced on 19 May 2005 that his Government authorised the Patrolling Police to detain criminals for 48 hours at the posts, even though it was in conflict with the provisions of Article 10 of the Pakistan Constitution²⁷ which provides that every person, who is arrested and held in custody, shall be produced before a magistrate within twenty-four hours of such arrest.

The High Courts and the lower courts played crucial role to appoint bailiffs to raid the police stations to rescue the detainees. The number of judicial interventions to raid the police stations in Pakistan was unprecedented in South Asia. Some of the cases documented by Asian Centre for Human Rights are given below.

On 16 February 2005, Tariq Hashmani, a bailiff appointed by the sessions court in Hyderabad district of Sindh reportedly recovered Mohammad Shahid from the custody of A-section police station in Latifabad. The bailiff did not find any record of Shaid's detention in the police station.²⁸

On 9 March 2005, the district and sessions judge of Moro ordered registration of an First Information Report (FIR) against the SHO of Moro police station for wrongful confinement of Ayaz, son of Qadir Bux Soomro of Moro in Noushero Feroze district of Sindh province. Ayaz was arrested and detained without any charge. Second judicial magistrate of Moro, Mr Zafarullah Solangi, raided the Moro police station on the directives of the district and sessions judge, and found Ayaz there in unlawful detention.²⁹

On 14 March 2005, the Lahore High Court set free Waheed-ur-Rehman after a bailiff recovered him from the custody of Kot Lakhpath police station in Lahore. The bailiff reported that no case was registered against Rehman and his arrest was not mentioned in the record.³⁰

On 21 March 2005, police from Noor Shah registered a case of kidnapping, torture and violation of the Police Ordinance-2002 against an Assistant Sub-Inspector, Muhammad Ashraf, and five constables of Tandlianwala police station at the orders of the Lahore High Court. The police personnel entered the house of Thiraaj in Bothna village in Sahiwal of Punjab on the night of 4 December 2004 and allegedly beat the women and looted valuable from the house and took away one Thiraaj. A bailiff appointed by the Lahore High Court recovered Thiraaj on 13 December 2004 from police custody and a medical examination confirmed his torture in custody.³¹

In April 2005, the Lahore High Court appointed a bailiff who recovered 12 detainees from Sabzpir police lock-up. The police could not show the record of their arrest and no FIR was registered against any of them either.³²

In May 2005, the Lahore High Court directed the District Police Officers at Chakwal and Hafizabad to register criminal cases against Assistant Sub-Inspector

Khurshid Baig of Hafizabad Sadar police.³³ A bailiff appointed by the Court raided the police station and rescued Jaffar Ali, Riasat Ali and Liaquat Ali, Akmal Husain, Shaukat Ali, Saifullah and eight-year old Mohammad Tufail from illegal detention. The bailiff also reported to the court that the Hafizabad officers, 'moharrar' Deedar Husain, ASI Khurshid Baig and constable Mukhtar misbehaved with him and that the SHO did not turn up to show him the official record. The police record had no entry of the arrest of the seven persons.³⁴

Civil judge-II of Sinjhoro, Syed Abdul Qayoom Shah reportedly found seven detainees - Dilbar Shar, Sattar, Abdul Sattar Brohi, Yousuf Brohi, Ghulam Rasool, Ali Hassan and Sain Bux³⁵ - in illegal confinement at Jhol police station in Sanghar district of Sindh during a raid on 23 May 2005. The judge had raided the police station upon repeated complaints that a large number of innocent persons were being arrested in connection with the Photo Mari murder case and were being released after taking bribes.³⁶

In May 2005, a bailiff appointed by the district and session judge rescued Fatima and Zulekhan from Shah Jewna police post after a raid by the police led by ASI Javed Iqbal from Chak Daulat Khan under Qadirpur Police station in Jhang district of Punjab. After recording the statement of the two women, the judge ordered the arrest of the accused police officers.³⁷

In October 2005, a raid commissioner appointed by the Sindh High Court found one Asghar Khoso, a resident of Mehar town, in wrongful confinement after being picked up by SHO of Mehar police station Abu Bakar Chandio, and in-charge of Baledai police post Rafique Khoso in Lakarna district of Punjab. The accused police officers were suspended and a case was registered against them on 25 October 2005 on the directive of the Sindh High

Court, Larkana circuit bench.³⁸

The courts also ordered the arrest of many police officers. With regard to the illegal detention of Munawwar Ali, the second additional sessions judge-II of Khairpur, Sindh, ordered registration of an FIR under section 364, 342 F-I PPC against Khuhra police out-post in charge, ASI Hakim Ali Jalbani, and seven other police personnel on 23 February 2005.³⁹

In early March 2005, Lahore High Court set free Tahir, Qayyum, Mazhar, Imanat, Ansar, Qurban, Rehan and Saddiqui from illegal detention and ordered the arrest of the accused police officers- Lal Muhammad, Station House Officer, Iqbal Bhutta, investigation officer, and Abdul Ghafar, sub inspector, from the courtroom.⁴⁰

On 31 October 2005, Lahore High Court ordered the arrest of Sub-Inspector Raza Husain and registration of a case of kidnapping against him and seven others for unlawfully arresting one Talib Husain, s/o Fateh Muhammad of Kot Khadim Ali Shah in Sahiwal district of Punjab.⁴¹ In another case, on 10 November 2005, the Lahore High Court ordered the Sialkot police to register criminal cases against three officials of Daska police station in Sialkot district of Punjab viz., inspector Tariq Mahmood and sub-inspectors, Munawwar Husain and Zulfiqar Ahmad for framing Arshad Mahmood in a false drug trafficking case, unlawfully detaining and torturing him.⁴²

c. Torture, inhuman and degrading treatment

Torture is prohibited under Pakistan's criminal justice system and *Sharia* laws. Article 38 of the Law of Evidence provides that "no confession made to a police officer shall be permissible against a person accused of any offence". Article 39 of the Law of Evidence further provides that "no

confession made by any person whilst he is in custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person." Under the Qisas and Diyat Ordinances, causing of hurt by any person to extort "any confession or any information which may lead to the detection of any offence or misconduct" is defined as a distinct punishable offence.

Yet, numerous instances of torture by security forces including sewing of lips of detainees were reported in 2005. As many as 1,100 cases of police torture were reported throughout Pakistan during 2004, of which 828 victims of such atrocities were men, 180 women, 65 boys and 27 were girls, who were subjected to various sorts of physical abuse by police.⁴³

In the early hours of 17 July 2005, ASI Abad Khan and seven other police officials from Hala police station in Nawabshah district of Sindh allegedly barged into the house of one Mukhtar Ahmed in Hala and thrashed him and his family members including women and children. Mukhtar Ahmed's mother, Sharifan 70, died on the spot due to alleged police torture.⁴⁴

In a case of beastly torture, police officials of Vehari police station of Punjab allegedly sewed the lips of a detainee, Muhammad Hussain using a needle and jute yarn to silence him when he fought with a fellow detainee, tore an officer's shirt and shouted while being taken to court on 23 June 2005. Confirming that the incident did take place, Malik Muhammad Iqbal, deputy inspector general of police in Multan ordered an investigation on 24 June 2005.⁴⁵ On 25 June 2005, seven policemen were suspended.⁴⁶

In yet another case of similar beastly torture, in October 2005, Mazhar Waheed, Deputy Superintendent of New Central Jail Multan, allegedly sewed the lips of Ijaz alias Chiri just before he was scheduled to

be produced before the court in Khanewal in Punjab so that he could not speak up against brutality of the jail staff. Earlier Waheed had the prisoner's head, beard, moustache and eyebrows shaved off as well.⁴⁷ On the other hand, Waheed claimed that Ijaz had sewed his lips by himself to defame the jail staff. The Khanewal Civil Judge Muhammad Iqbal Goraya rejected Mr Waheed's plea and summoned him and his abettors Habib and Zafar Kamboh on the next day.⁴⁸

On 3 June 2005, ASI Allahditta of North Cantonment police station in Lahore and two accomplices reportedly entered forcibly into the house of one Surraiya and started beating her son, Mohammed Nawaz. Later, the three dragged him to the police station. A medical examination of Nawaz reportedly confirmed torture. Upon an application by Surraiya, Additional Sessions Judge Muhammed Yar Wallana directed the North Cantonment station house officer Khalid Saeed to record the petitioner's statement in the prescribed register to act in the matter as provided under sections 154 and 155 of Criminal Penal Code. However, the SHO allegedly refused to register a case against the accused ASI Allahditta despite court orders.⁴⁹

On 8 July 2005, Noorshah police, at the orders of the district and sessions judge, reportedly registered a case against Bahadar Shah police post in-charge SI Raees Ahmed, along with his three accomplices Qalab Ali, Iqbal and Amir for abducting and detaining two brothers at a 'forced labour camp'. The four allegedly picked up two brothers Naseer Ahmed and Farid Ahmed from Bhuhar village under Noorshah police station in Sahiwal district of Punjab on 25 January 2005. The police detained the brothers in police lockup and subjected them to physical torture. Later, they were handed over to three Pukhtoons,

who took them to a forced labour camp, where they subjected them to violence, and rigorous labour.⁵⁰ While one of the brothers, Naseer somehow managed to escape from the labour camp, Farid fell unconscious due to torture and hard labour.⁵¹

The police did not spare even women in an advanced stage of pregnancy. On 17 July 2005, the police raided Alam Khan's house under Banamari police station in Peshawar. He was wanted in a theft case. When his wife, Nazo, who was in an advanced stage of her pregnancy, tried to resist his arrest, the police severely beat her. She received injuries and had to be rushed to the Lady Reading Hospital, where she suffered a miscarriage and also lost her eyesight. Later, she succumbed to her injuries.⁵²

IV. Judiciary and administration of justice

The Supreme Court of Pakistan had been blamed for being subservient to the political establishment especially validating the military regime and giving judgments that failed to resolve deadlocks over important constitutional matters.⁵³

In September 2005, the Supreme Judicial Council formed a committee comprising Pakistan Chief Justice Rana Bhagwandas and Justice Javed Iqbal to draft rules for taking "disciplinary action" against the judges of higher courts. A proposal to amend the code of conduct for judges under article 209 of the constitution was also approved.⁵⁴

In 2005, Pakistan could not adopt any measure for significant legal or judicial reforms. The federal Government introduced Law Reforms Bill 2005⁵⁵ and Punjab provincial government introduced the Punjab Criminal Prosecution Service (Constitution, Functions and Power) Bill 2005⁵⁶. Amongst others, the Law Reforms

Bill suggested amendments to the Pakistan Penal Code 1860 and the Code of Criminal Procedure 1898.⁵⁷ At the end of the year, the Law Reforms Bill 2005 was under consideration of the Standing Committee on Law, Justice and Human Rights.

Judicial delay was rampant. As of August 2005, there were as many as 0.2 million pending cases in the courts across Pakistan.⁵⁸ The Supreme Court had a backlog of over 30,000 cases.⁵⁹

The Access to Justice Programme introduced in 2001 reduced the numbers of pending criminal cases in the districts where it was implemented.⁶⁰ However, the lack of facilities and personnel such as judges, and police guards and vans to transport the under-trial prisoners to and from court and the frequent adjournments had been causing judicial delay and contributing to the overcrowding of prisons.⁶¹

On 18 January 2005, Afzal Haider, an accused booked in as many as 17 cases, mostly under section 17(3) and 14 of Enforcement of Hudood Ordinance and for robbery in different police stations in Karachi, was finally acquitted by the court after remaining in prison for more than 17 years without any conviction. Afzal had been facing the trials since 1987. He remained in Lahore jail for almost ten years. Thereafter he was shifted to Karachi jail in May 2004 but since then he was not produced before any court⁶² until his release.

The conduct of some subordinate judges was found questionable.⁶³

In August 2005, Chief Justice of Sindh High Court suspended Civil Judge Khair Mohammad Solangi and Judicial Magistrate Lakhi Ghulam Shah on the grounds of misconduct, inefficiency and corruption. In October 2005.

The Chief Justice reportedly

appointed Justice Anwar Zaheer Jamali as inquiry officer to conduct an inquiry against them.⁶⁴

V. Status of National Human Rights Institutions

A draft National Commission for Human Rights Bill was presented to the National Assembly in February 2005. In May 2005, the Bill was referred to the National Assembly's Standing Committee on Law, Justice and Human Rights for further consideration and deliberations.⁶⁵

The Draft National Commission for Human Rights (NCHR) Bill of 2005 failed to meet the Paris Principles of National Human Rights Institutions.

Under section 2(d), human rights were defined restrictively to mean "the rights relating to life, liberty, equality and dignity of individuals guaranteed by the Constitution of Pakistan or embodied in the International Instruments on Human Rights which the Government of Pakistan has ratified and are enforceable by the courts in Pakistan". In view of Pakistan's ratification of only a few international human rights treaties, the scope of the proposed National Human Rights Commission was severely restricted.

The composition of the NHRC as provided for in sections 3(2)(ii) and 3(2)(iii) of NCHR bill did not ensure sufficient representation of all sections of society and negates the guarantees of independence and pluralism as provided under Principle 4 of the Paris Principles. There was also no guarantee for representation from religious minorities or the tribals.

Moreover, section 10 of the NCHR Bill provided that the office and other staffs who were to assist the NHRC in the discharge of its functions were to be appointed from amongst employees of the federal government.

Under Sections 4 and 5, President would retain the power to appoint and dismiss members of the NHRC thereby severely impacting independence of the members.

There was no financial autonomy under section 20 of the National Commission for Human Rights Bill.

V. Repression on human rights defenders

Human rights defenders in Pakistan faced threats to their life and liberty from the law enforcement agencies and non-state actors alike, especially for taking up the equality of women and atrocities against minorities. On 12 April 2005, police picked up Aslam Pervaiz Sahotra, President of Bonded Labour Freedom Front Pakistan under Baghbanpura police jurisdiction in Lahore and allegedly tortured him.⁶⁶ In August 2005, Khalida Ahmad of an NGO, War Against Rape, was threatened with life for assisting a victim of rape. Those who were accused of rape threatened her.⁶⁷

Those who took up the equality of women have been specific targets. On 14 May 2005, police detained about 40 human rights defenders, including Ms. Hina Jilani, UN Special Representative of the Secretary General on Human Rights Defenders, Ms. Asma Jehangir, Chairperson of Human Rights Commission of Pakistan (HRCP), former law minister Iqbal Haider, Gulnar Tabassum, working for an NGO providing shelter to homeless women and Joseph Francis, a minorities' rights activist in an attempt to prevent them from participating in a mixed gender marathon organized in Lahore jointly by HRCP and Joint Action Committee for Peoples Rights to raise awareness on the issue of violence against women in Pakistani society. The police

imposed Section 144 Criminal Procedure Code banning assembly of more than five persons and beaten up the participants including women. Women participants were allegedly pulled by their hair and their clothes were torn by the police. All the detainees were released without charge.⁶⁸

Ms Asma Jahangir moved the Lahore High Court in a writ petition seeking registration of criminal cases against the policemen who allegedly outraged her modesty on 14 May 2005.⁶⁹ In September 2005, Additional district and sessions judge Lahore directed Deputy Inspector General, Lahore to arrest SHO Gulberg for his failure to appear before him during the hearing of Asma Jahangir's complaint on 30 July 2005. Earlier, the court had issued non-bailable warrants for the arrest of the said SHO, directing Senior Superintendent of Police (operation) to arrest and produce him before the court. But SSP did not do so.⁷⁰

On 4 June 2005, a heavy contingent of the Karachi and Hyderabad police raided the house of Jam Saqi, an activist and council member of the HRCP and senior political leader. During the raid at his house at Naseem Nagar, Qasimabad, the police arrested his wife Akhter Sultana on the charge of kidnapping her six-year-old nephew (sister's son) Mohammed Rafi for ransom. It was claimed that Jan Saqi's arrest was an act of revenge by Sindh Chief Minister Dr Arbab Ghulam Rahim for Jam Saqi's investigative report on behalf of HRCP which found that members of a sizable Hindu community were being oppressed by the Chief Minister's relatives.⁷¹

VII. Freedom of the press

The journalists in Pakistan were target of violence both by the State and the armed

opposition groups. At least 120 journalists were allegedly attacked by law enforcement agencies, political activists and fundamentalists groups in 2005. This was in comparison to 70 journalists being attacked in 2004.⁷² On 7 February 2005, Amir Nawab Khan, a cameraman with a broadcast news agency, *APTN* and a reporter with Pakistani daily *The Frontier Post*, and Allah Noor Wazir, reporter with *Pakistani Khyber TV*, *The Nation* and German news agency *DPA*, were killed in an ambush near Wana, South Waziristan. They were returning from Sararogha, South Waziristan after covering the surrender of Taliban warlord Baitullah Mehsud to the Pakistani authorities.⁷³

On 16 May 2006, the National Assembly adopted amended Pakistan Electronic Media Regulatory Authority (PEMRA) to empower the authorities to shut down broadcasting channels on the grounds of telecasting “offensive to commonly accepted standards of decency”.⁷⁴ Under the amended Act, PEMRA is authorised to seize equipment, withdraw licences and conduct investigations and empowers the police to arrest electronic media journalists without a warrant. Violations are punishable by prison sentences of up to three years and fines of some ten million rupees.⁷⁵

On 2 March 2005, PEMRA ordered the BBC World Service to halt its Urdu-language news programmes relayed to Karachi, Lahore, Multan and Faisalabad via the radio station *Mast FM103*.⁷⁶ On 14 November 2005, police accompanied by representatives of the PEMRA seized *Mast FM 103*'s transmitter and antennae in Karachi and closed down the radio station for broadcasting BBC's earthquake programmes.⁷⁷

On 22 December 2005, the PEMRA issued an order asking the cable TV opera-

tors to stop airing some 30 foreign TV channels, including entertainment, sports and news channels such as *MM Movie*, *Star Network*, *National Geographic* and *Fashion TV*. Most of the banned channels were Indian.⁷⁸

On the World Press Freedom Day on 3 May 2005, 30 journalists including Chairman of the Pakistan Federal Union of Journalists (PFUJ), Pervez Shaukat, were arrested by the police in Islamabad. At least 9 journalists were injured in police lathi-charge in Lahore.⁷⁹

In July 2005, a photographer of Sindhi daily *Kawish*, Munir Sangi and cameraman of private news channel *KTN*, Hadi Sangi were allegedly hit by Head Constable Gulzar Ali of Hyderi Police Station, Larkana with his submachine gun while covering a sit-in protests staged by hundreds of residents of Stadium Road Mohalla, Larkana.⁸⁰

Newspapers were often accused of publishing hate literature. On 19 July 2005, police reportedly raided the offices of three weeklies - Urdu weekly *Friday Special*, *Wujood* on Elander Road, weekly *Ghazi* off Tipu Sultan Road and daily *Ummat* near the National Hockey Stadium in Karachi and arrested Abdul Latif Abu Shamil of *Friday Special* and Mohammad Tahir, editor of *Wujood* on charges of allegedly publishing hate literature. Police had earlier raided the office of *Zarb-i-Islam* and arrested its editor and assistant editor. Police had also picked up newspaper hawkers from various localities.⁸¹

Three European documentary filmmakers identified as Leon Flamholz, his son David Flamholz (Swedish nationals residing in London) and Tahir Shah, a British writer of Afghan origin, were arbitrary arrested by military police on 18 July 2005 on the charges of filming a military base in the northwestern city of Peshawar. They were secretly held for 16 days,

including 15 days in solitary confinement, before forcibly expelling from Pakistan on 3 August 2005.⁸²

Academic freedom was severely restricted. Dr. Mujahid Mansoori, Punjab University Mass Communication Department associate professor was served a notice under the Removal from Service Ordinance 2000 by Punjab Governor's Secretariat on 8 July 2005 for writing a column under the heading 'Sir Par Khara Mehngai Ka Aik Aur Tofan' in *Jang* on 5 July 2005.⁸³ On 28 July 2005, the Education Department served a similar notice to Dr Ajmal Niazi, an associate professor of Urdu at Government College Lahore Township for writing articles.⁸⁴

On 5 December 2005, Hayatullah Khan, a reporter for the Urdu-language daily *Ausaf* and photographer for the *European Press Photo Agency* (EPA), was kidnapped by five unidentified gunmen in Mir Ali in the Tribal Zones bordering Afghanistan. Hayatullah Khan was on his way to report on a protest against a missile attack on a house in the village of Haisori in North Waziristan on 1 December 2005 that killed alleged Al-Qaida operative Abu Hamza Rabia. Hayatullah Khan had challenged the official account of the death by the missile attack and raised the sensitive issue of the US army's participation in the fight against terrorism in Pakistan.⁸⁵ It was widely suspected that he might have been abducted by members of the security forces.⁸⁶ Hayatullah Khan's whereabouts could not be known till the end of 2005.

The media also faced serious threats from the fundamentalist groups. On 29 January 2005, members of a religious fundamentalist group called Anjuman Tahafuz-e-Islami Aqdar attacked office of the *Jang* group of publications in Karachi to protest against an interview with the Israeli Deputy Prime Minister, Shimon Peres. The attackers manhandled the secu-

rity guards, damaged furniture and smashed windows. Seven vehicles parked outside were also damaged. The attackers, chanting 'Allah-u-Akbar', set fire to the main reception on the ground floor and ransacked newspaper and *Geo TV* offices on the first floor.⁸⁷

On 24 July 2005, noted journalist Khursheed Ahmed of the Urdu-language national daily *Khabrain* was attacked with three home-made bombs at his house in Gilgit of the Northern Areas. Ahmed escaped unhurt. This was the second attempt on his life. He was earlier attacked in a similar way on 3 March 2005.⁸⁸

VIII. Violations of the rights of the minorities

Religious minorities continued to be target of the fanatics. In a grenade attack on the Protestant International Church situated at the Diplomatic Enclave in Islamabad on 17 March 2005, suspected Islamic fundamentalists killed five persons and injured 42 others.⁸⁹

The blasphemy law has been extensively misused not only to target the minorities but also by Muslims against fellow Muslims to settle personal score. Even Federal Religious Affairs Minister Ejazul Haq admitted in November 2005 that the blasphemy law was being misused and expressed the government's desire to bring more amendments to it.⁹⁰ According to All Parties Minorities Alliance Chairman, Shahbaz Bhatti, hundreds of innocent people had been imprisoned, forced to flee the country or killed by extremists under the pretext of punishing blasphemers.⁹¹ At least 60 persons were accused of blasphemy between January and July 2005.⁹² Of these 60, formal charges were leveled against 53 persons, while seven were acquitted.⁹³ In 2004, a total of 23 blasphemy cases were registered. Of these, 14 cases were regis-

tered against 55 Muslims, seven cases against 24 Ahmadiyas and two cases against three Christians. According to a report by National Commission for Justice and Peace, 634 blasphemy cases had been registered between 1986 and 2004. Of these, 309 cases were registered against Muslims, 236 against Ahmadies, 81 against Christians and eight against Hindus.⁹⁴

The alleged desecration of the Koran invited street justice. On 19 April 2005, angry mobs in Nowshera district in North-West Frontier Province reportedly chased Aasheq Nabi and shot him dead for allegedly burning the Holy Quran. The local police had already registered a case of blasphemy against him.⁹⁵

On 28 June 2005, Muslim mobs attacked about 200 Christian homes in three areas near Peshawar after Yousaf Masih, a former sweeper in the army, was asked by an army major to burn a bag of papers which also allegedly contained pages from the Holy Koran. Yousaf Masih was illiterate and did not recognize the pages from the Holy Koran. But other workers saw him burning the pages of Holy Koran. Police arrested Yousaf Masih under the blasphemy laws on 29 June 2005.⁹⁶

On 10 September 2005, police arrested a Christian identified as Younis Masih at Waheed Park in Chungi Amer Sidhu under the Factory Area police station in Lahore on blasphemy charges and sent him to Kot Lakhpat Jail.⁹⁷ But according to his wife, Meena, Younis had only requested a neighbour not to sing Qawali in loud voice as his nephew had died on the previous night i.e. 9 September 2005. A huge mob of Muslims attacked the house of Younis and beat him and his wife, Meena.⁹⁸ By 11 September 2005, some 50 Christian families fled the area due to fear of attacks.⁹⁹

Those who faced blasphemy charges continued to live in fear even after acquit-

tal by the courts. In January 2005, a Christian named Anwar Masih of Lahore had to remain in hiding to escape death threats from the Lashkar-e-Taiba after he was acquitted on charges of blasphemy by a court in December 2004. Masih had been arrested in July 2004 after a Christian convert to Islam allegedly reported to police that Masih insulted his Islamic beard.¹⁰⁰

Minorities also faced physical violence. Syed Rahat Shah Qadri, the Imam of Owais Qarni Mosque and his students allegedly attacked a church at Miskeen Musharraf Colony in Islamabad on 16 March 2005 and beat up the worshippers. They were allegedly against the construction of the church, which was situated at a distance of about 100 metres from the mosque.¹⁰¹ On the night of 12 April 2005, Shahbaz Masih, a Christian in Chak 2 (South) near Mandi Bahauddin district of Punjab was tortured for not reciting the *kalma*.¹⁰²

The minority girls were also vulnerable to violence. On 8 February 2005, 13-year-old Fozia Zafar, daughter of Zafar Masih, a Christian, of Mohalah Islamabad Muncher Road, in Alipur Chatta in Gujranwala district of Punjab was kidnapped by three Muslim boys named Imran, son of Taj Muhammad; Irfan, son of Muhammad Anwar Khokher; and Mukhtar alias Kalo, son of Sharif of the same locality while she was going to her uncle Munawar Masih's house in the same locality.¹⁰³ Despite eyewitness accounts and confessions of two of those involved, police refused to register a complaint. Fozia's father complained to the Gujranwala District Police Officer, who directed local officers to register the FIR and detain the two suspects. After filing the complaint, Masih was dismissed from his local government job. Local Muslims also put pressure on him to drop the complaint. Fozia and her

third kidnapper, Mukhtar Kalo remained untraceable.¹⁰⁴

On 14 September 2005, a minority Hindu girl, Sapna, daughter of Gianchand of Jacobabad in Sindh was allegedly kidnapped by four unidentified Muslim youths at gunpoint and was kept in illegal confinement for a week by her captors.¹⁰⁵ On 20 September 2005, she was produced before the judicial magistrate in Jacobabad. In her statement before the Judicial Magistrate and Session Court, Sapna named as Mehak after her conversion to Islam stated that she had embraced Islam on her own will and got married with one Shamsuddin. She reportedly claimed no one kidnapped her.¹⁰⁶ On the other hand, the minority members of the National Assembly claimed that Sapna was forced to convert to Islam during her one-week illegal confinement by four accused men. According to them, Sapna was kidnapped, married and converted into Islam in a bid to threaten the Hindu minority in Sindh.¹⁰⁷

IX. Violence against women

In South Asia, the condition of women was the most deplorable in Pakistan. They continue to be victimized under the Offence of Zina (Enforcement of Hudood) Ordinance of 1979. Under the Hudood Ordinance, victims of rape face insurmountable legal barriers to securing a conviction of the accused, including production of at least four adult male Muslim eyewitnesses, who must be truthful persons and abstain from major sins (*kabair*) and have physically seen the act of rape against the victim in order to prove her case. If unable to prove rape, a woman who goes to the police is vulnerable to prosecution as the Ordinance considers sexual intercourse as adultery whether it is with or without the consent of a woman, who is not married with the man.

About 80% of the women prisoners in the jails were victims of the Hudood Ordinance relating to adultery, rape, kidnapping and abduction.¹⁰⁸ The federal and provincial governments failed to implement the recommendations of the National Commission on the Status of Women to repeal the Offence of Zina (Enforcement of Hudood) Ordinance of 1979.¹⁰⁹

Hundreds of women and girls were subjected to various forms of abuses such as discrimination, domestic violence, assault, kidnapping, forced marriage, rape, unlawful detention and honour killings both by civilians and security forces. There were many cases of custodial rape while the traditional *jirgas* pronounced harsh punishment against women.

Nothing more clearly demonstrated the apathy of the authorities towards the cause of the woman than the fact that in 2005, the National Commission on the Status of Women did not have a chairwoman for over 10 months.¹¹⁰

a. Restrictions on participation in public life

Women faced serious obstacles for participation in public life. A record number of over 55,000 women candidates contested in the Local body elections held in August-October 2005.¹¹¹ However, many faced serious threats.

In May 2005, local tribesmen and religious extremists reportedly barred women from filing their nomination papers for the 33 percent seats reserved for them in the local body elections in Diamer district of the Northern Areas. Women sitting alongside male were viewed as anti customs and traditions.¹¹²

Similarly in July 2005, political parties in Lower and Upper Dir districts barred women from contesting local body elections.¹¹³

In a worst case, Zubaida Begum, a for-

mer union council member in Daroda village in Upper Dir district of North West Frontier Province was assassinated in August 2005 for ignoring the warning not to participate in politics. Her 19-year-old daughter Shumaila was seriously injured.¹¹⁴ During her first stint as a member of Union Council from 2000-2005, Zubaida Begum faced stiff opposition from the local tribesmen and religious fundamentalists.¹¹⁵

Pakistan established the first ever women's police station in Islamabad in 1994. However, women police officials were not allowed to investigate criminal cases.¹¹⁶ All the 268 cases that had been registered in the women's police station since its inception, including the five cases registered during 2005, were investigated by male police officials.¹¹⁷

In June 2005, in Haripur district of North West Frontier Province, the District Coordination Officer and District Police Officer, through circular to all police stations of Haripur directed the phone booth owners to shun out female telephone operators.¹¹⁸

b. Violence in the name of cultural practices

Women remained disproportionate victims of cultural cruelties in Pakistani society. Hundreds of women have been killed every year for alleged misdemeanours such as adultery, marrying without the family's consent, pre-marital sex or having been raped. According to Sindh Additional Inspector-General of Police (Investigation), Nayyar H Zaidi, as many as 4383 women fell victims to honour killings and *karo kari* from January 2001 to December 2004 with 758 cases of honour killing in 2001, 1,015 cases in 2002, 1,261 in 2003 and 1349 cases in 2004.¹¹⁹

The much vaunted Criminal Law (Amendment) Act of 2004 against "honour killings" failed to address the issue of

impunity for violence against women.¹²⁰ It only enhanced punishments. However, under Qisas and Dayat Ordinance, relatives could pardon and exonerate alleged killers.¹²¹ Under the "*karo-kari*" or the so-called honour killings whereby a man can kill a woman on the ground that she brought dishonour to the family, the killers can still be pardoned by the victim's relatives. Once such a pardon has been secured, the state has no further writ on the matter.¹²²

The traditional *jirga* system of justice had also been responsible for atrocities against women. On 24 April 2004, the Sukkur Bench of the Sindh High Court banned *jirgas*. However, *jirgas* continued to be held, despite the High Court ban, under the chairmanship of MPAs, nazims, political party leaders and even ministers.¹²³

In April 2005, a local jury of the *Wani* tribe decreed the forced marriage of one Ms. Kaneez Kubra, daughter of Ghulam Hussain of Dera Ghazi Khan Town of Punjab to one Mujahid Hussain, whose sister, Ms Sumera allegedly had sexual relationship with the bride's brother, Abdul Majid. After the wedding on 28 April 2005, as ordered by a panchayat (local jury), Kaneez Kubra went to the groom's home. Her husband, Mujahid Hussain reportedly stayed with her till 11 pm and then left. Afterwards, Mujahid's grandfather Shahroo Khan and his mother Mukhtar came in and told the bride that the wedding was just an excuse to take revenge on Majid for outraging Sumera's modesty. Mujahid Hussain then invited his three friends Muhammad Rafiq, Shabbir Muhammad and Abdul Majid Almani, who gang-raped Kaneez Kubra. The next day, Mujahid Hussain also took her to the house of his friend Ghulam Mustafa, who also assaulted her. On 30 April 2005, when the bride's father, who had come to take his daughter back as per

tradition, approached the police, they refused to register a case against the groom and his friends. A case was later registered only when the Dera Ghazi Khan District Police Officer intervened.¹²⁴

Mukthar Mai gang rape case exposed the barbaric *Jirga* system of justice. On 22 June 2002, Mukthar Mai was gang raped at the orders of a Jirga at Meerwala village in Punjab province, as punishment for alleged rape of a Mastoi girl by Mai's 12-year-old brother Shakoor that had allegedly brought shame to the Mastoi clan. At the trial court, it was revealed that the 12-year-old boy had in fact been kidnapped and sodomised by the same men who later made up the jury that convicted him. The Mai family had threatened to report the matter to the police and hence meted out barbaric punishment.¹²⁵ On 28 June 2005, a Supreme Court Bench of Pakistan overturned the Lahore High Court judgement that released five accused in the gang rape of Muktar Mai.¹²⁶

Women were also specific target of revenge by male especially for alleged love affairs.

On 26 January 2005, five-armed men reportedly identified as Haq Nawaz, Shehzad, Muhammad Qasim, Ghulam Mustafa and Allah Wasaya raided the house of Saifal in Mitro Town in district Vehari of Punjab and beat him and his wife. They shot in the air to scare away the neighbours. Then the five assailants allegedly stripped Saifal's daughter and dragged her naked into the street because they suspected a boy from their family of having a love affair with her.¹²⁷

In May 2005, 11 armed persons, including Anwar, Akbar, Ghulam Ali, Sajid and others, reached the house of Fauzia Bibi, a resident of Chiniot on horses, dragged her out of her bed and forcibly took her away. Thereafter, they took her to a deserted farmhouse on the bank of the

Chenab where she was gang-raped for three consecutive days to avenge an alleged affair of one of victim's male cousins with a woman whose father disapproved of the relationship. Six men have been arrested in connection with the attack.¹²⁸

On 15 June 2005, Mohammed Yousaf and his six accomplices allegedly stripped 18-years-old Shaheen, beat her with a shoe and paraded her for 20 minutes through the square of farming village Chak 41EB in Multan district of Punjab as punishment for her brother's suspected affair with his wife.¹²⁹ Police arrested the seven assailants.¹³⁰

c. Custodial rape

Custodial rape remained a serious problem in Pakistan. Victims of rape who approached the police were subjected to custodial rape by the law enforcement personnel.

In April 2005, two policemen – a sub-inspector and a constable in Sialkot town in Punjab – allegedly confined Ms. Nazish Bhatti, a gangrape victim, in illegal custody and raped her for seven days. According to the victim, who is a first-year student of a girls' college in Sialkot, she was kidnapped by some "influential" people, who kept her hostage for over three weeks and gangraped her. She reportedly managed to escape from their captivity and straight away reached the police station only to be illegally confined and raped for seven days by the two accused policemen.¹³¹

In May 2005, two boys and two girls were reportedly taken into custody by Shahzad Town police Station in Islamabad. The girls were allegedly raped while the boys Tahir and Billa were released after a bribe of Rs. 29,000 was given. Following news reports about the incident in some national dailies on 22 May 2005, the

Islamabad District Authorities reportedly constituted a two-member judicial committee comprising Additional Deputy Commissioner General Zafar Iqbal Awan and Rural Circle Assistant Commissioner Sajid Chauhan to inquire into the allegations.¹³²

On the night of 5 July 2005, Ms Shamshad was allegedly gang raped by three policemen, two of them identified as Soomar and Sharif at the custody of Rohri police station in Sukkur district of Sindh. The victim had been arrested by the accused policeman from her house near Rohri and detained at the police station for investigation.¹³³

In many cases, the government provided impunity to the accused police officials. In May 2005, Superintendent of Police (investigation), Faisalabad Khalid Abdullah and Jaranwala Station House Officer Inspector Jamshed Chishti allegedly kidnapped a 23-year-old housewife, Sonia Naz, wife of Asim Yousuf of Faisalabad in Punjab for trying to expose Superintendent of Police, Khalid Abdullah's excesses on her husband and other family members. Sonia alleged that Inspector Jamshed Chishti raped her in the presence of SP Khalid Abdullah. A Punjab Police inquiry committee comprising provincial investigation Deputy Inspector General of Police Zafar Qureshi concluded, "As regards the allegation of rape, there are sufficient grounds for registration of an FIR and subsequent investigation." Yet, the Punjab government did not implement the recommendations of Zafar Qureshi inquiry committee. Instead DIG Zafar Qureshi was victimized by the Punjab government first by removing him from investigation department and then by transferring him to Surveillance and Inspection department without any office, staff, phone and car, and then by withholding his promotion from BPS-19 to BPS-20. Finally Punjab

Police ordered that his services were not required and he should stay at home till further orders.¹³⁴ On 17 October 2005, the Supreme Court took suo motu cognizance of Sonia Naz's case and ordered the immediate arrest of SP Khalid Abdullah, Inspector Jamshed Chishti and eight other policemen on charges of abduction, torture and rape of Sonia Naz.¹³⁵ On 24 November 2005, the district and sessions court in Lahore granted bail to SP Khalid Abdullah and Inspector Jamshed Chishti.¹³⁶ Sonia Naz alleged that since their release, hired assassins were let loose to kill her. Yet, the IGP Punjab Major Ziaul Hassan refused, in writing, to provide her security.¹³⁷

In the case of rape of Dr. Shazia Khalid, an employee of Pakistan Petroleum Limited working at the company's hospital at Sui in Balochistan province,¹³⁸ all attempts were made to hush up the case and exonerate prime suspect Captain Hamad, Head of the Defence Security Guard. Even while the judicial inquiry was in progress, President General Pervez Musharraf exonerated the prime suspect, Captain Hamad of the DSG.¹³⁹

X. Violations of the rights of the Child

The conditions of the children in Pakistan remained deplorable. There were consistent and credible reports of sexual abuse, forced marriages of children, corporal punishments in schools and home, illegal detention, torture and maltreatment of children in prisons etc.

a. Cultural cruelties

Girls were disproportionate victims of violence. Impunity under traditional justice system contributes to crimes against children. On 15 May 2005, a panchayat (tribal jury) ordered blackening the face of Maulvi Ghulam Qadir, 70, who was caught sexual-

ly assaulting seven-year-old girl Safia. The girl was reportedly taken to Nishtar Hospital in Multan in critical condition. The local landlord, however, did not let Safia's parents take the case to the police.¹⁴⁰

In December 2005, the Supreme Court of Pakistan ordered the Inspector Generals of Police of Punjab and North West Frontier Province to protect the girls and women given in marriage under the illegal custom of '*vani*'.¹⁴¹ For centuries, the custom of *vani* or delivering justice to the wronged party has been followed and girls were often "given away" in marriage to the aggrieved party for reconciliation of a dispute between two rival clans or tribes or to facilitate out-of-court settlement.

Girl child, as young as two-year-old, was reportedly decreed by village Panchayat to be married to the aggrieved man on attaining puberty. On 21 April 2005, "*The Daily Times*" reported that the village Panchayat of Kutcha Chohan in southern Punjab decided that once 2-year-old Rabia crossed her 14th birthday, she would have to marry now 40-year-old Altaf Hussain of the said village. Rabia's uncle Muhammad Akmal was accused of sleeping with Husain's wife. After an hour-long deliberation, the elders found him guilty and fined him Rs. 230,000 and ordered to marry his niece, Rabia, to Altaf Hussain once she passed her 14th birthday.¹⁴²

On 6 August 2005, five-year-old Asia and six-year-old Fauzia, both daughters of Muhammad Khan under Wan Bhachran police limits in Mianwali district of Punjab were reportedly married off to 18-year-old Amir and 8-year-old Islam respectively as a reconciliation of a dispute that originated in 1955 between Sheray Khel and rival Joaiey Khel tribe.¹⁴³

Very few dared to challenge the *vani* system in rural areas. In November 2005, Iqbal Khan, a resident of village

Sultanwala Sharqi in Mianwali district of Punjab had appealed to save five girls of his family, including his three daughters, from falling victim to the cruel social custom of *vani*. Iqbal Khan was convicted of murdering his relative Zaman Khan and was sentenced to death by a district and sessions court. He then appealed to the Lahore High Court. However, during the pendency of his appeal both parties reached an out of court settlement in December 1996 and the case was withdrawn. A panchayat (village court) decided that five girls from his family would be wedded to the boys of the aggrieved party because Iqbal could not pay cash to compensate the other party. Maulvi Inayatullah of Ali Khel village verbally offered nikahs of the five girls who were at these ages in 1996 – Asia (8), Amina (9), Abida (7), Sajida (5) and Fatima (7) – with the boys of the aggrieved family. However the nikahs were not registered. While the girls have become educated, all the five boys were illiterate. One of the girls was a student of MA (English) and did not agree to live with their "so-called" spouses. On the other hand, the family of the boys claimed that they had a right to the girls because "they were given to them under "*Vani*".¹⁴⁴

b. Juvenile justice

Plight of the children in conflict with the law in Pakistan remained deplorable. Government sources claimed that there were 2,200 juvenile prisoners in different jails in Pakistan as of 22 December 2005.¹⁴⁵ However, independent sources put the figure at more than 4,000.¹⁴⁶

The Juvenile Justice System Ordinance (JJSO) was introduced in July 2000 but rarely implemented. Amongst others, the JJSO consolidates at the federal level several provisions of provincial laws on children in conflict with the law, incorporated provisions as defining a child as

under 18 years of age, the establishment of juvenile courts, the regulation of police arrests of child suspects, prohibition of the death penalty for children, prohibition of the use of handcuffs and fetters, and the appointment of special panels of lawyers to represent child offenders. However, the implementation of the JJSO has been found to be very slow.¹⁴⁷ A study undertaken by the UNICEF and released in January 2005 found that nearly 100 percent of the juveniles convicted or being tried, and jail staff and prosecutors of the children, had no knowledge about the Juvenile Justice System and Juvenile Justice System Ordinance 2000 in Pakistan.¹⁴⁸ Over 450 women along with their children were being kept in Adiala jail and there was no one to assist them.¹⁴⁹

Most provincial governments reportedly failed to provide lawyers to the young offenders.¹⁵⁰ In July 2005, it was reported that Punjab government failed to provide lawyers to 28 juveniles jailed, some of whom have been in detention for two months without being produced before the court even once.¹⁵¹ North West Frontier Province had acute shortage of Probation Officers.¹⁵²

There were reportedly only three juvenile prisons in the country i.e. in Karachi, Lahore and Faisalabad. No such facilities existed in the NWFP and Balochistan.¹⁵³ In the absence of separate accommodation, juveniles were kept with adult prisoners, some of whom were hardened criminals and murder convicts. Mohammad Haroon, a 17-year-old juvenile offender alleged that children were sexually abused and taken at night for adult prisoners.¹⁵⁴

Even in police custody children were subjected to sexual violence. On 17 February 2005, a 17-year-old youth accused two officials, Waheed and Jamshed of the Civil Lines Police station

in Rawalpindi of subjecting him to brutal physical torture, burning different parts of his body with cigarettes and committing sodomy after arresting him in a false drugs case. He made the allegations before Judicial Magistrate Asma Tehseen.¹⁵⁵

Under the JJSO, no child can be handcuffed, put in fetters or given any corporal punishment. In November 2005, 14-year-old Sher Afzal, son of Shahbaz and Gulshan, who was arrested by Mirpurkhas town police in Sindh colony for alleged stealing was handcuffed and produced twice before the first judicial magistrate with handcuffs.¹⁵⁶

The JJSO had no overriding effect in Federally Administered Tribal Areas (FATA) and North West Frontier Province, and children as young as two years continued to be arrested and convicted under the colonial era Frontier Crime Regulations. In early July 2005, authorities of North West Frontier Province reportedly illegally detained and convicted 15 children and women belonging to the family of an alleged criminal, under the collective responsibility clause of the Frontier Crimes Regulations. The victims include Hukam Jana, wife of Qadir Khan, five of her six children Mohammad Siddique, 9 years, Khalil Mohammad 3 years, Razmeena 2 years, Wazir Azam 6 years and Islam Bibi 7 years, all of whom were sentenced for three years. One-year-old Khair Mohammad was also with his mother Hukam Jana. The other victims are Khair Bibi, wife of Aarsal Khan alongwith with four of her five children viz., Wasil Khan, 10 years, Commissioner Khan 6 years, Shawal Bibi, 5 years and Eman Bibi, 7 years, was convicted for three years. Baby Amrozia was with her mother. Another woman, Tika Bibi, wife of Laees Khan alongwith her baby Momina and 70 years

old mother-in-law Sanamullah Bibi, w/o Yaar Mohammad Khan were also detained in the Central Jail, Bannu.¹⁵⁷

Children were also held in illegal detention. On 26 September 2005, judicial magistrate-I of Nawabshah in Sindh raided the Daur police station and recovered 11-year-old Irshad Ali Zardari from illegal detention.¹⁵⁸

Children were also taken as hostages. On 24 November 2005, a police team from Badami Bagh police station in Lahore led by ASI Asghar Ali came to the Choudhry Baghdin village under Satellite town police, Mirpurkhas, to arrest Mohammad Aslam, an accused in a case of theft of gold ornaments. Not finding the accused, the police took away his 14-year-old nephew, Master Amjad Ali, son of Ghulam Mustafa, to Lahore. Later, the Badami Bagh police implicated 14-year-old Amjad Ali in a false case of stealing Rs 20,000 and sent him to Lahore jail. The three police officers of Badami Bagh police, ASI Azizur Rehman and constables, Amjad Farooq and Zulfikar were later arrested under sections 218, 451, 343, 109, 365 and 34 of Pakistan Penal Code.¹⁵⁹

c. Child labour

According to official statistics, there were more than three million children engaged in tedious, often dangerous, occupations in Pakistan. Independent estimates put the figure of child labourers at 10 million. Children as young as four and five years continued to be employed in back-breaking tasks for long hours, and at great risk to their health.¹⁶⁰

According to the Society for the Protection of the Rights of the Child, more than 120,000 children in Pakistan were employed as industrial workers or earning livelihood as scavengers. The report stated that out of them, 106,500 rummage through the waste produced by the affluent

in big cities while the rest toil in the glass bangles industry in Hyderabad, tanneries in Kasur, surgical instrument units in Sialkot or dig coal in Chakwal, Nowshera and Shangla districts.¹⁶¹

XI. Violations of the prisoners' rights

According to a report by the Central Jail Staff Training Institute, in August 2005, there were 86,194 prisoners in 81 jails of Pakistan against the authorized capacity of 36,825.¹⁶² In December 2005, Pakistani Interior Minister Aftab Ahmed Khan Sherpao stated that Pakistan had three times more prisoners than the authorised capacity. By December 2005, there were 53,000 prisoners in 30 jails of Punjab against sanctioned capacity of 17,637. In 19 jails of Sindh, there were 19,700 against sanctioned capacity of 8,000 prisoners. In 10 jails of Balochistan, 26,000 prisoners were detained against sanctioned capacity of 1800 prisoners.¹⁶³

An estimated 49,375 of the 86,194 or over 55% prisoners were under-trial prisoners. Punjab had the highest number of under-trial prisoners with 27,182 male and 585 female prisoners, followed by Sindh with 14,868 male and 205 female prisoners, Northwest Frontier Province with 5,310 male and 212 female under-trial prisoners, and Balochistan having 992 male and 21 female under-trial prisoners.¹⁶⁴

On 3 February 2005, Senate Functional Committee on Human Rights decided to pay surprise visits to prisons with special reference to human rights violation in prisons.¹⁶⁵ The Senators reportedly visited many jails in all the provinces and submitted their final recommendations.¹⁶⁶ But these had little impact. On 26 October 2005, Supreme Court ordered Inspector General of Punjab Prisons to submit a detailed report within two weeks

on allegations made by an under-trial prisoner of corruption, misuse of power, providing drugs to prisoners and sodomising of the juvenile prisoners.¹⁶⁷

Earlier in July 2005, the Supreme Court of Pakistan formed a judicial committee consisting of the attorney general and all the four provincial advocate generals to formulate recommendations for improving the condition of jails and prisoners and submit its report to the court. The Court directed to submit the complete data and statistics about prisoners and the facilities given to them in their respective provincial jails.¹⁶⁸

A delegation of the Federal Law, Justice and Human Rights Ministry and some local reporters during a visit in September 2005 found that a majority of prisoners in Kotlakpat Central jail in Lahore were suffering from scabies and other skin diseases, caused by overcrowding. A majority of the female inmates were suffering from Hepatitis.¹⁶⁹ Tuberculosis was spreading at an alarming rate in the jail.¹⁷⁰

Prisoners resorted to strikes to protest against the denial of basic facilities. On 12 May 2005, hundreds of prisoners in Central Jail-I and II, Sukkur protested against Ashiq Bozdar, Jail Superintendent and Jailer Pirzada and other officials for looting cash amounting to Rs 15 million from the prisoners during search operation in the first week of May 2005, not providing them food, water and electricity. The prisoners took 10 jail staff as hostages. One prisoner Taj Mohammad Pathan was killed and 25 others were injured in firing and tear gas shelling by security forces and police.¹⁷¹ About 170 prisoners of the Mach jail in Balochistan province reportedly started hunger strike on 30 June 2005 to protest against violations of the jail manual by the jail authorities.¹⁷²

In the Sargodha District Jail, security

forces resorted to teargas shelling and firing on 2 September 2005 following tortured to death of an under-trial prisoner, Ashraf Ali. Prisoners reportedly took his body in their possession and demanded suspension and arrest of the entire jail staff. While police tried to take possession of the body, protesting inmates broke open the locks of some barracks. The prisoners held three jail-staffers hostage at the jail mosque.¹⁷³ Five constables and about a dozen inmates were injured in police firing.¹⁷⁴

The prison authorities sought to hide torture perpetrated on the prisoners. The Supreme Court ordered exhumation of the body of prisoner Sardar Ali, who was detained illegally in New Central Jail, Multan and allegedly died of torture. Post-mortem by a medical board found the death as unnatural.¹⁷⁵

On 20 October 2005, Justice Sheikh Abdur Rashid of the Lahore High Court ordered prosecution of three personnel of the Central Jail, Faisalabad, including the superintendent and deputy-superintendent for severely torturing a prisoner Mohammad Ghufuran making him almost disabled.¹⁷⁶

The conditions of female prisoners remained more despicable. No lady doctor has been appointed for the women's section of the Peshwar central prison since 2003. District and Session judge Shahjehan Akhunzada during her visit to the jail in June 2005 expressed concern about the lack of a lady doctor and prepared a detailed report on the plight of prisoners. Most of the female convicts and under-trial prisoners have small kids and suckling babies with them who needed special attention.¹⁷⁷

XII. Tribal rights I: Balochistan

The root causes of the Balochistan

imbroglio pre-date General Musharraf's regime and yet remain unaddressed. Upon assumption of Presidency in October 1999, General Pervez Musharraf promised to, among other things, work towards "strengthening the federation, removing inter-provincial disharmony and restoring national cohesion" but six years later, his promises remained unfulfilled.¹⁷⁸ On the other hand, the federal government has been using regular troops and paramilitary forces for "strengthening the federation". The launching of mega projects and constructions of new army cantonments in the province without taking into account local and provincial sensitivities further increased the conflict.¹⁷⁹

The Balochistan crisis exploded after Pakistan government launched full scale military operations in December 2005. In early January 2005, similar military operation was carried out to suppress the armed protests by the tribal militias, consisting mainly of tribesman against the gang rape of a doctor, Shazia Khalid on 7 January 2005 allegedly by an Army officer.¹⁸⁰ The region has been highly militarized, as Pakistan reportedly established one paramilitary post for every 500 people.¹⁸¹

On 29 September 2004, a Parliamentary Committee headed by Pakistan Muslim League, President Chaudhry Shujaat Hussain was formed "to examine the current situation in Balochistan and make recommendations thereon." The committee was subsequently divided into two sub-committees - one headed by Wasim Sajjad to examine the question of provincial autonomy and the other headed by Hussein Sayed was mandated to address the immediate crisis in the province.

In March 2005, the Parliamentary Sub-Committee on Balochistan headed by Wasim Sajjad recommended complete revision of the concurrent list, announce-

ment of the National Finance Commission award before budget, biannual meetings of the Council of Common Interests and distribution of federal resources on the basis of poverty, backwardness, unemployment and development level of provinces instead of the existing criterion of population.

The Parliamentary Sub-Committee on Balochistan headed by senator Mushahid Hussain, recommended increase in gas royalty and surcharge; maximum representation to the province on the boards of the oil and gas companies operating in the province; implementation of the job quota of the Baloch; shifting of the Gwadar Port Authority head office to Balochistan; seven per cent of the gross port revenue to go to the province; training of local youth for jobs; probing of allotment of lands by a judicial body; construction of highways; announcement of National Finance Commission; taking of Confidence Building Measures such as keeping the visibility of the armed forces low; not disbanding the levy forces; holding in abeyance the construction of cantonments at Gwadar, Dera Bugti and Kohlu; harnessing water resources; maintaining Baloch-Pakhtoon parity in every respect - in terms of population and the regions.

A high-powered committee formed to implement the recommendations of the parliamentary committee on Balochistan held only two meetings in 2005.¹⁸² None of the recommendations was implemented.

While President Musharraf was visiting the area, eight rockets were fired on 14 December 2005 at a paramilitary base on the outskirts of the town of Kohlu, a stronghold of the Marri tribe. Three days later, security forces began aerial bombardment of Kohlu. Hundreds have been allegedly killed since 17 December 2005. Jamhoori Watan Party Chief and former Governor and Chief Minister of Balochistan, Nawab Akber Bugti alleged

that 80 to 85% of those either killed or injured were women and children.¹⁸³ The fighting caused widespread damage to buildings, and 85 percent of the 25,000 or so people of Dera Bugti were forced to flee the town.¹⁸⁴ The Human Rights Commission of Pakistan found number of cases of arbitrary arrests and detention, torture, extrajudicial executions, disappearances and use of excessive force by security and intelligence agencies since early 2005. Amongst the victims were women, children and many political activists.¹⁸⁵

There were also consistent and credible reports of repression of the political opposition by the police. On the night of 3 March 2005, police reportedly entered houses in Killi Qamrani suburb of the city in Quetta and apprehended 26 members of the Balochistan National Party (Mengal), the Jamhoori Watan Party and the National Party for opposing the construction of large projects in Balochistan.¹⁸⁶

On 31 March 2005, the University Town police in Peshawar arrested 13 leaders and activists of the Pukhtunkhwa Milli Awami Party (PMAP) under the Maintenance of Public Order Ordinance. They were charged under the Anti-Terrorism Act, 1997, and various other provisions of the Pakistan Penal Code. The PMAP activists were arrested along with 24 other people during the strike observed by the Pakistan Oppressed Nations Movement on that day.¹⁸⁷

In response to a petition by Mir Noor Jan whose son Imdad Baloch, a student of Bolan Medical College, Quetta, was allegedly picked up, along with Allah Nazar, Nawaz Ali, Akhtar Nadeem and some others on 26 March 2005, a Deputy Attorney-General gave an undertaking to a Sindh High Court bench on 26 July 2005 that the interior and defence secretaries would file their personal affidavits regarding detention of three activists of the

Baloch Students Organisation.¹⁸⁸ The police and other law-enforcement agencies were not disclosing their whereabouts.¹⁸⁹

Two daughters of Sher Muhammad Baloch of Lyari area in Karachi – Ms Arifa and Saba Baloch – reportedly disappeared after their arrest from Swat on 4 June 2005 by Pakistan security and intelligence officials. They have not been produced before the court since their arrest. Neither their parents had any access to them.¹⁹⁰ On 16 September 2005, an intelligence agency reportedly dropped Ms. Gul Hamdana, mother-in-law of Saba Baloch near the Daewoo company bus-stand in Peshawar from alleged illegal detention for more than three months while her son Bilal Ahmad and the Baloch sisters were allegedly in the custody of the intelligence agency.¹⁹¹

XIII. Tribal rights II: FATA region

Tribals living in the Federally Administered Tribal Areas (FATA) continued to suffer from discriminatory laws, in particular the colonial-era Frontier Crime Regulation (FCR) of 1872. Section 21 of the FCR empowers the political agent to order: - a) seizure, wherever they may be found, of all or any of the members of such tribe and of all or any property belonging to them or any of them; b) the detention in safe custody of any person or property so seized; c) confiscation of any such property; and, with like sanction, by public proclamation; d) debar all or any member of the tribe from all access into the (country); and e) prohibit all or any person within the limits of British India from all intercourse or communication of any kind whatsoever, or of any specified kind or kinds, with such tribe or any section or members thereof.¹⁹²

Tribals living in FATA or tribal areas were deprived of the benefits of the judicial system such as the Supreme Court and High

Court. Article 247 (7) of the 1973 Constitution of Pakistan bars jurisdiction of these courts in the tribal areas. The Political Agent or Assistant Agents (APA) whimsically invoked the provisions of the Pakistan Penal Code and Criminal Procedure Code alongwith the provisions of FCR against the accused but they cannot be challenged before the Supreme Court or High Court. This has resulted in miscarriage of justice.¹⁹³

On 30 June 1990, two tribesmen Tahir Khan and Nabi Hussain Bangash were sentenced to undergo a total of 42 years rigorous imprisonment on different counts by an assistant political agent of Kurram Agency under the Frontier Crimes Regulation on charges of carrying explosives. The Assistant Political Agent had also imposed Rs 1,50,000 fine on each of them and in default to undergo imprisonment of another 12 years. They have already completed 14 years of jail term but shall have to undergo 28 more years plus another term of 12 years each for failure to pay fines, as both are poor and cannot arrange the fine. Whereas under section 35 of the Criminal Procedure Code, sentence on different counts in one case should not exceed 25 years imprisonment.¹⁹⁴

In May 2005, tribal elder and political activist Fazl Hameed was arrested by the North Waziristan authorities under the FCR in May 2005. He was kept in illegal detention and was not reportedly produced before any court till November 2005.¹⁹⁵

In the war against terror, Pakistan has launched massive war against Al-Qaeda suspects in the FATA region and extensively invoked the Anti-Terrorism Act of 1997.

XIV. War against terror

The War Against Terror raised questions about administration of justice in Pakistan. Hundreds of suspects were held incommunicado. In an interview to *The*

Herald magazine in October 2005, Pakistan Interior Minister Aftab Sherpao stated that Pakistan security agencies had arrested over 600 foreign nationals since September 2001.¹⁹⁶ Many were handed over to the United States for interrogation without trial.

Anti-terror laws were extensively used against the political opponents. On 31 March 2005, Kabuli police in University Town in Peshawar of NWF Province reportedly arrested 37 persons including Pukhtoonkhwa Milli Awami Party (PMAP) central vice-president Arbab Mujeeb and provincial president Mukhtiar Khan Yousafzai and charged them under section 6/7 of the Anti-Terrorism Act, 1997, read with sections 353, 341, 342, 324, 427, 148 and 149 of the Pakistan Penal Code. The police claimed that the detainees were caught damaging public property and terrorized common people while trying to enforce the strike called by the organisation. Some of the arrested accused were small-time vendors and were illegally arrested after an enraged mob ransacked public property on the University Road.¹⁹⁷

On 3 April 2005, local police arrested as many as 59 activists of the Muttahida Majlis-i-Amal, including its local leaders of Faislabad in Punjab in connection with a strike call by it and booked them under the Anti-Terrorism Act.¹⁹⁸

In early June 2005, Sindh police arrested the representative of the Sindh assembly Zahid Bhurgari on fabricated charges under the anti-terrorist law.¹⁹⁹

In order to deny bail to the accused, in July 2005, the Sindh provincial government allowed the police authorities to book under the Anti-Terror law under which police can detain and arrest suspects for 12 months and the arrest cannot be challenged.²⁰⁰

Similarly, Swat police in NWFP arrested Altaf Hussain, Riaz, Ghulam Umer, Gulab Nawab, Tila Rehman, Jalal Hussain and Mohammad Ayub on 20 July 2005

under section 11-EEE of the Anti-Terrorism Act, 1997 on the ground that they were activists of a defunct religious outfit called *Tanzim Nifaz-e-Shariat Mohammadi* but without any criminal charges against them. While proceeding in a writ petition by the detainees, a Double Bench of the Peshawar High Court consisting of Chief Justice Tariq Pervez and Justice Qaim Jan Khan on 5 October 2005, reiterated that a person charged in criminal cases could be detained under the preventive laws. The NWFP home secretary reportedly failed to produce any evidence to prove that there was cause to detain them when asked by the court. The Court rejected the home secretary's contention that the detainees were arrested on information that they continued their association with the banned organisation and ordered that the petitioners be set free instantly. The NWFP Home Department had reportedly extended their detention for two months despite the fact that the Swat Anti-Terrorism Court judge had already issued their release order on bail.²⁰¹

On 29 November 2005, law enforcement personnel allegedly picked up Arif Qasmani from his KDA Scheme residence in Karachi for his suspected links with Al Qaeda and Taliban but his whereabouts remained untraced. No case was registered against him, nor was he produced before a magistrate for remand. The police even denied having arrested Arif when his wife, Javeria Arif informed them.²⁰²

Even children were not spared from abuses under the Anti-Terrorism Act, 1997. A six-year-old girl was reportedly languishing in a Wana prison under the Terrorism Act.²⁰³

XV. Violations of International Humanitarian Laws by the Armed Opposition Groups

The armed opposition groups target-

ed the tribal elders on suspicion of spying or helping the security forces. A large number of tribal elders were killed in Waziristan.

On 2 June 2005, unidentified assailants from a car shot dead a tribal leader Sakhi Marjan in the Lawara Mandi area of North Waziristan Agency. At the time of the incident, the deceased was reportedly sitting at a shop in Datakhel near the Afghan border when some people in a car opened fire on him and fled. A few days before the shooting, the deceased had received anonymous letters, asking him to stop spying for the US or face consequences.²⁰⁴

On 22 July 2005, armed groups shot dead Chief of the Ahmadzai Wazir tribe Mir Zalam Khan along with his two brothers and a nephew near Wana in the South Waziristan. Mir Zalam Khan was considered a staunch supporter of the government in the military operation against armed groups and was one of the 30 tribal elders whom the armed groups warned to withdraw support from the government or face consequences.²⁰⁵

On 5 October 2005, unidentified individuals suspected to be members of armed opposition groups kidnapped and shot dead a tribal elder, Mohammad Alam from Sarwek Langar Khel in sub-division Ladha of the South Waziristan Agency. His dead body was found in a deserted area. Mohammad Alam had allegedly collaborated with security forces in the crackdown on militants hiding in the tribal areas.²⁰⁶

On 19 October 2005, Malik Mashad Khan, 55-year-old pro-government chief of the Dotani tribe, who had been kidnapped by masked men from Wana in South Waziristan Agency, was found dead near the Wana bypass. The murders reportedly chopped his head off and threw his body into a dry watercourse.²⁰⁷ ■

Sri Lanka

I. Ranking in Human Rights Violators Index: 6th

Sri Lanka's positive human rights ranking in 2005 was virtually due to the fragile Cease-Fire Agreement (CFA) signed between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002.

In a glaring violation of the CFA, Foreign Minister Lakshman Kadirgamar was assassinated on 12 August 2005 allegedly by the LTTE which denied its involvement. The response of the Sri Lankan government to the assassination of Kadirgamar was a typical one: declaration of a state of emergency on 13 August 2005¹ and treat all the Tamils as suspects. Sri Lanka was under emergency throughout 2005.

II. Political freedom

Political freedoms, in particular, the right to freedom of association and peaceful assembly and the right to take part in the government, directly or through freely chosen representatives, was exercised more in Southern part of Sri Lanka.

In Northern and eastern parts of the country, the right to freedom of association and peaceful assembly were dealt with disproportionate force including killings by the security forces. On 3 March 2005, Sri Lankan army personnel reportedly opened fire on protesters comprising students and civilians near Jaffna University resulting in the death of 65-year-old Mr. Kathirgamu and injury to another. The students and

civilians were protesting against the death of twelve-year-old Ms Nagendran Thulashika, a schoolgirl, by a speeding Sri Lankan army truck on Hospital Road in Jaffna.²

There were widespread reports of killings, abductions, and other related violence by the armed opposition groups. Although the LTTE remained the overwhelmingly dominant armed opposition group and the signatory to the Cease-Fire Agreement, a large number of other Tamil armed groups like the People's Liberation Organization of Tamil Eelam (PLOTE), Eelam People's Democratic Front (EPDF), Eelam People's Revolutionary Liberation Front (EPRLF) and the Karuna faction led by Vinayagamoorthy Muralitharan were active. The internecine conflict between the LTTE and the other Tamil armed opposition groups continued unabated.

III. Human rights violations by the security forces

There were widespread reports of violations of human rights, including the right to life, by the security forces both from North Eastern and Southern part of Sri Lanka. The Human Rights Commission of Sri Lanka (HRCSL) summoned the Inspector General of Police on 21 March 2005 to express its concern over a number of extra-judicial killings of suspects by members of the police force in Southern parts of the country.³

The National Police Commission reportedly received a total of 2,419 complaints against the police in 2005. Of these,

761 complaints were reported from the Central Province, while 548 were reported from the Southern Province.⁴ Out of the 2,419 complaints, 274 complaints were related to torture, including beating, 130 complaints related to illegal arrests and detention, 192 for taking bribes, 721 were related to unethical behaviour, and 513 complaints for not acting properly. Investigations have been completed on 680 complaints and six police officials have been indicted, while disciplinary actions have been taken against 36 officials. Reports have been called from concerned departments on 2305 other cases, of which, reports were received by the National Police Commission in 1148 cases.⁵

a. Disappearances

Disappearances have been endemic in Sri Lanka.⁶ The government established a series of Commissions - Presidential Commission of Inquiry into Involuntary Removal of Persons of 1991, Regional Commissions of Inquiry in 1995, a Board of Investigation of the Ministry of Defence of 1996, All Islands Commission of Inquiry in 2000 - to inquire into disappearances of about 27,200 persons.⁷ Accountability remained elusive for such widespread disappearances.

Cases of disappearances continued to be reported. On 8 August 2005, a complaint was lodged with the Jaffna regional office of the Human Rights Commission of Sri Lanka and Jaffna office of the Sri Lanka Monitoring Mission (SLMM) about the disappearance of Kaunakakai Sasikaran of Allarai Kodikamam in Thenmaradchchi division in Jaffna district after being allegedly taken into custody by the Sri Lankan army soldiers in Muhamalai checkpoint.⁸

The lack of accountability contributed to continued enforced disappearances. In a rare case, in April 2005, a three-member

bench of Sri Lanka's Supreme Court held the State responsible for the disappearance of M.Arumugam and M.Mahendrarajah after their arrest on 6 July 1990 by the Sri Lankan army personnel in Trincomalee and ordered to pay the petitioner, K.Machchavalavan, a sum of Rupees 300,000 as compensation.⁹

Between February 2002 and November 2004, there were 900 reports of abductions, of which almost 400 have been certified by the Norwegian-led Sri Lanka Monitoring Mission (SLMM) as violations of the ceasefire agreement.¹⁰ Many of these cases of abductions resulted into disappearances.

b. Violations of the right to life

In March 2005, the HRCSL expressed concern over the reported killing from Negombo (02), Ragama (01), Peliyagoda (01), Welikada (02), Nawagamuwa (02), Mutwal (03), Kottawa (01), Athurugiriya (01), Nittambuwa (03) and Tangalle (01) police areas of Southern Sri Lanka.¹¹

Torture and custodial deaths were also reported throughout 2005. On 26 March 2005, Nallawarige Sandasiril Fernando was brutally assaulted by Panadura police at his home at Welaeda in Panadura for protesting against the arrest of his brother Deepal Kumara Fernando. He was seriously injured in the head and taken to the National Hospital in Colombo on 28 March 2005 where he died a few hours after admission.¹²

Many of the torture to death cases were confirmed by medical reports. The torture to death of Mr. Wijeratne Gunasinghe, a three-wheeler driver, was confirmed by a post mortem conducted on the deceased's body on 17 April 2005. He was taken into custody by some policemen from Maharagama police station in Colombo including a constable bearing ID No. 22728.¹³

The post mortem of Helwala

Langachcharige Susantha Kulatung, a resident of RajaMahavihara, Athgalawatte, Atakalampanna, Madampe, conducted on 27 April 2005 reportedly found more than 107 marks of injuries. Though police claimed the victim hanged himself, the post mortem report did not find any injury mark on the neck. The victim was reportedly taller than the height of the cell inside which, the police claimed, he had allegedly committed suicide. The deceased was arrested on 18 April 2005 by five officers from Rakwana Police Station.¹⁴

The Judicial Medical Officer of Ragama Base Hospital, P. Parathidharam, after the post mortem inquiry, held that death of L.G. Nandiraja Gamage, a resident of Ambana Elpitiya, was caused by assault.¹⁵ On 30 May 2005, L.G. Nandiraja Gamage reportedly died after being tortured while under the custody of Pitigala police station. He was allegedly arrested by two police officers in uniform and four others in civvies for allegedly stealing goods from a furniture shop on 29 May 2005.¹⁶

Similarly, in the custodial death of Hettiarachchige Abeysiri alias Ranjith in July 2005, Judicial Medical Officer's report confirmed that the death was caused due to internal hemorrhage due to injuries received from a blunt weapon. The two police officers, Sub Inspector K.L.A. Chaminda Kumara and police constable Anura Dharmapriya Weerawardena attached to crime unit of Peliyagoda police station were arrested in connection with his killing and produced before the court.¹⁷

Victims were threatened for filing complaints. R. Navaratne Bandara of Panadura while testifying before the Panadura Magistrate on 1 April 2005 reportedly wished to withdraw the complaint against his torture at the Kehelwatte police station in August 2001 after receiving threats.¹⁸

In early September 2005, the Attorney

General K.C. Kamalabayson filed direct indictment against six police personnel identified as former Officer-in-Charge (OIC) Biyagama Police Crime Branch Sub Inspector Siresh Gunasena, OIC Minor Complaints Branch Sub Inspector Asela Kumara Herath, Police constables Wijesena, Pradeep Kumara, Gayan Chandimal and Ajith Nishantha for murdering Gerard Mervyn Perera.¹⁹ Gerard Mervyn Perera was taken into custody on suspicion in connection with a triple murder that had taken place four years ago at Hendala Alwis Town. He was allegedly assaulted by the police and treated in an inhuman manner. He had filed a fundamental rights case against seven police officers of Wattala Police Station and the Negombo High Court had ordered the accused police officials to pay him compensation of one million rupees.²⁰ On 21 November 2004, an identified gunman shot at Gerard Mervyn Perera. He was scheduled to testify in a fundamental rights case against seven police officers of Wattala police station before the Negombo High Court on 2 December 2004.²¹ But trial was continuing at snail's pace.

The police also used fire-arms indiscriminately causing violations of the right to life. On 28 December 2005 around 5 pm, two youths identified as Yogarajah Gajendran from Kolumbuthurai in Ariyalai and Paranchothy Theepan from Kanduvil Veethy in Ariyalai who came in a motor-bike were allegedly stopped and shot dead after beating one of them against a wall by the Sri Lanka army soldiers manning the checkpoint at Mutthirai Junction on Jaffna-Point Pedro Road near Nallur.²²

Many Tamils were killed in reprisals by the Sri Lankan Army personnel. On 23 December 2005, Ms Markandu Pushpamalar alias Malar was injured and later succumbed to her gunshot injuries at the Jaffna Teaching Hospital²³ and K

Rajathurai was seriously injured when the soldiers fired indiscriminately at civilians following a grenade attack at the SLA sentry camp near the Multipurpose Cooperative building in Chavakachcheri.²⁴

On 24 December 2005, five Tamils - Ms. Parameswari Somasundaram, Thirunavukarasu Jeyakanthan, a local businessman from Pallai, Ratnakumar Kunasegar, a carpenter from Kanakarayankulam, Krishnan Vimalaswaran, a night watcher and Palasingham Chandrakumar, a garage worker in Kottady were allegedly shot dead by the Sri Lankan army personnel in Jaffna. The woman was a heart patient who had come to Jaffna Hospital for treatment from Konavil in Kilinochchi. The parents of the victims identified the bodies following the publication of photos in the local newspapers. The Sri Lankan military claimed that the five persons were gunmen and that troopers had recovered weapons from the them.²⁵

Rarely the security forces were taken to tasks for such indiscriminate use of firearms. In a rarest case, seven policemen were arrested following the orders of Tissamaharama Magistrate Court for the indiscriminate firing while raiding a gambling den on the eve of Sinhala new year's day in which six persons including a fourteen-year-old and a woman were injured by Tissamaharama police on 13 April 2005.²⁶ In another incident, four policemen were arrested and remanded for killing Indika Priyantha Kumara de Silva of Akaralle and injuring two others seriously after they opened fire at a group of villagers involved in a gem rush at Opanayake on 21 July 2005.²⁷

c. Arbitrary arrest, detention and torture

Ethnic Tamils were specific targets of arbitrary arrest, detention and torture.

A large number of Tamils were arrested following the assassination of then Foreign Minister Laksman Kadirgamar. In a fundamental rights violation petition filed before the Supreme Court, Sivarasan Sivarajan stated that he was illegally arrested and detained by Colombo Crimes Division in connection with the assassination of Mr Lakshman Kadirgamar. He further stated that there was no material to connect him to an offence either under the Prevention of Terrorism Act or Emergency Regulations and he was wrongfully detained with no reasonable ground or evidence to connect him to the assassination or to justify his arrest and detention.²⁸

On the evening of 13 October 2005, 48 Tamil rice mill workers were reportedly arrested during a cordon and search operation conducted by over 500 Sri Lankan police personnel following information of infiltration by alleged LTTE cadres into the Polannaruwa area.²⁹

The Sri Lankan army personnel and the Colombo Police reportedly arrested 920 Tamils, including 105 Tamil women in a joint cordon and search operation named "Strangers Night III" to hunt LTTE cadres. The operation was conducted in Tamil residential areas of Wellawatte, Bambalapitiya, Maradana, Kotahena, Grandpass and Mutuwal in Colombo between midnight of 30 December 2005 and the noon of 31 December 2005.³⁰

After an inquiry into the alleged torture of convict Mr. Thevamanoharan Jatheeswaran by prison guards of Jaffna prison, the Jaffna regional office of the Human Rights Commission of Sri Lanka in August 2005 found three prison guards guilty and recommended legal action.³¹ In another incident, an inquiry by HRCSL in September 2005 found Police Sergeant E.M.P. Subasinghe (31545) of Elibiwichcha, Bopitiya Pannala guilty of twice torturing Channa Prasanka, resident

of Pitipana South Negombo. The Commission had ordered the police officer to pay Rs. 25,000 to the victim and asked the Attorney General, Inspector General of Police and Chairman of the National Police Commission to take action against the officer for the criminal offences he had committed.³²

The Sri Lankan Navy personnel were also responsible for torture mainly of the Tamil fishermen. On 17 March 2005, a group of about fifteen fishermen from Mathakal, a coastal area in Jaffna district, were allegedly beaten up by personnel of the Sri Lankan Navy while fishing in sea.³³ On the same day, officials of the HRCSL caught Navy personnel with fish forcibly seized from local fishermen near Crow Island in Jaffna.³⁴

On 2 September 2005, two fishermen Mr. Iruthayarajah Jesuthas and Mr. Arulprahasam Anton of Polykandi were admitted at Valvettithurai government hospital with injuries following torture by the Sri Lanka Navy personnel.³⁵

On the morning of 22 December 2005, seven Tamil fishermen, four of them identified as S. A. Calistus (15), S. Stanilaus (11), S. A. Roge (17) and Immanuel Arokianathan (18) from Pallimunai, and three others from Jaffna district were allegedly arrested, assaulted and detained at the Sunny village Naval Camp in Mannar by the Sri Lanka Navy while returning to the shore after night fishing.³⁶ The medical officers of the General hospital who examined the two released detainees confirmed of having assault injuries.³⁷

Torture was rampant across Sri Lanka. In a fundamental rights violation petition before the Supreme Court, H.H. Prabath de Silva from Negombo alleged that he was subjected to brutal assault after his illegal arrest and detention at Wattala Police Station on 13 January 2005. The Judicial Medical Office had confirmed assault on

de Silva.³⁸

Even the police personnel were not spared. On 3 February 2005, several police personnel reportedly beat up police constable C.K. Wanninayake of Kurunegala leaving him with a badly damaged eardrum at a police post in Andiyagala.³⁹ After torture, the police personnel admitted him to the Horana government hospital with a warning not to complain about the incident.⁴⁰

When the victims approached the National Human Rights Institutions, they were subjected to torture. On the morning of 18 December 2005, the Sri Lanka army personnel attacked the drivers of auto-rickshaws at Irupalai junction located on Jaffna-Point Pedro road Irupalai of Jaffna town in retaliation against complaining to the SLMM.⁴¹

IV. Judiciary and administration of justice

Sri Lanka failed to extend invitation to the UN Special Rapporteur on Independence of Judges and Lawyers, thereby adding credence to the allegations about the lack of independence of judiciary in the country.

Chief Justice of the Supreme Court of Sri Lanka Justice Sarath N Silva continued to deliver judgements with nationalist fervour. On 12 August 2005, the Supreme Court stayed the operation of four crucial clauses of the Post-Tsunami Operational Management Structure (P-TOMS) agreement signed between the government and the LTTE for tsunami relief and rehabilitation operations in the north and east.⁴²

Justice continued to elude the ethnic Tamils. On 21 May 2005, the Supreme Court acquitted Sepala Dissanayake, M.A. Sammy, R.M. Premananda who are civilians and Senaka Jayampathy Karunaratne, former officer-in-charge of the Bindunuwewa Rehabilitation Centre who had been sen-

tenced to death by the High Court for their role in the Bindunuwewa massacre. 28 Tamil youths were killed and 14 others were seriously injured in the custody of the Sri Lankan government at Bindunuwewa Rehabilitation Centre on 25 October 2000.

The trial into Mirusuvil massacre in which eight persons were murdered on 19 December 2000 continued at a snail's pace. In May 2005, the Colombo High Court Trial-at-Bar established a new three-member bench to inquire into the Mirusuvil massacre case.⁴³

Those residing outside of Colombo continued to face problems for filing cases on violations of fundamental rights. Under Section 126(1) of the Constitution, a petition against violations of fundamental rights could only be filed with the Supreme Court, which is based in Colombo. This restricted the access to justice to the poor, as many simply could not afford to hire a Supreme Court lawyer. Those who were living outside of Colombo could not regularly follow up the cases in the Supreme Court. Further, only the victim or an attorney-at-law on his/her behalf could file a complaint of human rights violation. This excluded the possibility to pursue justice for violations of fundamental rights on behalf of the dead and the missing. Section 126(2) also imposes a ban on filing a petition against human rights violations after one month of the occurrence of such violations. Since most Tamils living in the LTTE held areas and High Security Zones did not enjoy the right to freedom of movement and were required to take "passes", they could not effectively approach the Supreme Court against violation of their fundamental rights.⁴⁴

In May 2005, the Sri Lankan government also adopted draconian Code of Criminal Procedure (Special Provisions) Act and Criminal Procedure Code Amendment Act in the name of speedy justice. The Acts

empowered the Police Officer not below the rank of Assistant Commissioner of Police to detain persons for 48 hours, instead of existing 24 hours, in certain cases such as killings, rape and any offence committed with the use of explosives or offensive weapons without producing before the judge. The Acts also provided for the extension of the period of detention of persons arrested without producing before the court.⁴⁵

In these offences, a magistrate has been also empowered to hold a preliminary inquiry and forward the record of the proceedings to the Attorney General, who on receipt of the record of the proceedings can decide whether to file indictments in the High Court, thereby denying trials at the lower courts. The Acts also provided that statements made by a witness in the course of the investigations shall become part of the records of the inquiry after the Magistrate had verified the accuracy of such a statement and both the witness and the Magistrate had certified it.⁴⁶

Taking blood samples of suspects for DNA test without the consent of the accused has also been legalised.⁴⁷

Judicial delay continued to plague administration of justice in Sri Lanka.⁴⁸ The hearing into the petition on fundamental rights violation application filed by Mr Sundara Aratchchige Laltih Rajapakse on 20 May 2002 before the Supreme Court has been delayed several times. On the other hand, the petitioner was subjected to constant pressure to withdraw his complaint and has been repeatedly called to testify alone at a police station.⁴⁹

V. Effectiveness of National Human Rights Institutions

Since its inception, the Human Rights Commission of Sri Lanka (HRCSL) had been hamstrung by the failure to establish transparency in its work. The lack of pow-

ers to enforce its recommendations and inadequate financial resources remained serious impediment to its effectiveness and independence.

In its Annual Report 2003, the last one to have been made public, HRCSL stated, “owing to the heavy cuts imposed on the HRC budget in terms of the government’s budgetary policy, HRC was severely constrained during this period in carrying out its routine duties such as visiting police stations and this often hampered the Commission in performing this deterrent role as efficiently as it would have.” The HRCSL received a total of 16,016 complaints out of which it concluded 8,304 cases, leaving a backlog of 7,712 cases.⁵⁰

In its Annual Report-2003, the HRCSL recommended that the Human Rights Commission Act of 1996 should be amended to make the recommendations of the Commission enforceable⁵¹ but no action was taken by the government.

Besides, the credibility of the HRCSL had also been questioned In April 2005, an inquiry officer of Human Rights Commission of Sri Lanka allegedly harassed a torture victim Bernard Janapriya during investigation with his ‘hostile manner and of asking irrelevant questions’. Janapriya had filed a complaint with the HRCSL against a sergeant and two policemen for assaulting him on 10 February 2005.⁵²

Worst, no one could be arrested for the attack on the headquarters of HRCSL in Colombo on 12 October 2005. The HRCSL’s office was ransacked, its files were destroyed and newspapers in the office were set on fire by pouring kerosene. The HRCSL stated that the motive of the perpetrators could be to frighten the commissioners & staff members of the HRCSL.⁵³ But the government failed to bring the culprits to justice.

VI. Repression on human rights defenders

Human rights defenders did not face any major obstacles in 2005. However, on the night of 8 January 2005, Mr. Rajadurai Inthirarasa, a leading social worker based in Valvettithurai was reportedly critically injured following assault by the Officer-in-Charge of the Valvettithurai (VVT) Police. He was protesting against police harassment of inmates including women and children of the Tsunami Welfare Centre located at Chidambara College.⁵⁴

VII. Freedom of the press

The press freedom and freedom of expression remained precarious across Sri Lanka. The journalists faced attacks from the security forces, political parties such as Sri Lanka Freedom Party, United National Party, Janata Vimukti Perumuna and the armed groups like the Liberation Tigers of Tamil Eelam. The ethnic Tamil journalists were the primary targets of both the security forces and the LTTE.

The Sri Lankan government failed to take necessary security measures to protect press freedom. The grenade attacks on *Sun-Television* station from India at Vairavarpuliyankumam in Vavuniya town in Colombo on 2 June 2005⁵⁵ and 12 September 2005⁵⁶ were a clear testimony.

In 2005, at least two journalists were killed. On the night of 28 April 2005, Mr. Dharmaratnam Sivaram alias Taraki, senior editor of *TamilNet* and *Daily Mirror* columnist was reportedly abducted and killed by unidentified gunmen near Bambalapitya Police Station in Colombo.⁵⁷ A group calling itself “Therapuththabhaya Balakaya” reportedly claimed responsibility for the killing.⁵⁸ On 29 June 2005, a Tamil newspaper distributor, K. Arasakumar was reportedly shot dead by

an unidentified gunman in Samanthurai.⁵⁹

On 12 August 2005, news presenter of the Sri Lanka state television *Rupaahini* and the Sri Lanka Broadcasting Corporation, Relangi Selvarajah and her husband Sinnadurai Selvarajah, a PLOTE activist, were reportedly gunned down by two unidentified gunmen suspected to be LTTE⁶⁰ inside their house in Bambalapitiya.⁶¹ She was critical of the LTTE.⁶²

On 29 August 2005, the printing office of the Tamil daily *Sudar Oli* at Colombo was attacked with grenade killing its security guard Mr. David Selvaratnam.⁶³

A number of journalists also received death threats. On 10 May 2005, two journalists attached to *Free Media Movement*, Victor Ivan and Sunanda Deshaprita were allegedly threatened with death by an alleged Sinhalese armed opposition group calling itself as 'Theraputtabhaya Force'.⁶⁴ Vediwel Thevara, associate editor of Tamil daily *Veerakesari*, also reportedly received death threats.⁶⁵

Arbitrary arrest and detention of the media persons was common. On 19 August 2005, Tamil journalist Subramaniam Ramesh was arrested under Emergency Regulations.⁶⁶ On 17 December 2005 at around 11.30 pm, a senior Tamil journalist who is also a lawyer, P. Parthipan with two computer technicians Kokulan and Sarveswaran of Tamil newspaper *Thinakkural* were reportedly arbitrarily detained for over 12 hours by the Kirulapona police in Colombo.⁶⁷

Reporting from conflict areas invited ire of the security forces. On 4 March 2005, Mr. Vincent L. Jeyan, the *Lake House* journalist was reportedly assaulted and injured by the military for reporting the public unrest in Jaffna.⁶⁸ On 15 December 2005, Sri Lanka army personnel cordoned off the offices of the popular Tamil daily *Namathu Eelanaadu* and searched its editorial, administrative and

press section of the paper's office in Jaffna.⁶⁹

On 19 December 2005, the security forces beat up three journalists, Mr. T. Sabeswaran, and Wintson Jeyan of Thinakaran and Mr. J. Jerad of *Namathu Eelanadu* and smashed their cameras for covering a peaceful demonstration at Jaffna University.⁷⁰

Politically motivated attacks were carried out against the journalists and the media. In April 2005, provincial reporter of *Lankadeepa*, Hiran Priyankara Jayasinghe was arrested for taking photograph of a hotel coming up near the Tabbowawewa in Puttalam district, which was reportedly owned by United National Party (UNP) Member of Parliament Range Bandara. Jayasinghe was produced before the Court and released on bail but his camera was kept in police custody.⁷¹ On 6 May 2005, UNP activists assaulted *Rupavahini Polonnaruwa* correspondent, Upul Shantha Medagedara and smashed his camera while covering their protest rally at Thamankaduwa in Polonnaruwa.⁷²

The Janata Vimukti Perumuna (JVP) activists also threatened and attacked the journalists. Lasantha Wickramatunga, Editor of Colombo-based newspaper *Sunday Leader* sought police protection after he received threats from Wimal Weerawansa, a ruling party MP and leader of JVP on 5 May 2005.⁷³ On 23 August 2005, a trainee photojournalist Yathurshan Premachandran of *Sudar Oli* newspaper was reportedly assaulted by a group of JVP activists while assisting his senior in covering the JVP demonstration in Fort Railway Station in Colombo. The police arrested him and handed over to the National Intelligence Bureau for further interrogation under the Emergency Regulations.⁷⁴ However, police claimed that they took him into custody to rescue from the attacks of the JVP activists.⁷⁵

VIII. Violations of the rights of indigenous peoples

Indigenous Veddhas continued to face discrimination including for not being able to speak Sinhalese. They have little access to homes and habitat.

On 28 March 2005, a member of the indigenous Veddah community, Uruvarige Kekula of Dambana, Mahiyangana complained to the Supreme Court of being harassed and detained along with seven others by Mahiyangana Police Officer-in-Charge Gayan Marapana and others for speaking his aboriginal language because he could not understand Sinhalese. He complained that the police repeatedly harassed him and warned that if the case did not end he would be continuously harassed.⁷⁶ Chief Justice Sarath N. Silva appointed Justice Gamini Amaratunga and State Counsel Parinda Ranasinghe to inquire into the grievances of the Veddah community.⁷⁷

IX. Violence against women

According to Police Women and Children Bureau, violence against women in Sri Lanka increased considerably. Major offences had risen from 2977 reported cases in 2002 to 4593 cases in 2004 while minor offences have risen from 1260 in 2002 to 1415 in 2005. A study by OXFAM showed that 60 per cent women suffer domestic violence including emotional, verbal and sexual abuse in close relationships.⁷⁸ Between June and December 2005, 30 cases of molestation of children and women were reported to Police Women's Bureau in Dambulla district.⁷⁹

There were consistent reports of sexual violence against Tamil women by the security forces. In a complaint to the Mannar Citizens committee on 9 March 2005, a group of Sri Lankan Tamil

refugees alleged that they were beaten, robbed and molested on a sandbank in the seas off Mannar on 5 March 2005 by five men suspected to be Sri Lanka Navy personnel. They also alleged that the sailors raped five refugee women including twenty-five-year old Ms. Rajitha Rajan. On 8 March 2005, Thalaimannar Police reportedly admitted Ms. Rajitha Rajan to Mannar Base Hospital for medical tests. According to the woman's husband, Mr. Mylvaganam Rajan, his wife was raped at gunpoint.⁸⁰

In another incident on 17 June 2005, four army soldiers including two corporals reportedly raped three women several times after tying the hands of three males on their backs at a quarry located at first milepost in Welikanda. The soldiers were arrested and produced before court.⁸¹

The naked body of Ilayathambi Tharsini, a resident of Punguduthivu, who was reportedly abducted on 16 December 2005 allegedly by Sri Lankan Navy soldiers while she was on her way to her aunt's house was found in an abandoned well near the Sri Lankan Navy camp in Punguduthivu on 17 December 2005. According to the post mortem report conducted at Jaffna Teaching Hospital, she was brutally raped before being strangled to death. Several injuries caused by fingernails and biting had been found on several parts of her body. One of her breasts had been severely bitten.⁸²

The women migrant workers were also targeted. On 10 October 2005, 23-year-old woman, mother of one child, was reportedly raped by security officer, Mervin Nissanka Anthony inside a room at the Bandaranaike International Airport, Katunayake.⁸³ The victim complained to the Wellawa police that she received death threat demanding to withdraw the case filed against the accused, who was arrested following an identification parade.⁸⁴ However, the main accused Mervin

Nissanka Anthony and four others - W. Indika Devapriya Fernando, Shaminda Dewapriya Fernando, J.M. Ramesha Dimuthukumara and U.D. Sunil Shantha, who were held guilty of aiding and abetting the crime were released on bail despite threat to victim's life.⁸⁵

In one rare case, the High Court of Anuradhapura on 23 August 2005 indicted three police officers i.e. Inspector Suraweera, Constables Wimalaretna and Cumaraswamy Rajah and nine soldiers of the Sri Lankan Navy with rape, torture and unlawful detention of two Tamil women, Sivamani Weerakone and Wijakala Nanthan, both residents of Uppukulam in Mannar town on 19 March 2001.⁸⁶ Both women were allegedly stripped naked, assaulted, raped and tortured after their arrest on 19 March 2001 when they were being held in the Counter Subversive Unit cell in Mannar Police Station.⁸⁷

Many other women were also tortured. K.A. Ganga Kalpani of Galwanguwa, who was five months pregnant, was reportedly tortured along with her husband Walakadage Gamini Senadeera by the Embilipitiya police in April 2005. Kalpani was admitted to the Embilipitiya Hospital on 30 April 2005 where she gave birth to a stillborn baby as a result of torture.⁸⁸

On 23 December 2005 at around 5.30 pm, 28 persons including females were reportedly injured when the Sri Lankan Navy personnel entered the settlement of the IDPs of Victoria Hundred Scheme at Thullukudiyiruppu in Pesalai and attacked the civilians with batons, bike-chains and shoes after tying their hands and legs.⁸⁹

X. Violations of the rights of the child

Sri Lanka was one the most dangerous place for children especially in the context of tsunami and the armed conflict.

a. Sexual violence and trafficking

Following the tsunami, the government banned adoption of the orphans to stop possible abuse.⁹⁰ Many Sri Lankans were arrested for trying to sell children to foreigners.⁹¹ There were also reports of children being carried away in ships to foreign destinations.⁹² In second week of January 2005, police reportedly found seven tsunami children survivors between age group ranging from 6 to 12 years in a house in Karuveppankerni in Batticaloa. Police investigations revealed that the children had been in the custody at the house since 1 January 2005 in the aftermath of the tsunami disaster. The owner of the house was arrested for kidnapping these children.⁹³

On 11 January 2005, police reportedly arrested a man who was trying to sell two tsunami orphans, aged 13 and 14, at Rs. 50,000 each to a foreign employee official of the UNICEF who posed as a buyer in Balapitiya. The suspect was produced before the Balapitiya magistrate and remanded.⁹⁴

A special police unit of the National Child Protection Authority reportedly exposed an alleged child trafficking racket when they raided a hostel in Heiyantuduwa in February 2005. They reportedly found eight tsunami affected children kept by an individual who claimed that their guardians had handed over the children to him.⁹⁵

b. Children in armed conflict

In 2003, the LTTE had agreed with both UNICEF and the Sri Lankan government to discharge all child fighters to rehabilitation centers, where they could receive care and counseling to help them rejoin society.⁹⁶ But the recruitment of child soldiers did not stop. Since the signing of the Ceasefire Agreement in 2002, the recruitment of child soldiers became so intense that less than 50 percent children went to

school as many parents kept children at home in fear of the LTTE and other armed groups taking them away on the way.⁹⁷

UNICEF recorded 5,368 cases of reported recruitment of child soldiers in Sri Lanka since January 2002⁹⁸ out of which about 44 per cent were girls. Though the LTTE released 1,115 children between 2002 till at the end of 2005,⁹⁹ recruitment continued unabated.

On 23 August 2005, the LTTE released twenty-one youths including eleven girls of ages between 15-17 years to their parents 3 months after joining the LTTE. Three of the youths were handed over to the International Labour Organization funded Vocational Training Centre staff with the concurrence of their parents for skills training. All the eleven girls released were attending high school when they joined the LTTE and of the ten boys, only eight were attending school.¹⁰⁰ On 13 October 2005, 26 underage youths who had allegedly volunteered to join the LTTE were released to their parents by the North East Secretariat on Human Rights at Karadippoku Junction in Kilinochchi.¹⁰¹

The reports of recruitment of children were consistent.

On 25 February 2005, an LTTE cadre, Mahalingam Manivannan was arrested for allegedly abducting a girl from Kokkuvil, Ponpadi LTTE office in Jaffna. The girl was to be handed over to her parents after necessary investigation.¹⁰²

On 20 July 2005, N. Yuddan (14) and P. Ajanthan (16), both schoolboys and residents of Unnarkula Road in Chenkalady, were reportedly kidnapped by alleged LTTE members from their paddy field.¹⁰³ In July 2005, another three teenage boys identified as T.Madan (13) and T.Judan (15) of Market Road and M.Baskaran (15) from the Andankulam area of Chenkalady were allegedly abducted by the LTTE and their parents and relatives were threatened

not to report the abductions.¹⁰⁴

On 1 August 2005, three teenage girls identified as M.Renu Fareena (17), Valeuttu Erakkandy and P. Nilani (17) were abducted at Erakka in Kuchchaveli when they were on their way to a church.¹⁰⁵ On the same day, alleged LTTE cadres abducted Felix M. Christian (15), a school-boy of Murunkan and Christopher Vanaraj (14) of Kaluwankerni in Eravur.¹⁰⁶

On 26 December 2005, alleged LTTE cadres picked up three tsunami-displaced girls aged between 11 and 15 years from refugee camps in Batticaloa and Ampara. The two girls from Ampara were released but the other girl remained with the LTTE.¹⁰⁷

Very few of those abducted children managed to flee. In first week of August 2005, a ten-year-old child Krishnan Balachandran who was reportedly kidnapped by the LTTE cadres escaped from the Navakkudi camp of the LTTE and reportedly surrendered to the Batticaloa police. Krishnan Balachandran reported that there were several other boys who had been kidnapped and were being held at the LTTE camp.¹⁰⁸

XI. Status of IDPs and returnee refugees

The December 2004 tsunami further aggravated internal displacement in Sri Lanka.

According to the UNHCR, more than 400,000 people displaced by the conflict have returned home since the Ceasefire Agreement in 2002, while 325,000 still remain displaced in the two decade long civil war in the North East.¹⁰⁹ Land mines and unexploded ordnance continued to pose problems for the returning and resettling IDPs in the northeast. According to the UNDP, about 75,180 mines were cleared at the end of 2005 and that it had

recorded 1,269 civilian mine casualties from 1995 to July 2005 of which 188 were killed and 1,081 were injured. The actual number could be much higher.¹¹⁰

The continued violations of the cease-fire agreement, the failure to resolve property disputes and slow reconstruction and rehabilitation efforts in areas of origin made the return process to a near standstill.¹¹¹

The camp conditions, especially in the High Security Zones were deplorable. Most of the displaced persons were subsistence farmers, fishermen, agricultural labourers or unskilled workers who needed strong support from the government and aid agencies to restart their lives. But the government failed to take any measure. The displaced families of the Vadamarachchi east division were still facing problems as their houses and lands were occupied by the government troops in the High Security Zones.¹¹²

In Valigamam district, displaced persons were getting only Rs. 1140 per month as relief assistance as per the 1990 estimate on living standards. The amount was not increased at the end of 2005. On the other hand, the government officials reportedly announced to include the displaced families in the Samurdhi scheme under which the allowance would be reduced to Rs. 750 per month.¹¹³

These IDPs were still the most fortunate lot. There were thousands of IDPs who have lost their valid documents to prove ownership of their lands and houses to claim financial assistance and compensation from World Bank funded North East Housing Reconstruction Programme (NEHRP) and other state agencies. The NEHRP through District Task Force structure identified about 60,000 landownership problems confronting the war and tsunami affected families.¹¹⁴ There were also reports of discontinuation of dry rations to the dis-

placed people of the Islets in the Jaffna district.¹¹⁵

The tsunami further exacerbated the problem of shelter which has been one of the biggest problems for the returnees. According to Global IDP project estimate, as of mid-2005, 450,000 tsunami affected people remained displaced.¹¹⁶

The reconstruction work was slow and the Tamils and Muslim minorities were not provided relief materials and rehabilitation assistance at par with the Sinhalese in the South.¹¹⁷ In Trincomalee, the survivors were made to stay in tents which emit unbearable amount of heat, thus affecting their health.¹¹⁸

International Organisation for Migration (IOM) facilitated the return of over 2,800 Tamil refugees from India including 27 refugees who returned on 27 July 2005¹¹⁹ and 38 refugees who returned on 19 December 2005.¹²⁰

Many refugees returned without any official negotiation and were subjected to harassment. On 20 June 2005, Sri Lanka Navy reportedly arrested twenty-five Tamil refugees including 13 women returning from Tamil Nadu of India. Civil authorities claimed that the returnee refugees were immediately sent to their native villages in Trincomalee and Vavuniya districts.¹²¹ However, eleven Sri Lankan Tamil refugees returning from India on the night of 11 November 2005 were reportedly arrested by the Sri Lankan Navy at Pesalai and handed over to Mannar Police for further investigations.¹²²

XII. Violations of the prisoners' rights

Prison conditions in Sri Lanka were deplorable with the absence of basic facilities.¹²³ By August 2005, there were 22,904 convicted prisoners and 60,484 under-trials. Some prisons were over-

crowded as much as by 400%. The Welikada Prison housed over 4,000 prisoners against sanctioned capacity of 1750.¹²⁴

Article 11 of the Constitution of Sri Lanka allows inspection of prisons and detention centres by different bodies including HRCSL. However, very few inspections were carried out and the findings of inspections were not made public.¹²⁵

Although prisoner's welfare and rehabilitation programmes were initiated as far back as 1953, little or no progress has been achieved over the years. Among the prisoners, 71% were serving sentences of over 6 months, 45% were serving terms between 3 months and one year, and 65% were serving jail terms for inability to pay fines imposed by the courts for various offences¹²⁶ while 37% were held for drug related offences.¹²⁷ On 4 February 2005, 1,800 prisoners were freed on a Presidential Pardon.¹²⁸

In early hours of 6 May 2005, three remand prisoners were reportedly injured after a wall at the Welikada Prison collapsed due to heavy rains.¹²⁹ Due to the overwhelming increase in prisoner population, a number of prisoners in Welikada prison were reportedly becoming mentally unstable. According to a report, seventy-nine prisoners of Welikada prison needed treatment for mental sicknesses. The requests made by prison authorities to the Health Ministry to provide a psychiatrist to the prison had fallen on deaf ears. Most of the prisoners were serving extended prison terms due to their inability to pay fines.¹³⁰

On 28 May 2005, a remand prisoner Sumanasiri, resident of Ratgama, under detention in Galle prison reportedly died while undergoing treatment at Galle Karapitiya hospital. Ratgama police arrested him for gambling and was fined Rs.1,500 by court. He was imprisoned for two

years for failing to pay the fine.¹³¹

There was serious lack of security with prisoners being killed inside prison cells and inside prison vans while being taken to courts.¹³² Weapons could allegedly be smuggled inside prisons and officials having close connections with underworld don cannot be ignored.¹³³ On 1 September 2005, prisoner Mohamed Riswan was reportedly gunned down by a fellow prisoner Aravinda Dhanushka in the prison bus while being brought from Magazine prison to appear in Aluthkde Courts. The deceased was the main suspect in killing the High Court judge Sarath Ambepitiya.¹³⁴

On 26 September 2005, three prison guards identified as Overseer Wimalatunga Perera, guards Y. Amarasinghe and J. Niroshan and one prisoner, Ambegoda were allegedly killed by suspected underworld gang in an attack on the prison vehicle carrying them to the Negombo Courts at Udugampola.¹³⁵

According to a study, in the absence of adequate number of rehabilitation centers, about 60% of the one time juvenile offenders were returning to prisons for committing the same offence on their release. Out of the eight rehabilitation centers functioning earlier, only four were functioning in 2005.¹³⁶

XIII. Violations of the rights of minorities

The root causes of the civil war in Sri Lanka, especially, in Northern and Eastern parts are the discrimination against the Tamil minorities. Other minorities too faced attacks from the majority Sinhalese.

There were reports of Buddha statues being suddenly erected in tsunami-affected areas in the Muslim majority areas in the East. According to Sri Lanka Muslim Congress leader, Rauff Hakeem, a Buddha statue was constructed in Ullei, Pottuvil in

January 2005 allegedly by some political elements who wanted to incite communal violence.¹³⁷

In the last week of March 2005, the Principal of Lindsay Girls School in Colombo reportedly banned Muslim students from wearing the traditional head scarf known as the '*hijab*' in school and directed the Muslim students to adorn themselves as same as Sinhalese students with immediate effect contrary to the circular number No: 1995/37 of the Ministry of Education and Higher Education which permitted all Muslim students to wear the head scarf and the trouser, according to the Islamic religious norms.¹³⁸

On the morning of 18 November 2005 at around 5.45 pm, four Muslims - Mr. Ibraheem, Mr. Abubaker, Mr. M.I.M Mustafa and Mr. Noordeen were killed and at least eighteen others were wounded when unidentified assailants hurled two grenades at the Akkaraipattu Jumma Mosque located on Akkaraipattu-Amparai Road.¹³⁹

XIV. Violations of International Humanitarian Laws by the AOGs

There were reports of serious violations of international humanitarian laws such as killing, torture, kidnapping and hostage taking by the armed opposition groups such as the LTTE, People's Liberation Organization of Tamil Eelam, Eelam People's Democratic Front and Eelam People's Revolutionary Liberation Front and the Karuna faction.

a. Killings

All the armed opposition groups were responsible for killing, though the LTTE remained the overwhelmingly dominant group responsible for maximum number of violations of international humanitarian

laws.

The LTTE cadres were responsible for the killings of the cadres of PLOTE, EPDF, EPRLF and Karuna faction.

On 8 March 2005 at around 5.10 am, a PLOTE cadre identified as Alakaiah Kirubeswaran was allegedly shot dead by suspected LTTE¹⁴⁰ gunmen while waiting a bus to go to Colombo in front of the Police headquarters in Batticaloa town.¹⁴¹

Those who were associated with EPDF leader Douglas Devananda were specifically targeted by the LTTE. On 4 April 2005, Vocational Training Director Thiyagarajah Kailanadan was allegedly shot dead at point blank range by suspected LTTE members at Kathankudi in Batticaloa for allegedly working under EPDF leader Douglas Devananda.¹⁴² Mr. Rajadurai, principal of Jaffna Central College, was reportedly shot dead in front of his students by four unidentified gunmen alleged to be cadres of the LTTE when he was attending a religious function at the Weerasingham hall in Jaffna in October 2005. He had reportedly received death threats from the LTTE, warning him not to carry out development work at the school using the funds received from Mr. Douglas Devananda who had been a student of the college.¹⁴³

On the night of 11 October 2005, another school principal Mr. Nadaraja Sivakdacham of Kopay Christian College was allegedly shot dead in front of his family members by suspected LTTE cadres at his residence at Kopay in Jaffna district.¹⁴⁴

Those who were suspected for spying for the army were also specifically targeted by the LTTE. These included S. Pathmanathan, who was abducted from his home and shot dead by unidentified gunmen in the outskirts of the village Maavilangaimunai of Aaraiyampathy in Batticaloa on 6 March 2005¹⁴⁵; P. Jegatheesvaran, who was killed on 24

January 2005 at 33rd Lane opposite the Wellawatte police station, Colombo;¹⁴⁶ Rasaratnam Sri Kanth, a PLOTE member who was shot dead at point blank at his residence located on 3rd lane at Kovilkulam in Vavuniya;¹⁴⁷ and Selvadurai Yoganadan, who was shot dead while returning home after visiting his sick father at Pattakadu in Vavuniya on 19 September 2005.¹⁴⁸

On the morning of 14 September 2005, former leader of Razeek group Sivaguru Navaratnarajah alias Gandhi was killed in a grenade attack by a suspected LTTE cadre at an army camp at Lake Road in Batticaloa.¹⁴⁹

Many were targeted for not heeding to demands of extortion. On 26 November 2005, a businessman identified as Ganeshalingam Thyagarajah was allegedly shot dead by a LTTE cadre riding a motorcycle at Vakarai in Batticaloa. He was under death threat allegedly from the LTTE for not paying extortion money.¹⁵⁰

On 25 December 2005, Tamil National Alliance (TNA) Parliamentarian from Batticaloa District, Joseph Pararajasingham was shot dead inside the St. Mary's co-cathedral church in Batticaloa during Midnight Mass on Christmas Day.¹⁵¹ His wife Sugunam Pararajasingham and seven other civilians were injured in the attack. A clandestine armed opposition group "Sennan Brigade" reportedly claimed the responsibility for the assassination.¹⁵²

The LTTE and its sympathizers too suffered number of casualties at the hands of mainly the Karuna group. On 7 February 2005, LTTE's Batticaloa-Amparai district political leader, E. Kaushalyan and four others were reportedly killed in an ambush carried out by Karuna Group in Government-controlled Punani area in the Batticaloa District.¹⁵³ TNA MP Ariyanayagam Chandra Nehru who was also injured in the ambush succumbed to

his injuries on the next day. The Karuna group reportedly claimed responsibility of the killing.¹⁵⁴

On 29 August 2005, six LTTE cadres were killed and seven injured in an ambush by alleged the cadres of Karuna group in the uncleared area of Panichchakerni in Vakarai in Batticaloa district. Their bodies were reportedly displayed at Tamil Maha Vidyalaya in the government-controlled area of Vakarai.¹⁵⁵

The Karuna group also specifically targeted the relatives of those cadres of its group, who surrendered to the LTTE. On the night of 7 December 2005, Mrs Yogarasa Yogeswary and Mrs Thurairasa Vathany were reportedly shot dead by suspected Karuna group at Palacholai in Batticaloa. The victims were identified as the two sisters of Puhalventhan who surrendered to the LTTE on 8 December 2005.¹⁵⁶ On 30 December 2005, 10 LTTE Wannu cadres were reportedly killed and twelve others were injured in an attack carried out by cadres of Karuna faction at Nilapanichchikulam in Trincomalee.¹⁵⁷

b. Kidnapping

A large number of cases of kidnapping were also reported. Hundreds of kidnapping cases were recorded by the SLMM.

In a complaint to the SLMM, the relatives of Vaithiyalingam Jeganathan alleged that on 20 January 2005 at around 2.30 pm, Jeganathan, a member of the EPDF, was allegedly abducted by LTTE cadres while he was returning home from an EPDF camp in Vavuniya town.¹⁵⁸

Other victims of kidnapping include H.S.N. Prema Jayanta and D.R. Dissanayake who were allegedly abducted by armed LTTE cadres from Ampara on 30 July 2005¹⁵⁹ and a peasant identified as Ranjith Jayasiri who was kidnapped from Mahaweligama in Serunuwara in October 2005.¹⁶⁰

Very few managed to escape from the

LTTE custody. On 12 April 2005, Kalin Riyaz resident of Veppankulam reportedly escaped from LTTE captivity and reached Vavuniya Police Station. He was reportedly kept in an iron cage with his hands bound with an iron chain during his two and a half months confinement in the jungles of Mullaithivu. His father was an active member of the PLOTE in Vavuniya.¹⁶¹

The Karuna group was also responsible for kidnapping. On the night of 5 November 2005, three youths identified as Mr. Uthayan Selvarajah, Mr. Subramaniam Kanapathipillai and Mr. S. Leethan were allegedly kidnapped by alleged cadres of the Karuna group from Kaluwankerny in Eravur.¹⁶²

c. Attacks on civilians

Many civilians became targets for not following the dictat of the armed opposition groups. In the wee hours of 2 January 2005, LTTE cadres reportedly set ablaze the welfare center at the Kudatane government school at Nagarkovil in Jaffna which housed over 60 tsunami affected Tamil families for disregarding their directives of not to obtain relief assistance from the Sri Lankan army.¹⁶³

On 13 July 2005, nine civilians includ-

ing a four-year-old girl were reportedly hurt in an LTTE attack on a tsunami refugee camp in Periyapalayam where Muslims were housed.¹⁶⁴ The camp provided shelter to 250 Muslim refugees. The injured soldiers and the children were admitted to Trincomalee hospital.¹⁶⁵

Many civilians were also killed in the cross-fire between the LTTE and other armed groups. On 5 March 2005, six civilians identified as Arachecal Selvarajah, Asoka Wijesooriya, Segu Lebbe Abdul Jabbar, Mohamadu Hanifa, Mohamudu Lebbe and Asinam Lebbe, all residents of Konakulaweli, were reportedly shot dead during clashes between the LTTE and the Karuna group at Kolakanawadiya in Welikanda.¹⁶⁶ Three others Ashok Wijeyratne, Abdul Jabbar, Mohammed Hasan, and M. Jeyama were injured and rushed to the Polonnaruwa hospital.¹⁶⁷

On 5 March 2005 at around 8.45 pm, four Muslims, a Sinhalese and a LTTE supporter were allegedly shot dead by gunmen suspected to be cadres of Karuna group on the Polannaruwa- Batticaloa highway near Kolakunaweli Police post in Welikanda. The Karuna group allegedly attacked these Muslims and Sinhalese for providing information to the LTTE about the Welikanda area.¹⁶⁸ ■

India

I. Ranking in Human Rights Violators Index: 7th

In *SAARC Human Rights Violators Index 2006*, India has been given lowest negative ranking because of the existence of institutional checks and balances.

There were consistent reports of gross human rights violations in India but the democratic institutions remained intact and operational. Its judiciary, despite being plagued by delay, remained more independent than its SAARC counterparts. The National Human Rights Commission (NHRC), despite its systematic, institutional and operational flaws remained the most effective in South Asia. Human rights defenders did face challenges but their status virtually remained the same across South Asia. The press freedom was more enjoyed in India. Most importantly, there was no governmental policy *per se* to repress press freedom.

According to the statistics of the National Crime Records Bureau of the Government of India and the National Human Rights Commission show, India had the largest incidents of human rights violations. India also had over one billion (1000 millions) populations in comparison to 152.6 million in Bangladesh according to 2001 census, 132 million in Pakistan according to 1998 census, 22.73 million in Nepal according to 2001 census, 18.73 million in Sri Lanka according to 2001 census, 0.67 million in Bhutan according to 2005 census, and 0.28 million in Maldives according to 2004 census. The vulnerable groups like the Dalits and

indigenous/tribal peoples and those who reside in armed conflict situations remained more vulnerable to human rights violations. These violations did occur not because of the lack of laws unlike in few other SAARC countries but because of the lack of implementation of the laws. The attitude of the government of India and its agencies towards human rights violations remained the same as in other SAARC countries. India also had in place a number of laws to provide impunity to the security forces for human rights violations. It is the existence of institutional checks and balances that ultimately improved India's human rights ranking. The activism of judiciary and quasi-judicial institutions like the National Human Rights Commission, despite having flaws, had been instrumental for the realisation of human rights and fundamental freedoms in India more than in other SAARC countries.

II. Political freedom

Though India by large provided more political freedom than other SAARC countries but the vulnerable groups continued to be denied political freedom.

About 10 lakh refugees, mainly Sikhs, who came to Jammu and Kashmir from Pakistan during the partition of India in 1947¹ continued to be denied the right to citizenship as they have not been recognized as citizens of Jammu and Kashmir under the Jammu and Kashmir constitution. The government of India failed to ensure their political participation in the

last 60 years. The conditions of those living in the *bastis* (colonies) were the worst. Although the refugees have been living in these *bastis* since 1947, they lacked developed roads, drinking water facilities, medical facilities and schools.²

In addition, about 65,000 Chakmas and Hajongs who migrated to northeast Indian state of Arunachal Pradesh in 1964 continued to be denied political freedom. The government of India also failed to implement the Supreme Court judgement of 9 January 1996 in the case of *National Human Rights Commission versus State of Arunachal Pradesh & Another* (W.P. (c) No. 720 of 1995) and applications for citizenship of 4,627 Chakmas and Hajongs under Section 5 of the Citizenship Act of 1955 remained indisposed till the end of 2005. Despite repeated interventions by the Election Commission of India, the State Government of Arunachal Pradesh continued to prevent more than 15,000 Chakma and Hajong eligible voters from enrolling their names in the electoral rolls during the Intensive Revision. On 23 March 2005, the Election Commission of India passed specific guidelines as to how to enroll the names of the Chakma and Hajong voters. Instead of complying with those guidelines, the Electoral Registration Officers and Assistant Electoral Registration Officers and other electoral officers who are also employees of the State Government summarily rejected the applications of the Chakma and Hajong citizens for inclusion of their names. The representative organization of the Chakmas and Hajongs namely Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) complained to the Election Commission of India against gross non-compliance of ECI's guidelines of 23 March 2005 by the electoral officers in Arunachal Pradesh. Taking cognizance of CCRCAP's com-

plaints, the ECI suspended publication of electoral rolls of all four Chakma and Hajong inhabited State Assembly constituencies. At the end of 2005, the Election Commission failed to give its final order.

The Scheduled Castes, who are also known as the Dalits, continued to face discrimination while exercising their political freedom – from casting of votes to denial of privileges if elected. On the night of 6 February 2005, four members of a Dalit family were shot dead at Saidpur village under Kako police station area in Jehanabad Assembly constituency in Bihar after they voted in the first phase of the assembly elections.³ On 21 October 2005, a Dalit woman, Prabhavati Devi, contesting local elections on a Bahujan Samaj Party ticket was reportedly set ablaze by her rivals for refusing to pull out from the fray at Mujehra Khurd village in Mirzapur district of Uttar Pradesh.⁴ She succumbed to her over 90 per cent burn injuries.⁵ Earlier, on 15 August 2005, a Dalit woman *Sarpanch*, Village Council head, identified as Anita Bai Ahiwar of Patehra village under Damoh district in Madhya Pradesh was not allowed by government officials to hoist the national flag in a market place because of her caste.⁶ In June 2005, it was reported that Deomanti Devi, a Dalit woman, who was elected as the chairperson of the Bodhgaya Nagar Panchayat in Bihar in August 2002, had been deprived of allowances and other entitlements privy to a civic body head.⁷

III. Human rights violations by the security forces

According to the 2005 Annual Report of the National Crime Records Bureau (NCRB) of the government of India, a total of 61,560 complaints were reported against police personnel in the country. Out of

these, inquiries into 19,941 cases - 18,940 departmental inquiries, 713 magisterial inquiries and 288 judicial inquiries – were instituted. About 1,668 police personnel were sent for trial after investigation and framing of charges. During the year, trials of 225 police personnel were completed out of which 128 were acquitted and 97 convicted. Cases against 373 police personnel were withdrawn or disposed off.⁸

Yet, the statistics of the NCRB do not reflect the reality of human rights violations by the security forces. The complaints against the armed forces – the army and para military forces under the Central government - are not covered by the NCRB. The armed forces have also been kept out of the purview of the NHRC under Section 19 of the Human Rights Protection Act of 1993.

The Human Rights Cell in the army headquarters claimed that between 1993 and August 2005, only 342 allegations of human rights violations were made against the armed forces in the insurgency-hit North Eastern states. Out of the 318 cases investigated, 290 allegations were found to be baseless while 28 allegations involving 63 army personnel were found to be true.⁹ But the armed forces seldom admitted human rights violations brought against them.

The security forces were responsible for serious human rights violations including torture, arbitrary arrest and detention, rape and other violations.¹⁰ Majority of the cases of enforced disappearances were seldom inquired into. The Jammu & Kashmir High Court in early May 2005 issued a non-bailable arrest warrant against Ghulam Ahmad Bhat, Station House Officer (SHO) of Panta Chok for not registering a First Information Report (FIR) against the army personnel for arresting Mohammad Hussain Ashraf of Chowdhary Bagh, Rainawari in Srinagar, who went missing

after being arrested by the troops of 7th Rajputana Rifles from Sempora in Balihama on 24 May 2003.¹¹ On 26 February 2005, the Court of Additional Sessions Judge of Patiala of Punjab sentenced two police personnel —Assistant Sub Inspector Massa Singh and Havaldar Baljit Singh — to three-years imprisonment on charges of causing the disappearance of *Aj Di Awaz* journalist, Sukhpal Singh Palli in 1994.¹²

a. Custodial violence

Torture and other forms of custodial violence have been an integral part of administration of justice in India. The NHRC received a total of 1493 cases of custodial deaths during 2004-2005, out of which 136 deaths occurred in police custody and 1357 deaths in judicial custody.¹³

However, prosecution of the guilty officials was extremely low as the government of India provided impunity to the security forces under section 197 of the Criminal Procedure Code and Section 6 of the Armed Forces Special Powers Act (AFSPA) of 1958. On 11 March 2005, the Assam Rifles challenged the legality of instituting the Judge C Upendra panel by the State Government of Manipur to probe the Bungte Chiru firing incident in which LD Rengtuiwan was killed on 16 November 2004 on the ground that the State Government had no jurisdiction to inquire into the conduct of the personnel belonging to the armed forces under the AFSPA of 1958.¹⁴

In Jammu and Kashmir, about 230 police and security personnel were reportedly awarded punishments for human rights violations committed from 1990 to 2004¹⁵ but the details were not made public. The state government of Jammu and Kashmir also failed to make the report of a magisterial probe into the killing of a school student Nitish Sharma alias Nishu

of Roop Nagar on 28 October 2005 public though the report was submitted on 29 November 2005.¹⁶

Medical examinations into the custodial death of Satnam alias Satta, a Dalit youth at Lohian Police station under Jalandhar district of Punjab on 6 February 2005;¹⁷ death of Kishan Singh on 16 March 2005 at Shahdara police station in East Delhi;¹⁸ death of Rawoof on 9 May 2005 at Jayanagar police custody in Bangalore, Karnataka;¹⁹ death of Gurmail Singh at Pehowa police station of Kurukshetra district in Haryana on 13 May 2005;²⁰ and death of Udayakumar, resident of Nedungadu, Kerala at City Fort police station on 27 September 2005²¹ reportedly confirmed torture of the victims.

Many police officials were suspended after *prima facie* evidence of violations of rights was found against them. Those police personnel who were reportedly suspended included Circle Inspector Ravi Kumar and Sub-Inspector of Police Mallikharjuna Gupta for custodial death of one Chalapathi in Tiruputi in Andhra Pradesh on 12 January 2005;²² a police sub-inspector Aniseti Raghu for the custodial death of Irpha Sitaiah at Charla police station in Khammam district of Andhra Pradesh in January 2005;²³ five policemen, namely, Head Constable Pawan, Constables Manoj, Surender, Malkeet and Pankaj of the Special Staff of East district of New Delhi for the torture of Akhtar, a tea stall owner in February 2005;²⁴ four policemen including Rajendra Prasad Bahera, the inspector-in-charge of Shahid Nagar police station of Orissa for the custodial death of Dilip Kumar Sahoo alias Swain on 3 March 2005;²⁵ and two policemen including SHO of Malihabad police station, Shashi Bhusan Dwivedi, who were suspended for the custodial death of Rashid, the Block Development Committee member of Rahimabad,

Lucknow, Uttar Pradesh on 3 December 2005.²⁶ Following the filing of a habeas corpus petition before the Andhra Pradesh High Court in October 2005, five policemen including Kurnool town circle-inspector Sivashanker Reddy and sub-inspector Maheswar Reddy were suspended for the illegal detention of Mr Seshanna Goud, Mr Panduranga Swamy Goud and Mr Ravindra Goud in October 2005. Their detention was not recorded and the police initially denied in the court that the three were in their custody.²⁷

Magisterial inquiries were ordered in a number of custodial death cases including the custodial death of Abdul Gani Dar at the hands of Special Operation Groups personnel at Magam police station in Budgam district in Jammu and Kashmir on 19 January 2005;²⁸ Dwipen Bayan at the Udalguri police station in Darrang district of Assam on 26 January 2005;²⁹ Tadipatri Eswaraiah, resident of Akutotapalli village in Anantpur district of Andhra Pradesh in January 2005;³⁰ and Buru Bhumij at Mathurapur police station in Sivasagar district of Assam on 21 December 2005.³¹

In a few cases, the courts awarded punishment including sentencing of five policemen namely Sub Inspector (SI) Anand Pratap Singh Parihar, Additional Sub-Inspector (ASI) Nand Kishore Mishra, constables Vijay Pandey, S Mishra and Mohan Singh to 5 years of imprisonment by a special court in Shahdol district of Madhya Pradesh for the custodial death of Suhawan Kewat on 10 December 1997;³² and sentencing of constable Kishore Singh to life imprisonment, 10 years jail term to ASI Sumer Dan and 5 years jail terms to the then SHO of the Barmer police station, Sohan Singh, by the Additional District Judge Chandra Sekhar Sharma of Fast Track Court, Barmer, Rajasthan on 21 December 2005 for severing the private part of Jugta Ram in police custody.³³

In a few cases, the courts also directed the authorities to take actions against guilty personnel. In June 2005, the Madhya Pradesh High Court directed to arrest and initiate action against the Superintendent of Police of Lokayukta, Bhopal, Mokham Singh Nayan, Inspector BP Singh and two constables for the custodial death of Deputy Commissioner of Commercial Tax Department, Rishabh Jain at Lokayukta police office on the night of 15 July 2004.³⁴ The Andhra Pradesh High Court in its order on 21 December 2005 also directed to take action against inspector T. Srinivas Reddy of LB Nagar police station for the illegal detention and torture of one Ms Shoba Rani in November 2005.³⁵

The courts also awarded compensation in a few cases of torture and custodial deaths. These included grant of compensation of Rs 10 lakh by the Nagpur bench of the Bombay High Court in January 2005 to the family of a young jeweler who died in illegal police custody in Nagpur in 2003;³⁶ grant of Rs 1 lakh by the Chief Judicial Magistrate of Shillong in February 2005 to the next of kin of Banjoplang Kharbamon, who was gunned down by CRPF personnel in May 2003;³⁷ grant of Rs three lakh by the Delhi High Court in May 2005 to the kin of a custodial death victim Indal Singh who was killed in January 1996;³⁸ grant of Rs 75,000 in May 2005 by the Gauhati High Court to one Ningthoujam Pishak-macha Devi, who was beaten up at her house by the security forces in Manipur on 2 March 1996;³⁹ grant of Rs 2 lakh by the Delhi High Court in September 2005 to a taxi-driver, Surrender Singh who was shot and injured by a traffic police ASI Anoop Singh on 9 August 2004;⁴⁰ and grant of Rs 1 lakh by the Guwahati High Court in November 2005 to the kin of Mayengbam Bisheshwar and Maibam Naobi of Manipur who were killed by troops of the

8th Assam Rifles on 22 July 2000.⁴¹

b. Extra-judicial killings

Besides torture, there were also reports of killings in fake encounters and indiscriminate use of fire-arms. During 2005, 355 civilians were killed and 373 civilians were injured in police firing alone.⁴²

Some of the cases of killings in police firing included killing of Bal Singh and Ratan at Peepalkhedi village near Soyat in Shajapur district of Madhya Pradesh on 28 April 2005;⁴³ killing of six Telugu Desam Party supporters at Penukonda in Andhra Pradesh's Anantapur district on 8 May 2005,⁴⁴ killing of Insaf Ali and Saifuddin Ahmed, members of a Joint Forest Management Committee at Borotari village under Sipajhar police station in Darrang district of Assam on 14 May 2005,⁴⁵ killing of Dillip Mahanta in Keonjhar district of Orissa on 8 June 2005,⁴⁶ killing of five farmers at Pipli village near Jaipur, Rajasthan on 13 June 2005,⁴⁷ and killing of five students at Williamnagar in East Garo Hills district and four students at Tura in West Garo Hills district of Meghalaya in indiscriminate firing by the security forces on 30 September 2005.⁴⁸

The highhandedness of the security forces also led to violations of the right to life. Some of such cases included killing of a lorry driver Jhantu Das by Assistant Commandant W Rajendra Singh of 46th Battalion of Border Security Force under Kalamchoura police station in West Tripura district on 26 March 2005;⁴⁹ killing of Dudhnath Yadav by Railway Protection Force constable G S Pandey at Sewree railway station on 25 April 2005;⁵⁰ and killing of Ashutosh Roy by BSF personnel at Sreepur border outpost in West Bengal on 24 August 2005.⁵¹

There were also reports of extrajudicial executions in fake encounters includ-

ing of Deven Lahkar by the army personnel at Burburi village under Ghograpar police station in Nalbari district, Assam on the night of 17 January 2005;⁵² Mohammad Rafiq Ganie and Mukhtar Ahmad Bhat by the 17th Jammu and Kashmir Light Infantry personnel on 27 February 2005 after arresting them while traveling from Yaripora to Munadgufan in Jammu and Kashmir;⁵³ Kamkhosei Khongsai of Lhungjang village under Saikul subdivision of Manipur by 13th Assam Rifles troops after picking him up on the evening of 23 April 2005;⁵⁴ Keshorjit Singh of the Nongada area in Imphal East district, Manipur in an alleged fake encounter on 21 June 2005 by the Assam Rifles personnel;⁵⁵ Ahanthem Rameshwar by the Assam Rifles troops based at Sagolmang in Manipur on 30 June 2005,⁵⁶ and Sajad Ahmed Budroo, an autorickshaw driver, in the custody of Rashtriya Rifles in Dooru Anantnag of Jammu and Kashmir on 27 October 2005.⁵⁷

In some cases of indiscriminate use of fire-arms, the state governments paid compensation. On 19 January 2005, the state government of Manipur agreed to pay an ex-gratia of Rs 1 lakh⁵⁸ to the family members of Lourebam Maipak and a 9-year-old girl Thokchom Puspa who were extrajudicially killed by personnel of the CRPF personnel in Thoubal district on the evening of 18 January 2005.⁵⁹ On 16 March 2005, Madhya Pradesh Chief Minister Babulal Gaur announced ex gratia of Rs 1 lakh each to the family of deceased, Honey alias Aniket (6) and Pappu Lodhi (17) and Rs 10,000 each to those injured (over 12) when the police opened fire at a protesting mob on 15 March 2005 at Banda in Sagar district of Madhya Pradesh.⁶⁰

But prosecution of the guilty personnel remained elusive.

c. Arbitrary arrest, illegal detention and torture

Cases of arbitrary arrest, illegal detention and torture of detainees were consistently reported from across the country. The complaints included arbitrary detention and torture by application of electric shock to a tea vendor, Sami Akhtar at Mayur Vihar Phase-II in Delhi on the night of 17 February 2005;⁶¹ torture of Rajpal Singh by Delhi police at Bhati Mines police post of Mehruli on 19 September 2005;⁶² beating of one Dinesh by Line Par Police Station House Officer Virender Singh in Bahadurgarh town in Jhajjar district of Haryana on 15 October 2005;⁶³ and beating of Showkat Ahmad Shalla at Nawa Kadal in Jammu and Kashmir on 27 June 2005.⁶⁴ In several cases, torture of the victims was confirmed by medical reports. Medical test conducted by the Deen Dayal Upadhaya Hospital in Delhi reportedly confirmed the presence of burn marks and physical injuries on Raju and Titoo of Palam Colony, who were tortured after being picked up by the police from Dabri in southwest Delhi on 30 August 2005.⁶⁵

The armed forces were also responsible for torture, including of Mohammad Lateef Mir by the security forces of Bonora camp in Pulwama district of Jammu and Kashmir on the intervening night of 23 and 24 January 2005;⁶⁶ Hemin Khongsai and Manginlun Thangsing by the 14th Assam Rifles at Kangpokpi area in Manipur in February 2005;⁶⁷ Jitul Saikia and Nripen Saikia at Biyakorua village under Merapani police station in Golaghat district of Assam in May 2005;⁶⁸ Alok Basumatary, president of Jharbari unit of All Boro Students' Union by the army personnel of Jharbari in Kokrajhar, Assam on 4 May 2005;⁶⁹ and torture of 50-year-old mentally challenged Okram Kunjabihari of Nambol Kha-jiri Mamang Leikai in Manipur by the personnel of the 22 Maratha Light Infantry on 21

May 2005.⁷⁰

The armed forces deployed in armed conflict situations rarely admitted arrests of innocent persons and suspects. On 7 March 2005, Tongbram Ibungomcha Singh of Thanga along with four others was picked up by four Assam Rifles personnel without issuing arrest memo from Phumlou area of Bishnupur district in Manipur. Following the Manipur State Human Rights Commission's intervention, the Officer-in-Charge of Lamshang police station, after investigation, confirmed that Tongbram Ibungomcha Singh was under the custody of the Assam Rifles till 24 March 2005 while other four were released on different dates.⁷¹

IV. Judiciary and administration of justice

India's judiciary remained more independent than its counterparts in South Asia. However, it continued to be plagued by judicial delay.

a. Legal reforms

The adoption of the Code of Criminal Procedure (Amendment) Act, 2005⁷² was an important initiative for legal reforms on the administration of justice. Through this Amendment Act, the Central Government effected 33 amendments in the existing provisions while 10 new sections were inserted. Some of the key amendments were - setting up of a Directorate of Prosecution by State Governments {Section 25-A}, prohibition of arrest of women after sunset and before sunrise, barring exceptional circumstances {Section 46 (4)}; mandatory requirement of informing by the arresting officer(s) about the arrest to a person nominated by the arrestee {Section 50-A}; mandatory requirement of furnishing report of medical examination of the accused to the

accused or to a person nominated by him (Section 54 (2)); power to prohibit carrying arms in procession or mass drill or mass training with arms {Section 144-A}; medical examination of the victim of rape {Section 164-A}; mandatory requirement of holding an inquiry by Judicial or Metropolitan Magistrate in case (a) any person dies or disappears, or (b) rape is alleged to have been committed on any woman in custody {Section 176 (I-A)}; under trial already detained for a period up to one-half of the maximum period of imprisonment shall be released on personal bond {Section 436-A} etc.

Many of the amendments to the Criminal Procedure Code were regressive and faced opposition. Following wide spread protests by the lawyers throughout India against some of the provisions like setting up Directorate of prosecution; requirement of physical presence of the accused in court for anticipatory bail; declaration of an accused as proclaimed offender; attachment of properties of an accused etc, on 14 July 2005, the Central Government passed an order keeping in abeyance all the amendments.⁷³ In another notification in December 2005, the Ministry of Home Affairs set crucial amendments like the ones prohibiting arrest of women after sunset for implementation, while others like the setting up of Directorates of Prosecutions in States and cancellation of bail etc were put on hold.⁷⁴

b. Judges' accountability

In 2005, Congress led United Progressive Alliance Government proposed to establish a National Judicial Council (NJC) by amending the Judges (Inquiry) Act of 1968. The government drafted the Judges (Inquiry) Bill, 2005 and sought the opinion of Chief Justice of India. Both the former Chief Justice Ramesh Chandra Lahoti⁷⁵ and present

Chief Justice of India Justice Yogesh Kumar Shabbarwal, who succeeded Mr. Justice Lahoti on 1 November 2005, expressed reservations to the proposal of establishing the NJC.⁷⁶

c. Judicial delay

Judicial delay continued to plague India. The lack of judges continued to hamper delivery of justice.⁷⁷ According to a Supreme Court judge, six times more judges were needed for expediting the pending cases and supporting the present judicial system.⁷⁸

As of December 2005, there were four vacancies in the Supreme Court and as many as 141 vacancies in the 21 High Courts in the country with Calcutta (21), Madras (20), Allahabad (14), Punjab and Haryana (11) topping the list.⁷⁹ As on 31 December 2005, 34,481 cases were pending with the Supreme Court, 35,21,283 cases with the High Courts, and 2,56,54,251 cases with the subordinate courts.⁸⁰

In the *Salem Advocate Bar Association of Tamil Nadu Vs Union of India* (2003 1 SCC 49) challenging the 2002 Amendments to the Civil Procedure Code, the Supreme Court in its judgement in August 2005 directed the Central Government to conduct “judicial impact assessment” and provide finance and infrastructure to deal with additional cases every time a new law is enacted.

In a case of judicial delay and gross negligence of the administration, in July 2005, the Kamrup Chief Judicial Magistrate released Machang Lalung Lalung on a token personal bond of Rupee 1 from LGB Regional Institute of Mental Health.⁸² Lalung was an under-trial for 54 years and he was never produced before any court. The NHRC had intervened with regard to Lalung and four other under-trials at the LGB Regional Institute of Mental Health - Khalilur Rehman, an under trial

for 35 years, Anil Kumar Burman, an under trial prisoner for 33 years, Sonamani Deb, an under-trial prisoners for 32 years, and Parbati Mallik for 32 years.⁸³ On 11 November 2005, the Supreme Court issued notices to the state government of Assam questioning the illegal detention of Lalung.⁸¹

As many as 1,734 fast track courts (FTCs) have been operational across India since 1 April 2001. The incumbent Congress led UPA government did not pursue with the 12th Finance Commission to get the funds approved in 2005 and the tenure of FTCs expired on 31 March 2005. However, following the Supreme Court’s extension of term of the FTCs till 30 April 2005, the Central government decided to continue the functioning of the FTCs across the country and the government sanctioned Rs.509 crores for another 5 years.⁸⁴

Besides this, in order to speed up delivery of justice, a three-judge Bench of the Supreme Court in August 2005 also directed the High Courts to take prompt measures to speed up all cases, civil and criminal, within a specific time frame. The Supreme Court suggested that the cases should be graded as sprint; middle-distance and long-distance with a view to clear the burden of backlog of cases. The apex court segregated cases in different tracks on the basis of their nature, quantum of evidence and possible time the courts would take to clear them. For instance, civil suits covering maintenance, divorce, rent and eviction would be in Track-I. These cases should be cleared in nine months. Track-II, covering suits for money, would have a one-year limit and Track-III and Track-IV, covering suits for partition, property disputes, etc, would have a two-year limit. In the criminal side, the bench classified criminal cases in five segments. Cases of murder, rape and dowry deaths in Track-I and other

non-bailable offences in Track-II would have deadlines of nine months and one year respectively. Economic offences in Track-III and offences tried by special courts under special laws like Prevention of Terrorism Act and Terrorist and Disruptive Activities Prevention Act in Track-IV would have deadlines of one year and 15 months respectively.⁸⁵

V. Effectiveness of National Human Rights Institutions

Established on 12 October 1993, the National Human Rights Commission (NHRC) of India disposed of 85,661 cases during the period from 1 April 2004 to 31 March 2005 while 49,548 cases were pending before the Commission as on 31 March 2005.⁸⁶

Despite its critical role, the NHRC suffered from serious credibility crisis due to both statutory limitations and operational flaws. The statutory limitations included inability to investigate abuses committed by the armed forces, inability to visit prisons without prior permission from the executive authorities, inability to investigate into complaints which are more than one year old, and the lack of power to implement its recommendations. NHRC often failed to respond to the victims in time, ensure transparency in its operation and follow the principle of natural justice for adjudication of the complaints.

Only 16 states - Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Karnataka and West Bengal - established State Human Rights Commissions.

The SHRCs were in shambles. They lacked financial resources, necessary,

infrastructure and investigative skills.

Since 10 December 2003, Manipur Human Rights Commission had been functioning with a single member, its chairperson, retired Chief Justice W A Shishak. In April 2005, the Imphal branch of Gauhati High Court directed the state government of Manipur to fill up the vacancies⁸⁷ but the State government failed to comply with the directions of the Court. On 20 August 2005, Justice Shishak pointed out that he himself had not been getting his salary.⁸⁸

The recommendations of the State Human Rights Commissions were seldom implemented

The Jammu and Kashmir State Human Rights Commission stated that the State government did not submit any Action Taken Report (ATR) on the 2,112 cases of human rights violations that had been disposed off by it since its inception in 1997.⁸⁹ In its 2003-2004 Annual Report, the State Human Rights Commission of Jammu and Kashmir stated that state government and its officials, especially the Deputy Commissioners, blatantly ignored the recommendations of the Commission, and instead ordered fresh inquiries of their own. The findings of many such fresh enquiries contradicted the findings of the Commission.⁹⁰

In January 2005, the then Chairman of the Kerala State Human Rights Commission, Justice V.P. Mohan Kumar alleged that the government of Kerala did not take any action against certain police officials against whom the SHRC recommended action after finding them guilty of committing human rights violations.⁹¹

When the State Government of Karnataka issued the notification on 16 April 2005 to set up human rights courts as provided under Section 30 of the Human Rights Act, 1993⁹², there was little euphoria.⁹³

VI. Repression on human rights defenders

Frontline human rights defenders continued to suffer from repression by the State and the armed opposition groups while the Central government maintained strict control under the Foreign Contribution Regulation Act of 1976. In 2005, human rights defenders came under severe attacks from the security forces, state sponsored vigilante groups, religious fundamentalist groups, self-styled vigilante groups etc.

In Andhra Pradesh, human rights defenders faced the worst form of repression from the State police and the self-styled anti-naxalite groups like ‘Narsi Cobras’ and other vigilante groups.⁹⁴ Between August and November 2005, the vigilante groups killed at least four activists for allegedly supporting the Naxalites. On 24 August 2005, “Narsi Cobras” gang killed a rights activist Kanakachari, a teacher at a local school in Mahbubnagar district allegedly to avenge the killing of Congress MLA Narsa Reddy by the Maoists.⁹⁵ The State Police Chief Swaranjit Sen justified the threats and killings by the vigilante groups as “a natural reaction against the atrocities of the Maoists”.⁹⁶

On 29 July 2005, police arrested Debashis Chakraborty, a member of the Association for Protection of Democratic Rights and Siliguri Welfare Organisation, from his Hyderpara office in Siliguri town of West Bengal, accusing him of giving shelter to members of the banned Naxalites.⁹⁷ He was booked under Sections 121, 121(a) and 121(b) of the Indian Penal Code for “waging war against the State.” On 29 October 2005, he was granted bail by the court of Chief Judicial Magistrate, Siliguri after the police failed to file a chargesheet against

him within the stipulated 90-day period.⁹⁸

Human rights defenders were also harassed by the rightwing fundamentalist groups. On 14 June 2005, San Francisco-based academic Angana Chatterji, along with other women members of the Indian People’s Tribunal on Environment and Human Rights, were allegedly threatened with rape by some members of the Hindu fundamentalists while investigating the spread of communalism and human rights violations in Orissa.⁹⁹

VII. Freedom of the press

Although press freedom was generally respected in India, the journalists had to face attacks, harassment and intimidation from the law enforcement agencies and the armed opposition groups as well as the government servants, leaders and the cadres of political parties etc. In December 2005, the Chattisgarh government passed “Chhattishgarh Special Public Security Act, 2005” prohibiting the media from reporting any activity that could be termed “unlawful”.¹⁰⁰

a. Attacks by the state agencies and political activists

The security forces continued to invoke obsolete laws to restrict press freedom. In June 2005, Meghalaya police registered cases under section 502 (sale of printed or engraved substance containing defamatory matter) and section 153 A (promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) of the Indian Penal Code against Editor of *The Shillong Times*, Mr Manas Chaudhuri, who was also a Member of Legislative Assembly (MLA) of Meghalaya; Executive Editor of *The Meghalaya Guardian*, Mr MA Venugopal; and photo-

journalist of *The Meghalaya Guardian*, Mr Suraj Joshi over news reports relating to eviction of Khasis residing in the disputed Lumdorbar area of Karbi Anglong in Assam.¹⁰¹ In December 2005, M. Venkateswara Rao, Revenue Divisional Officer of Visakhapatnam of Andhra Pradesh served an interim order on *Andhra Jyothi* and *Leader* to go for screening before publication of news reports pertaining to public servants.¹⁰²

Journalists reporting from conflict areas were more vulnerable to atrocities of the security forces. On 20 February 2005, N Noren of *The Sangai Express* and W Lukhloi of the *Mannaba* daily were brutally assaulted by personnel of the 130th Central Reserve Police Force posted at Sajiwa Jail, when they were covering the agitation launched by activists of Meitei Erol Eyek Loinasillon Apunba Lup near the Sajiwa Jail in Manipur.¹⁰³

In Jammu and Kashmir, security forces often targeted the journalists. In May 2005, a group of photo-journalists including Habib Naqash of *The Asian Age*, Tauseef Mustafa of *Agence France-Presse*, Omar of *Subah Kashmir* and Qazi Irshad of *Khidmat* were hit with rifle butts and caned by the police while covering a protest at Lal Chowk in Srinagar in Jammu and Kashmir.¹⁰⁴ On 13 September 2005, two cameramen, Sajjad Ahmed of state-owned *Doordarshan* and Tabrez Madni of *Zee Kashmir*, were beaten up by the army personnel in Srinagar for inquiring as to why vehicular traffic was stopped.¹⁰⁵

In Andhra Pradesh too journalists were targeted. On 30 May 2005, N. Venugopal, senior journalist and editor of the Telugu-language fortnightly *Veekshanam*, was arrested under sections 121A (“waging war against the state”), 122 (“conspiracy”) and 120B (criminal conspiracy) of the Indian Penal Code along with three other members of the

Revolutionary Writers Association, G. Pinakapani, editor of the pro-Maoist literary magazine *Aruna Tara*, Chenchaiiah and Ravi Kumar and two alleged members of the Communist Party of India (Maoist) in Nizamabad in Andhra Pradesh. They were produced before a judge in Bodhan only on 3 June 2005.¹⁰⁶ On 16 June 2005, N. Venugopal was released on bail.¹⁰⁷

In Assam, the police arrested Binod Behari Nath, the Bongaigaon correspondent of Assamese daily *Ajir Dainik Batori* and vice-president of Bongaigaon District Journalist Association in Bongaigaon on 11 October 2005 on the basis of a case (88/47/94) filed against him in 1994 accusing him of having links with the proscribed United Liberation Front of Asom (ULFA).¹⁰⁸

The media also came under the attack of the right-wing groups.

On 11 March 2005, the Meitei Irol Eeyek Loynsillon Apunba Lup (MIELAL) of Manipur declared a ban on distribution of all newspapers published in Manipuri language, demanding publication of newspapers in the Meitei script instead of Bengali script.¹⁰⁹ The MIELAL activists tore copies of newspapers at Keisampat area in Imphal West district.¹¹⁰ On the same day, Shiv Sena activists rampaged *India Today* office at Nariman Point in Mumbai, the capital of Maharashtra, in protest against inviting Union Petroleum Minister Mr Mani Shankar Aiyar to an awards function by the magazine’s sister publication, *Business Today*. The Shiv Sainiks accused Mr Aiyar of disrespecting freedom fighter Veer Savarkar.¹¹¹

b. Attacks by the AOGs

The armed opposition groups especially in Jammu and Kashmir and Manipur targeted the media persons.

On 23 February 2005, *ESPN/ Star Sports* correspondent, Obed Longvah was

assaulted by some unidentified armed cadres of an underground organization at Litan in Ukhrul district of Manipur.¹¹²

On 29 July 2005, seven journalists identified as Ejaz Ahmed and Aamir Ahmed (*ANI*), Manzoor Ahmed (*India TV*), Muzamil Rashid (*Srinagar Mail*), Firdous Ahmed (*Zee Kashmir*), Amir Hussain (*Subhe Kashmir*) and cameraman Muzaffar Ahmed (*Sahara TV*) were injured in a grenade attack by the armed opposition groups at Budshah Chowk in Srinagar, Jammu and Kashmir. Two Islamic groups, Al Mansoorian and Jamiat-ul Mujahideen reportedly claimed responsibility for the attack.¹¹³

The press in insurgency-hit Manipur state faced continued harassment, threats and intimidation from the armed opposition groups. On 14 June 2005, Manipur Hill Journalists Union suspended publication of all Churachandpur-based newspapers from 16 to 19 June 2005 protesting against “interference” and “pressure” from several armed opposition groups.¹¹⁴

On 7 September 2005, armed opposition group Kanglei Yawol Kanna Lup (KYKL) imposed ban on two local dailies *Matangi Yakairol* and *Mannaba* and cable network *ISTV* for allegedly not “properly” reporting on the abduction of the Manipur University Students Union president, Ashok Kumar Singh.¹¹⁵ In protest against the ban, All Manipur Working Journalists’ Union called one-day shutdown of Imphal-based newspapers and *ISTV* on 8 September 2005.¹¹⁶

On 28 October 2005, media houses in Manipur did not publish newspapers in protest against diktats from armed opposition group, Kangleipak Communist Party (KCP) to the media houses. Earlier, on 27 October 2005, KCP chief City Metei had reportedly warned newspaper editors against publishing newspapers if they did not carry the press release sent to them by the KCP.¹¹⁷

VIII. Violations of the rights of indigenous peoples

Over 84 million indigenous/tribals peoples of India, known as the Scheduled Tribes, continued to be disproportionate victims of “development”, displacement and dispossession. Many tribal communities including Birhore of Jharkhand,¹¹⁸ Karbongs of Tripura,¹¹⁹ the Great Andamanese, Onges, Shompens, Jarawas, and Sentinelese of Andaman and Nicobar¹²⁰ have been facing extinction. In 2002, the Supreme Court ordered the closure of those parts of the Andaman Trunk Road that run along and through the Jarawa Tribal Reserve as it threatens their survival. But the Andaman Trunk Road continued to remain open in gross violation of the Supreme Court orders.¹²¹

a. Atrocities against tribals

According to the 2005 Annual Report of the National Crime Records Bureau, a crime against the tribals was committed in every 29 minutes. In 2005, a total of 5,713 cases against Scheduled Tribes were reported in the country as compared to 5,535 cases in 2004 showing an increase of 3.2% in 2005 from 2004. These included 1,283 cases reported under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 and 162 cases under the Protection of Civil Rights Act. Although the average charge-sheeting rate for the crimes against the STs was 91.6 per cent, the average conviction rate was only 24.5%. A total of 8,273 persons (83.8%) out of 9,870 persons arrested for crimes committed against Scheduled Tribes were charge-sheeted but only 24.2% were convicted consisting of 1,934 persons out of 7,981 persons against whom trials were completed.¹²²

In many cases, the SC/ST (Prevention of Atrocities) Act of 1989 was never

invoked to prosecute the accused. On 28 April 2005, Rameshwar Steels' factory manager Dinesh Gupta and security guard Remaul Kujur in Raipur, Chhattisgarh allegedly forced two Adivasis identified as Shyam Lal and Shadanand to sit on burning iron plates on the charges of stealing raw material from the factory. The tribal victims reported the matter to local police at Gharghora police station but their complaint was allegedly not entertained.¹²³

In addition, the tribals were often intimidated to withdraw the cases.¹²⁴ On 20 October 2005, a Gond tribal identified as Suraj Singh Gond, the president of the Teacher-Guardian Association of the village school, was allegedly burnt alive by members of an upper caste family at Kataria village under Katni district of Madhya Pradesh.¹²⁵ Suraj Singh Gond had refused to withdraw the complaint of theft of school material against the accused.¹²⁶

On 10 November 2005, two tribal village leaders identified as Dinu Gurjibhai Gamit and Rameshbhai Melekbhai Gamit of Motherkui village were reportedly beaten up with sticks and poles in front of the public by the police officers at Areth police outpost under Mandvi police station in Surat district of Gujarat. The victims were arrested on the basis of a case filed at Mandvi police station (number 113/2005) on 8 November 2005 by Haribhai Parmar after the Gram Panchayat, Village Council, passed a resolution against the quarry of Haribhai Parmar. The quarry was illegally operating and adversely affecting the environment and health of the villagers. On 9 November 2005, both the tribal leaders were granted bail by the Magistrate Court in Bardoli but the police registered a new case against them and detained and tortured them.¹²⁷

Tribal women were extremely vulnerable to sexual violence. In 2005, a total of 640 rape cases were reported against the

Scheduled Tribe women as compared to 566 cases in 2004. During 2005, Madhya Pradesh reported the highest number of rape cases against Scheduled Tribe women (294) accounting for 45.9 percent of the total rape cases of tribal women in the country.¹²⁸

On the night of 9 December 2005, the right hand of a tribal woman Kamlabai was chopped off in an attack on her family by the upper caste men at Nigari village in Raisen district of Madhya Pradesh. The attack was made following her refusal to withdraw her complaint of rape against two upper caste villagers Manmod Singh Mehra and Siyaram Raghuvanshi despite repeated warnings. The assailants barged into the house of the victim, dragged her to the courtyard and brutally chopped off her hand with an axe after tying her hands and feet. They also beat up her family members and set afire the house. The victim had filed a rape case against Manmod Singh Mehra and Siyaram Raghuvanshi with Silwani police station on 9 April 2002. On 27 September 2005, the victim's sister filed another complaint alleging rape by Manmod Singh Mehra.¹²⁹ The police arrested five persons identified as Manmod Singh, a schoolteacher, Devi Singh, Premnarayan, Ramsevak and Dinesh Raghuvanshi in connection with the attacks on 9 December 2005.¹³⁰

b. Land alienation and displacement

The tribals constituted 8.2 % of the total population of India according to the 2001 census. But they also constituted 55.1% of the total displaced persons as a result of so-called developmental projects like dams, mining, industries and conservation of nature.

The Sardar Sarovar Project, the largest dam being constructed on the Narmada river would displace 400,000 persons including 200,000 by the reservoir at the

proposed height of 136.5 meters.¹³¹ In November 2005, the Narmada Bachao Andolan (NBA) alleged that the Narmada basin States were violating the Supreme Court order of March 2005 in the Sardar Sarovar Project case by disbursing cash to the displaced families instead of providing “land for land.”¹³² Earlier in September 2005, the Government of Madhya Pradesh informed the Narmada Control Authority that out of 30,690 families to be affected in 177 villages by Sardar Sarovar Project at the proposed dam height of 121.92 metres, 17,288 had been resettled including 4,262 families in Gujarat. The remaining 13,402 families were yet to be resettled. These included a backlog of 13,233 families at the current height of the dam, which was 110.64 metres at the end of 2005.¹³³ These figures were contested by the NBA.

The Jharkhand Government reportedly signed over 42 MoUs with investors including Mittal Steel, Tata Steel, Jindal Steel and Power Company Limited worth about Rs 1,69,198.26 crores since Jharkhand became a state in 2000. Approximately 47,445 acres of land would be required for the projects in mineral-rich Kolhan Region, which was likely to affect about 10,000 families and cause deforestation of 57,15 kms land.¹³⁴ A study by People’s Union for Civil Liberties showed that over 74 lakh tribals were displaced in Jharkhand by different projects between 1950 and 1990. Out of them, only 18.45 lakhs displaced tribals were rehabilitated.¹³⁵

During 2002-2005, the Orissa government signed 42 MoUs with companies for proposed steel and other plants in the state and thousands of tribals would be displaced.¹³⁶ The MoU with Korean steel major Pohang Steel Company (Posco) signed on 22 June 2005 for setting up a steel plant at Paradeep in Jagatsinghpur district in Orissa with a total investment of \$12 billion would displace around 4,000

tribal families.¹³⁷

About 1.4 million people, most of them tribals, have been reportedly displaced in Orissa between 1951 and 1995 due to dams, canals, mines and other industries. Majority of the displaced persons have not received compensation and rehabilitation. Another 80,000 to 1,00,000 tribals from 50 villages in Subdega and Balisankra blocks in Jharsuguda district of Orissa faced imminent displacement due to the proposed dam on the Ib river.¹³⁸

In October 2005, the Central government reportedly granted “forest and environmental clearance” to the multi-purpose Polavaram project being built across the Godavari river at Polavaram in West Godavari district of Andhra Pradesh.¹³⁹ The proposed 46-metre high Polavaram multi-purpose dam is likely to displace nearly 2,00,000 people, of which about 150,000 are tribals. The Union Ministry of Environment and Forests also admitted that about 193,350 persons would be displaced in three states - Andhra Pradesh (175,275), Orissa (6,316) and Chhattisgarh (1,766).¹⁴⁰

c. Repression under the forest laws

Thousands of petty cases have been lodged against the tribals under the Forest Act of 1927.

On 8 November 2005, the Forest Department of Chattisgarh reportedly decided to close 2,57,226 forest cases registered against 1,62,692 tribals between 1953 to 30 June 2004 under Sections 26, 33 and 41 of the Indian Forest Act 1927 pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts.¹⁴¹ On 11 March 2005, Chief Minister of Orissa, Navin Patnaik stated that his government withdrew 2531 cases against the tribals, and returned 1183.40 acres of land to the tribals.¹⁴² The opposition leaders in Orissa

contested the claims of the Chief Minister.¹⁴³

Tribals faced false prosecution because of the connivance of the mafia and the police and the forest officials. On 8 June 2005, the timber mafia in alleged connivance with the forest officials attacked and burnt the houses of Agaria tribe at Kumba Kurd village under Nagar Untari police station limits of Garhwa district in Jharkhand after the tribals opposed the activities of the timber mafia. One eight-month-old baby was reportedly burnt alive and 140 huts of the Agaria tribe were burnt to ashes. A case was lodged with Nagar Untari police station against 23 persons including 13 forest officials. On the other hand, the forest department lodged an FIR against the Agaria tribals on the basis of which the police swiftly arrested eight Agaria tribal villagers. But the police refused to take action against the accused forest officials.¹⁴⁴

The Supreme Court-appointed Central Empowered Committee in its report submitted on 29 April 2005 stated that the State government of Kerala could transfer forest land to tribals if compensated with afforestation programmes. The State government was reportedly willing to resettle 53,000 tribal families in the forests of Muthanga Sanctuary by transferring nearly 7,000 hectares of forest land.¹⁴⁵ But the Kerala government failed to take action into the Muthanga firing incident of February 2003.¹⁴⁶

The government also failed to place the Scheduled Tribes (Recognition of Forest Rights) Bill 2005, which seeks to protect the rights of those who had been occupying forestland prior to October 1980, before the parliament.

d. Encroachment by non-tribals

Despite various laws prohibiting transfer of tribal lands to non-tribals, alien-

ation of the tribals' lands continued unabated. In 2005, the government of Jharkhand identified 1500 tribals in Ranchi who had lost their land to outsiders and decided to give back physical possession of their land under an action plan drawn up by the land revenue department.¹⁴⁷ The non-tribals encroached upon the tribal lands and harassed them by filing false cases with the police.¹⁴⁸

In Assam, a report tabled before the State Assembly on 6 April 2005 by the State Revenue Minister Goutom Roy stated that over 2.20 lakh *bighas* of tribal land were either transferred to or encroached upon by non-tribals in the state. This included tribal land measuring 1,77,082 *bighas* in Lakhimpur, 518 *bighas* in Goalpara, 4,867 *bighas* in Nalbari, 4,451 *bighas* in Barpeta, 14,895 *bighas* in Dhemaji, 417 *bighas* in Morigaon, 5,366 *bighas* in Dhubri, 2,21,257 *bighas* in Udalguri and 196 *bighas* in Kamrup districts.¹⁴⁹

IX. Violations of the rights of the Dalits

The Scheduled Castes, known as "Dalits", constituted 16.2 % (166,635,700) of the total population of India according to the 2001 census. They continued to face atrocities and discrimination in all spheres of life.

The 2005 Annual Report of the National Crime Records Bureau reported a total of 26,127 cases - 8,497 cases under the Protection of Civil Rights Act and 291 cases under the SC/ST (Prevention of Atrocities) Act of 1989 - against the Scheduled Castes. Although the average charge-sheeting rate for the crimes against the SCs was 94.1 per cent, the average conviction rate was only 29.8%. A total of 46,936 persons (82.4%) out of 57,804 persons arrested for crimes committed against Scheduled Castes were charge-sheeted but

only 28.3% were convicted consisting of 12,691 persons out of 44,842 persons against whom trials were completed.¹⁵⁰

Madhya Pradesh topped the crime rates against Dalits with 6.6 per cent, followed by Rajasthan (6.2%) and Andhra Pradesh (3.9%) against the national average of 2.4%.¹⁵¹ The conviction rate under the Scheduled Castes and Tribes (Prevention of Atrocities) Act was low because of biases against the Dalits.¹⁵²

Accountability for violations of the rights of the Dalits was seldom established. The findings of the Justice K S Lodha Commission which probed the Kumher massacre in Rajasthan in which 17 Dalits were burnt alive in June 1992 was not made public by the state government despite a High Court order to place the report in the State Assembly.¹⁵³

a. Denial of access to public places

Untouchability is still practised across India and the Dalits continue to be denied access to public places including temples, tube-well, etc. In some temples, idols of deities are removed if the Dalits come to offer prayers.¹⁵⁴

In Gulbarga district of Karnataka, untouchability was reportedly being practised in 542 villages of the total 1,530 villages in the district.¹⁵⁵ The Andhra Pradesh State Commission for Scheduled Tribes and Scheduled Castes also received several complaints on the untouchability from capital city Hyderabad.¹⁵⁶

Despite the government's directive for recruitment of women preferably from the Scheduled Castes and the Scheduled Tribes for the mid-day meal schemes in schools in Kendrapara district of Orissa, Dalit women applying for the job of cooks were allegedly turned away by the school authorities for the fear that upper caste students might not eat the food if cooked by the Dalits.¹⁵⁷

In Badhram village in Pulwal district

of Haryana, Dalit villagers were ostracized and confined by the landlords after they offered prayers at the village temple on 20 July 2005. They were prevented from buying essential commodities from the village shops. Many were beaten up and the moustache of one 65-year-old Bhajan Lal was forcibly shaved off on 10 August 2005. On 11 August 2005, the National Commission for Scheduled Castes asked the Inspector-General of Police (Gurgaon range) to provide security to the Dalit villagers and submit an action-taken report within 10 days.¹⁵⁸ On 12 August 2005, a Deputy Superintendent of Police visited Badhram village but atrocities reportedly continued to take place.¹⁵⁹

b. Physical attacks against the Dalits

Physical attacks against the Dalits were extensively reported. The National Crime Records Bureau of the Ministry of Home Affairs recorded a total of 669 cases of killing, 258 cases of kidnapping and abduction and 210 cases of arson against the Dalits during 2005.¹⁶⁰ Hundreds of cases are seldom reported to the police.

The failure of the police and the administration in the prevention of attacks against the Dalits has been glaring. Following the murder of a Jat youth allegedly by some Dalit youths of Balmiki colony in Gohana under Sonapat district of Haryana on 27 August 2005, the Dalits had sought police protection in view of threats by the Jats. But the police instead allegedly asked the Dalits to flee their houses. Between 27 August and 30 August 2005, about 1000 Dalits reportedly fled from the Balmiki colony to safer areas. On the day of the attack on 31 August 2005, about 54 Dalit houses were set on fire and several others ransacked and looted by a mob of the Jats.¹⁶¹ Field investigations by National Campaign for Dalit Human Rights¹⁶² and the All India Lawyers Union¹⁶³ confirmed

that the police remained silent spectators during the violence which lasted for nearly three hours. The National Commission for Scheduled Castes in its interim report to the Haryana government blamed the district administration for its failure to take any preventive measures, although the authorities had prior information about such a threat from the Jat community to the Dalits.¹⁶⁴ The police reportedly registered cases against 23 persons under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and some were reportedly arrested. Following intense political pressure and condemnation from all quarters, the Haryana government acted by moving out Deputy Commissioner S K Goel, Superintendent of Police Anil Kumar and Deputy Superintendent of Police, Paunki Ram¹⁶⁵ and also suspended some police officers.¹⁶⁶ On 5 September 2005, Haryana Chief Minister Bhupinder Singh Hooda ordered a CBI probe into the incident, and increased the compensation to Rs 1 lakh for each victim.¹⁶⁷

The Dalits were targeted because of their caste. On 1 March 2005, a Dalit youth identified as Mohanlal Meghwal was killed in broad daylight allegedly by former Congress Member of Legislative Assembly (MLA) Thakur Shivdan Singh at Bedkalan village in Pali district of Rajasthan. The deceased was first stabbed with a dagger and later a tractor was run over his body in broad daylight. Thakur Shivdan Singh, his son Tikam Singh, and his brother Daler Singh were arrested and sent to judicial custody.¹⁶⁸

On late night of 10 July 2005, three members of a Dalit family identified as Bhagirath, Kachru and Ramchandra were hacked to death by an upper caste Rajput family on alleged charge of stealing a buffalo near Bamankheda village in Ujjain of Madhya Pradesh. A compensation of Rs 5

lakh to the victim's family was announced by the district administration.¹⁶⁹

Many Dalits were tortured and subjected to humiliation and degrading treatment in public.

On 27 February 2005, a 15-year-old Dalit boy C. Muthukumar of Arunthathiyar Colony in North Kaavalaakurichi under the Ooththumalai police station limits in Tamil Nadu was tortured by an upper caste youth Kaalaisamy. The accused thrashed the Dalit boy, tied his hands at the back and then suspended him from his genitals in a well. Instead of taking stern action, the police allegedly released the accused without registering any case.¹⁷⁰

In November 2005, 19-year-old Dalit youth Banesh Malayya Pulluri was reportedly beaten up in public, garlanded with *chappals*, sandals, and forced to eat human excreta by the *gram sabha*, village council, for writing a love letter to an upper caste girl at Jamanpalli village under Sironcha tehsil in Gadchiroli district of Maharashtra. The police reportedly arrested four persons.¹⁷¹

c. Violence against Dalit women

Though Dalits are considered untouchable, rape of Dalit women is common. The National Crime Records Bureau recorded a total of 1,172 cases of rape against the Scheduled Caste women during 2005.¹⁷²

On the night of 10 April 2005, a Dalit woman, wife of a Dalit policeman from Begusarai, was abducted and gang raped by four upper caste men after taking her to a hotel in Munger in Bihar.¹⁷³

On 12 June 2005, a 5-year-old Dalit girl was reportedly gang raped after taking her to an abandoned area at Sukhdevpur village under Dhaulana police station in Ghaziabad district of Uttar Pradesh. The police reportedly refused to register the case.¹⁷⁴

Dalit women have been subjected to

brutal torture, degrading treatment, humiliation and rape.

On 2 August 2005, a young pregnant Dalit woman Manju Devi, wife of Binod Sada, reportedly died after being brutally hit with rifle butt by former Rashtriya Janata Dal MLA Sunil Kumar Pushpam because she failed to move out of the road quickly when his jeep started honking at her on the muddy road at Beethan village in Samastipur, Bihar.¹⁷⁵

On 28 April 2005, a Dalit woman Nirmala Devi was allegedly beaten up, tansured and paraded naked after blackening her face by the upper caste men for refusing to work as domestic maid in Paswan Tola at Dhameli village under Mirganj police station in Purnia district of Bihar. A case was filed with the Mirganj police station on 2 May 2005.¹⁷⁶

On 19 September 2005, a group of Dalit women belonging to the barber community were reportedly dragged out of their houses and paraded naked on the streets by some men from upper-caste Khandayat community in Bhubanpati village in Puri district of Orissa after their husbands refused to wash the feet of upper caste bridegroom and other members of the marriage party.¹⁷⁷

d. Denial of land rights

The Dalits also faced dispossession from their lands.

In Rajasthan, lands of Dalits were illegally encroached upon and occupied by the upper caste people. Agricultural land measuring thousands of bighas belonging to Bheel tribals and Dalits in Chittaurgarh, Baran and Kota districts were either illegally occupied by the influential upper caste people or declared as Government property under Rajasthan Tenancy Act, 1955.¹⁷⁸

The state government of Karnataka also failed to provide houses to the Dalits

under different welfare schemes. As in December 2005, in Nimbarga of Karnataka, title deeds were not given to 63 Dalit families despite allotting houses under *Ashraya* Housing Scheme.¹⁷⁹

In Andhra Pradesh, the Dalits were often allotted *pattas* for land, but not the actual land. On the other hand, such land schemes of the government allegedly took away the original lands of the Dalits. On the night of 22 August 2005, a Dalit farmer Katuri Moses committed suicide fearing that his 22 cent land would be taken away by the administration at Pedapalaparru under Mudinepalli mandal in Andhra Pradesh.¹⁸⁰

X. Violence against women

According to the National Crime Records Bureau's 2005 Annual Report, 1 crime was committed against women in every 3 minutes, 1 rape in every 29 minutes, 1 molestation in every 15 minutes, 1 dowry death case in every 77 minute in the country during 2005. The NCRB recorded a total of 1,55,553 cases of Violence Against Women (VAW) including 18,359 cases of rape involving 18,376 victims, 34,175 cases of molestation, 15750 cases of kidnapping, 6,787 cases of dowry deaths and 58,319 cases of torture in 2005.¹⁸¹ Despite high rate of violence against women, only 24 out of 28 states in India have established State Commission for Women by 2005.¹⁸²

Women also became victims of violence by the security forces and armed opposition groups and as a result of cruel cultural practices.

a. Violence by the security forces

The law enforcement personnel responsible for sexual violence included officers like Inspector-General of Police Mr P.S. Natarajan of Ranchi, Jharkand¹⁸³ to

constables. On 23 December 2005, the personnel of Indian Reserve Battalion of Haryana shot dead three Boro tribals identified as Thomas Basumatary, Ramen Moshahary, and Raju Basumatary who were protesting against the molestation of eight girls from Gossaigaon College who had boarded the 4056 UP Brahmaputra Mail at Salakati railway station under Basugaon in Kokrajhar district of Assam.¹⁸⁴

Many officers and police personnel were arrested for rape including Circle Inspector of Nandapur in Orissa Mr S K Odu, Nageswar Rao and a doctor, P K Rath of Nandapur Community Health Centre who were arrested on 12 January 2005 for alleged gang rape of a 30-year-old tribal woman at their official residence,¹⁸⁵ constable Hamid Nazir Kazi of Nerul police station for raping a former bar girl in her house at Sector-8 in Nerul of Navi Mumbai¹⁸⁶ and Delhi police constable Rajendra in December 2005.¹⁸⁷

Many police personnel were dismissed from services including Sub Inspector J D Bhardwaj of Bhajanpura police station of Delhi in June 2005¹⁸⁸, 7 policemen including Head Constable Arjan Singh, constables Nishan Singh, Balbir Singh and Mohan Lal of Tarn Taran police district in Punjab in October 2005,¹⁸⁹ and constable Sunil More who raped a 17-year-old girl at Marine Drive police outpost in Mumbai.¹⁹⁰

In armed conflict situations, the security forces perpetrated similar atrocities. In early December 2005, two Tripura State Rifles personnel were arrested for raping the wife of one Purna Mohan Rupini at gunpoint under the guise of searching for the outlawed National Liberation Front of Tripura cadres in Agartala, Tripura.¹⁹¹

b. Violence by the AOGs

During 2005, there were also reports

of violence against women by the armed opposition groups (AOGs) especially from Jammu and Kashmir. On 5 November 2005, a school girl was gang raped by alleged militants at her residence at Muradpur in Rajouri district of Jammu and Kashmir. The victim later committed suicide by consuming poison.¹⁹²

On 14 December 2005, a Public Interest Litigation was filed in the J&K High Court for seeking justice for a minor girl, daughter of Ashiq Hussain from Laroti village in Rajouri district. She was kidnapped by members of the Lashkar-e-Taiba, forcibly married off and raped by their members. After the minor girl escaped from the captivity, the Lashkar-e-Taiba announced reward of Rs 50,000 on her head. Though Ashiq Hussain went to the nearby police station to lodge an FIR, the SHO Javed Manhas refused to lodge the FIR.¹⁹³

c. Cruel cultural practices

Women continued to become victims of violence because of cruel cultural practices like *Sati* (the traditional Hindu practice of a widow immolating herself on her husband's funeral pyre), honour killings, witch hunting etc and the traditional justice delivered by the panachayats and clerics.

Though police arrested 11 persons including a 42-year-old woman, Basanti Devi, who allegedly attempted to commit *Sati* at a temple at Sumel village in Rajasthan's Pali district on 20 March 2005 in front of over 10,000 villagers from Pali, Ajmer and Nagaur districts in Rajasthan,¹⁹⁴ the Rajasthan Tourism Development in its guidebook, *Popular Deities of Rajasthan*, released on 30 May 2005 glorified *Sati* and described Rajasthan as "'best-known for various Sati Matas"¹⁹⁵

There were also reports of honour killings. On 7 October 2005, a businessman shot dead his 24-year-old daughter

identified as Neeru at Rohini multiplex in Delhi for marrying one Saranjeet Singh against the family's consent. Saranjeet Singh managed to escape with bullet injuries.¹⁹⁶

Dozens of women were killed for alleged witchcraft especially in Assam, Tripura, Jharkhand, West Bengal, Orissa, Uttar Pradesh, and Chhattisgarh. Asian Centre for Human Rights (ACHR) recorded killing of 34 persons, mostly women, and attack on 7 others on the charges of practising witchcraft. The victims who were killed included Chatu Tirki at No. 1 Daolabari village in Kokrajhar of Assam on 17 November 2005,¹⁹⁷ Budhuni Singh at Birwal village in Sundargarh district of Orissa on 20 March 2005,¹⁹⁸ Savitri Devi who was beaten to death by the villagers in Gulabghat village under Sadar police station of Purnea district of Bihar on 17 April 2005,¹⁹⁹ Munnai Bandra, who was raped and killed at Uttam Basti on the outskirts of Rourkela city in Sundargarh district of Orissa on 21 April 2005,²⁰⁰ Lakshmi Murmu at Kumodda village in Sagardighi in Murshidabad district of West Bengal on 5 June 2005,²⁰¹ Kosharam Reang who was beaten to death at Tainani in South Tripura on 26 June 2005,²⁰² Soli Oraon and his wife Mungri who were killed in Mill Bagan tea estate in Darjeeling, West Bengal on the night of 12 October 2005,²⁰³ Jayanti Chatar who was killed at Belabahali village under Tomka police station in Jajpur district of Orissa on 17 November 2005,²⁰⁴ Pinpina Turi and Golapi Bhumij who were killed at Rajmai Tea Estates in Sivasagar district of Assam on 20 November 2005,²⁰⁵ and three members of a family identified as Karuna Devi, her husband Marari Singh and son Kaushal Prasad who were shot dead by their relatives at Pyarepur village under Giriak police station in Nalanda district of Bihar on 28 November 2005.²⁰⁶

The village panchayats acted as "cultural courts" where victims were held guilty. In September 2005, the panchayat of Muslim-dominated Padhyar village in Banka district of Bihar allegedly forced a rape victim to publicly lick the spit of her husband Mohammad Farooq, who had instantly pronounced *talaq* when she told him that she had been raped by one Mohammad Ajaz on 28 August 2005. The rape victim was also thrown out of the house by her husband. On the other hand, the rapist was let off by payment of a paltry fine of Rs 15,000 after he refused to marry the victim. The victim filed a case in the court of chief judicial magistrate and the court directed the Dhoraiya police station to lodge an FIR against Ajaz and his father.²⁰⁷

XI. Violations of the rights of the child

The situation of children remained vulnerable with the lack of effective programmes for the child labourers, recruitment as child soldiers, sexual violence against girl child and deplorable conditions of the juveniles in conflict with the law.

a. Child labour

According to the 2001 census data of the government of India, there were 1,2,66,377 child labourers across the country with 19,27,997 in Uttar Pradesh alone, followed by Andhra Pradesh with 13,63,339, Rajasthan with 12,62,570, Bihar with 11,17,500, and Madhya Pradesh with 10,65,259.²⁰⁸ Of the total of 604 districts across the country, only 271 districts were covered by government's rehabilitation process. While 250 districts were covered under the National Child Labour Project²⁰⁹ and 21 districts under the Indo-US Child Labour Project,²¹⁰ the child labourers in

rest of the districts were left to fend for themselves.

The failure of the government of Delhi to rehabilitate some 477 child labourer rescued by the police and labour department officials in November 2005 showed the failure and reluctance of the government to rehabilitate the child labourers. Immediately after their rescue, the children were reportedly housed at a *Raen Basera*, a night shelter for beggars at August Kranti Bhawan at Bhikaji Cama Place in Delhi. Failing to put together rehabilitation plans for the children and unable to bear the cost of food and lodging, the children were reportedly sent to 11 observation homes, which mainly housed the juvenile delinquents.²¹¹ A Division Bench of Delhi High Court on 22 December 2001 directed the government to file an affidavit explaining why it was not taking any step to prosecute those employing child labourers in Delhi.²¹²

b. Child trafficking

The only regular source of data available is from the National Crime Records Bureau which recorded a total of 3518 cases of kidnapping and abduction of children during 2005. It also recorded 28 cases of buying of girls and 50 cases of selling of girls for prostitution during 2005.²¹³ The figures of the NCRB however do not reflect the reality.

The NHRC in a report in July 2004 stated that every year an average of 44,476 children went missing during 1996-2001 and about an average of 11,008 children per year were never traced during the same period.²¹⁴ In northeast India, Assam has been one of the most vulnerable states to child trafficking. Between 500 to 1,000 children, majority of them girls, have been reported to be missing from different parts of Assam every year and only about one third of them could be traced.²¹⁵

c. Children in armed conflict

In armed conflict situations, children were subjected to killing, torture, sexual abuses and other forms of physical violence both by the security forces and the armed opposition groups.

In Jammu and Kashmir, while the security forces used children as human shields in the guise of taking them as guide during raids and combing operations, the armed opposition groups recruited the children as combatants.²¹⁶ The state government of Chhattisgarh earned notoriety for recruiting Adivasi children as Special Police Officers to fight with the Naxalites. The Naxalites too have been using large number of children as combatants.

About 50% of the armed opposition group members in Jammu and Kashmir were reportedly within the age group of 14 to 18 years.²¹⁷ In Andhra Pradesh, police claimed that there were around 150 minors in various Naxalite organizations.²¹⁸ Two Naxalites, Boggula Ramadevi alias Vennela (14) and E Saraswathi (18) who surrendered in Warangal on 1 February 2005 were minors.²¹⁹

d. Orphaned children

Over the past 17 years of armed conflict, about 40,000 children were reportedly orphaned in Jammu and Kashmir. According to the Iqbal Memorial Trust, which has been reportedly helping the orphans through its social service programme, "Sakhawat Centre", these orphaned children have been facing miserable conditions.²²⁰

The State Government of Jammu and Kashmir failed to provide any help to the orphaned children except a monthly stipend of Rs.200/- sent to each by post. The population of destitute children kept on increasing each year. However, the J&K Government ran only nine male (Baal Ashram) and five female (nari nikan) homes across Kashmir having a total

inmates population of 600. Even these 14 destitute homes were not managed properly and most of them did not have the basic facilities. Barring the female-homes where the grown up inmates take care of kitchen, cleanliness and other basic tasks, the male homes were reportedly in shambles almost everywhere.²²¹

e. Girl child: Target of sexual abuse

According to Annual Report 2005 of National Crime Records Bureau, a total of 4026 cases of child rape were recorded during 2005.²²² Many of the cases of child-rape were committed by the law enforcement personnel.

Some of the cases of child-rape reported were rape of a 12-year-old girl by an Assam Rifles constable Gautam Tamang in Karbi Anglong district of Assam on 7 February 2005;²²³ rape of a minor girl by Tripura State Rifles personnel Rabi Debbarma at Gajapara under Sidhai police station area in the West Tripura district on 9 February 2005;²²⁴ rape of a 17-year-old college girl by constable Sunil Atmaram More inside a police post on Marine Drive in Mumbai, Maharashtra on 21 April 2005;²²⁵ rape of a 8-year-old girl by an SPO of Punjab police at his residence in Ludhiana in Punjab in May 2005;²²⁶ rape of a 14-year-old girl at the police quarters in Bhuj, Gujarat by Police sub-inspector BN Chawda and assistant sub-inspector Raghuvirsinh Jadeja on 28 July 2005;²²⁷ repeated sexual abuse of his minor domestic help by Head Constable Abdul Hanief at Sowjjan area in Jammu and Kashmir;²²⁸ rape of a 15-year-old ragpicker by Head Constable Chandrakant Pawar attached to Sahar police station in Mumbai on the night of 17 October 2005;²²⁹ and rape of a 14-year-old girl of IG Colony in Nangloi by constable Bijender posted with the Sarai Rohilla railway police in Sarai Rohilla in north Delhi on 21 December 2005.²³⁰

In one of the worst cases, on 23 September 2005, Rama Shankar Yadav, a constable posted at the Transport Nagar police station in Gorakhpur, Uttar Pradesh, allegedly set on fire a teenaged girl identified as Poonam, daughter of Radhey Shyam, after failing to molest her. The girl succumbed to her burn injuries on the way to hospital. A case under Sections 376, 511 and 302 of the Indian Penal Code was registered with the Cantonment police station.²³¹

Law enforcement officials often try to shield the guilty especially if the accused are government servants. On 1 January 2005, two persons, including a *Naib Tehsildar* of the state government posted at Palwal town in Faridabad district of Haryana, reportedly abducted a 15-year-old girl student of Government Girls Secondary School, Palwal. In her statement, the victim reportedly claimed that her captors raped her and the medical examination also confirmed rape. The police officials allegedly forced the victim to change her statement. On 6 January 2005, lawyers staged a demonstration alleging that a senior police official posted at Palwal called the victim to the police station on the pretext of personally hearing her and thrashed and forced her to change her statement.²³²

f. Juvenile justice

Despite the enactment of the Juvenile Justice (Care and Protection of Children) Act in 2000, by and large, the Act remained unimplemented. Many states did not establish adequate number of Juvenile Justice Boards as provided under the Juvenile Justice Act of 2000. Proceeding in a Public Interest Litigation petition on 15 July 2005, a division bench of the Jharkhand High Court directed the government to speed up the process of constituting the Juvenile Justice Boards to look after the welfare of juveniles lodged in the different

remand homes of the state.²³³

National Capital Territory of Delhi had only one Juvenile Justice Board at Kingsway Camp, North Delhi for all nine districts of the India's capital. The total number of pending juvenile cases stood at 3,050 at the end of August 2005.²³⁴

The conditions of the juvenile homes remained wanting. In January 2005, as many as 50 inmates ran away from the two juvenile homes situated at Alipur and Kingsway Camp in Delhi because of the lack of basic provisions like food, clothes etc.²³⁵

In January 2005, the NHRC also raised concerns about the protection of human rights of juveniles lodged in the observation homes in Karnataka. On 13 December 2004, 14-year-old Santosh, an inmate of the Observation Home in Madivala police limits in Bangalore, allegedly committed suicide by hanging himself by a rope from the ceiling of the toilet.²³⁶

Apart from the denial of basic facilities, torture of inmates has been a part of administration of the juvenile homes. On 26 May 2005, a Juvenile Justice Board Principal Magistrate Santosh Snehi Mann issued bailable warrants against a former SHO of a North Delhi police station, three guards and some officials of the juvenile observation home in Majnu Ka Teela on charges of "brutally torturing" four boys after some other inmates escaped from there on 13 April 2005. The Principal Magistrate issued the warrants on a complaint by the counsel for the boys alleging that they were beaten up with iron rods and kicked after being made to lie on the floor by the guards and the Station House Officer of Timarpur Police Station jumped on their chests.²³⁷

Juveniles were often found to be at the mercy of policemen. On 18 April 2005, a minor was arrested by two policemen from

Najafgarh police Station in west Delhi while having food and subjected to torture which resulted into multiple injuries. When Juvenile Justice Board Principal Magistrate Santosh Snehi Mann ordered the SHO of Najafgarh Police Station, Shri Kailash Chandra, to produce the photographs of all the policemen posted there in order to help the victimised juvenile to identify the two accused policemen,²³⁸ the SHO allegedly tried to influence the victim through threat and inducements.²³⁹

g. Torture of children

Children were also subjected to torture by the law enforcement personnel. In February 2005, a 12-year-old boy was allegedly tortured in police custody by N Islam, Officer-in-Charge of Hallydiganj police outpost in West Garo Hills district of Meghalaya without any reason. The boy reportedly sustained a fracture in his right leg due to the beating.²⁴⁰

Salwinder Singh, Sub-Inspector of Crime Investigation Agency (CIA) of Amritsar, Punjab was suspended for giving electric shocks to 10-year-old Sumit, a student of Class IV in January 2005. The boy was released after his father allegedly handed over a cheque of Rs 2.35 lakh – signed under coercion – to the Sub-Inspector.²⁴¹ Sub-Inspector Singh was later suspended.²⁴²

Haryana Chief Minister Bhupinder Singh Hooda ordered a probe after a television news channel showed a clip of a 14 year old boy being tortured by the police at the CIA police station in Panchkula on 13 March 2005. The boy was accused of theft from the Mansa Devi temple. He was also hung upside down from a tree as punishment.²⁴³

In January 2005, a city court rejected the bail plea of a Delhi Police Sub Inspector Parveen Kumar, who was accused of assaulting a boy by injecting

petrol and thinner into his rectum for refusing to pay Rs 50,000 as bribe for his release at Ambedkar Nagar Police station in Delhi on the intervening night of 13 and 14 June 2004.²⁴⁴

XII. Status of internally displaced persons

There were over 600,000 conflict induced IDPs in India in the beginning of 2005.²⁴⁵ The IDPs included 33,362 displaced persons in Kokrajhar district and 74,123 in Gosaigaon district²⁴⁶ of Assam; 55,476 Kashmir Pandit families who were displaced due to the conflicts in Jammu and Kashmir since 1990;²⁴⁷ and about 35,000 Brus (also known as Reangs) from Mizoram who were displaced in October 1997 and took shelter in Tripura.

In addition, over 44,000 tribal Karbis and Dimasas were displaced during the Karbi-Dimasa ethnic conflict which began in September 2005 in Assam's Karbi Anglong and North Cachar (NC) Hills districts. Another 6,000 Hmars and Paites were displaced from Manipur's Barak circle.²⁴⁸ In Chhattisgarh, about 50,000 tribals were displaced due to the Salwa Judum campaign which began in June 2005.

The IDP camp conditions were deplorable. During its field mission in November 2005, Asian Centre for Human Rights (ACHR) found that out of the 44,071 inmates in Karbi Anglong and NC Hills of Assam, 17,971 or an overwhelming 40.78 per cent were listed as minors by the government. Yet, there was no baby food. Nor was there any special treatment for 200 women who were in advance stage of pregnancy. In Karbi Anglong, 32,871 inmates were provided only 8,504 plates, implying that four persons had to share a plate.

During a field mission in December 2005, Asian Centre for Human Rights

found that the Bru IDPs camps in Tripura were in similar situations. The daily cash dole of Rs 2.90 i.e. Rs 87/- per month given to each adult Bru was extremely inadequate. Since 2001, the new-born babies have been included only in the census but not in the relief cards, making them ineligible for food items. Those who become adult in the last five years continue to be given rations as minor. The food ration of rice was so inadequate that displaced Brus had not even been reporting death for the fear of further reduction of the rations being provided.

Medical facilities were non-existent. The literacy rate among the Bru IDPs was only 10%.²⁴⁹ The Tripura government did not provide any educational facility including under the *Sarva Siksha Abhiyan* (Education for All) programme of the government of India. Effectively, over 5,000 minors were denied the right to education and an entire generation of the Brus have been kept illiterate in the last eight years.²⁵⁰

No visible measures were also taken to ensure return of the IDPs. The Jammu and Kashmir State Revenue and Rehabilitation Minister Hakim Mohammad Yaseen stated that by August 2005, about 1600 applications were received from willing migrant families to return.²⁵¹ However, most of the Kashmiri Pandits remained skeptic over the return due to security concerns.²⁵² The Mizoram government refused to take the Bru IDPs while Assam government showed no intention to rehabilitate the IDPs.

XIII. Violations of the prisoners' rights

Prisons are governed by the state governments. Prison conditions remained deplorable across India. According to the statistics of National Human Rights Commission, there were a total of 3,32,112

prisoners against the total capacity of 2,38,855 prisoners in the 1315 jails of the country as on 31 December 2004. Out of them, 2,32,731 inmates were undertrials, comprising of staggering 70 % of the total inmates. This included 12276 women and 1,570 children. The highest overcrowding rate was reported from Jharkhand with 195.2 % overcrowding, Delhi with 149.7 %, Chattisgarh with 94.5 % and Gujarat with 91.5 % overcrowding.²⁵³

The showpiece of India's prisons, Tihar Jails had 13,697 prisoners, including 520 female, against the total sanctioned capacity of 6250.²⁵⁴ About 80% of the prisoners were under-trials.²⁵⁵

The jail conditions were sub-human and most of them lacked even basic amenities such as adequate food, drinking water, sanitation, and health services.

Following a field study conducted by NHRC led by its Special Rapporteur and Chief Coordinator of Custodial Justice Cell to assess the conditions of prisons in Tripura, Andhra Pradesh, Kerala, Goa and Chandigarh, the NHRC team expressed serious concern over alarmingly high overcrowding in most of the jails visited by the team, lack of proper food, lack of full time doctors and proper medical facilities, lack of free legal aid to the poor inmates, lack of vocational training facilities for the women inmates, poor living conditions, high mortality rate of prisoners, and instances of non-compliance with the Commission's instructions regarding the death of prisoners.²⁵⁶

In June 2005, it was reported that a fact-finding delegation sent under the direction of the Gauhati High Court to examine the state of affairs of Kokrajhar district jail in Assam reportedly found, among others, that the jail wards were utterly filthy, the inmates were being served poor quality food, forced to drink water directly from the tube-wells, and

deprived of speedy justice. The latrines, urinals and the septic tanks released horrible stench. Mosquitoes created havoc for the inmates, yet they were not provided with mosquito nets. There was lack of even primary medical facilities. A woman detainee had been suffering for a long time with multiple diseases but she was not getting proper attention. A male inmate with grenade splinters injury had not been taken to Guwahati Medical College Hospital despite the doctors referring his case. There were 189 prisoners including 185 males and 4 females in the Kokrajhar district jail.²⁵⁷

In March 2005, inmates of Alipingal subjail in Orissa's Jagatsinghpur district launched mass hunger strike demanding proper food, drinking water, and medical treatment.²⁵⁸ Similar demands were also made by the inmates of Orissa's Bhanjanagar sub-jail²⁵⁹ and Padampur sub-jail.²⁶⁰

On 9 September 2005, police beat up some of the jail inmates of central jail, Srinagar in Jammu and Kashmir for staging hunger strike against failure on the part of the jail administration to take them to the courts on time during trials.²⁶¹

During a visit to the Central Jail in Aizawl, Mizoram in June 2005, human rights activists and journalists found that the jail did not have a permanent doctor and the jail's infirmary had no medicine. In the Aizawl Central jail, about 40 male inmates in each ward shared a single blade for shaving purposes. Since no segregation was made between the HIV positives and the non-HIV inmates, there was imminent risk of proliferation of HIV/AIDS, among others, by sharing blades.²⁶²

In November 2005, NHRC directed the Inspector General (Prisons) of Delhi to segregate the prisoners suffering from communicable diseases from the healthy ones and transport ailing prisoners to

courts in jail ambulance separately. The direction was issued following an anonymous complaint from some prisoners stating that undertrials were huddled together in vehicles in excess of the capacity while being taken to the courts.²⁶³

A number of deaths due to alleged denial of medical treatment were reported from different prisons across the country. In December 2005, the National Human Rights Commission, while confirming the death of an under-trial prisoner Babu Lal, who succumbed to his burn injuries due to inordinate delay in taking him to the hospital by the jail administration of Banda district jail of Uttar Pradesh in November 2000, held that technical considerations for shifting a patient to the hospital cannot outweigh the right to life of the patient.²⁶⁴

The victims who died due to alleged lack of medical facilities or treatment included Bhagat Rajbangshi of Raiganj district jail in West Bengal on 11 July 2005,²⁶⁵ ULFA leader Robin Handique of Tezpur jail in Assam on 30 August 2005,²⁶⁶ Ch Nagaraju of Nellor Central jail in Andhra Pradesh in August 2005,²⁶⁷ Bheega Ghagrai, Indira Munda, Shyam Oraon and Malua Oraon who respectively died on 8 November 2005, 15 November 2005, 20 December 2005 and 25 December 2005 at Birsa Munda Central Jail in Jharkhand.²⁶⁸ The hospital of Birsa Munda Central Jail in Jharkhand's state capital Ranchi reportedly had only two doctors to look after patients whose number was three times of the actual capacity of 100.²⁶⁹

There were also reports of torture of the inmates. On 24 April 2005, Jalandhar Jail officials in Punjab tattooed *Neevi Jaat* (lower caste) with a hot iron rod on the back of a Dalit under-trial Mohan Lal.²⁷⁰

Many prisoners died allegedly because of torture. Some of the victims included Rafeeq, an alleged ISI agent who

died in the district jail of Meerut, Uttar Pradesh on 13 April 2005,²⁷¹ Ravidas Prabhudas in the Surat district sub-jail in Gujarat on 15 May 2005,²⁷² Babu Ram in Kurukshetra district jail in Haryana on 13 June 2005,²⁷³ Ganjeli of Tihar Jail in Delhi on 13 June 2005,²⁷⁴ Gurpreet Singh of Barnala sub-jail in Punjab on 11 July 2005,²⁷⁵ Kuldeep at Agra District Jail in Uttar Pradesh on 25 September 2005,²⁷⁶ Mahendra Prasad Mahto at the Varanasi Central Jail on 27 September 2005,²⁷⁷ Suraj Bhan of Central Jail, Bathinda on 1 October 2005,²⁷⁸ Sama Vasava at Vadodara Central Jail in Gujarat on 18 October 2005,²⁷⁹ and Sankar Patra of Balasore jail in Orissa on 15 November 2005.²⁸⁰

XIV. Violations of the rights of minorities

The religious minorities in India constituted 18.6 % of the total population as per 2001 census of India. Of them, Muslims constituted 12%, Christians 2.3%, Sikhs 1.9%, Buddhists 0.8%, Jains 0.4% and others 0.7%.²⁸¹

The National Commission for Minorities is mandated to safeguard the constitutional legal rights of the minorities. Only 15 States - Andhra Pradesh (Statutory Commission), Assam (Non-Statutory), Bihar (Statutory), Chhattisgarh (Statutory), Delhi (Statutory), Jharkhand (Statutory), Karnataka (Statutory), Madhya Pradesh (Statutory), Maharashtra (Non-Statutory), Manipur (Non-Statutory), Rajasthan (Statutory), Tamil Nadu (Non-Statutory), Uttar Pradesh (Statutory), Uttaranchal (Statutory), and West Bengal (Statutory) have established State Minorities Commission.²⁸²

The recommendations of the National Commission for Minorities were seldom implemented. In a resolution adopted on 30 March 2005, the NCM stated, "The

provisions of the Bodh Gaya Temple Act, 1949, are not in harmony with the Fundamental Right enshrined in Article 26 of the Constitution, guaranteeing the right of freedom to every religious denomination to manage their respective religious affairs. Appropriate legal measures should be taken to ensure that all members of the committee entrusted with the management and control of the Bodh Gaya Temple, including the Mahabodi Mahavira in Bihar are Buddhists".²⁸³ Under the Bodh Gaya Temple Act, 1949, the Hindus run the management of the Bodhgaya complex in Bihar. But the recommendation of the NCM remained unimplemented.

a. Attacks on the Christian minorities

Among the religious minorities, Christians faced more systematic attacks because of their beliefs.

In Andhra Pradesh, two Christian pastors were murdered. On 21 May 2005, K Daniel, a gospel preacher was found dead near Pedashapur on the outskirts of Hyderabad. He went missing on 19 May 2005.²⁸⁴ On 2 June 2005, Pastor K. Issac Raj of Rock Church was found murdered with his body tied up with ropes in a gunny bag at Errakunta in Shaikpet, Andhra Pradesh. He went missing on 24 May 2005.²⁸⁵ The police claimed that they arrested the main culprit identified as Kokala Govardhan, an activist of a little known Hindu fundamentalist outfit called Hindu Vahini.²⁸⁶

In Rajasthan, Hindu fundamentalist groups beat up workers of Emmanuel Mission on the charges of converting a group of about 250 Hindu Dalit youths from Andhra Pradesh at Kota city in Rajasthan on 19 February 2005.²⁸⁷ On 21 February 2005, Bajrang Dal workers forced another group of 27 tribals from Udaipur, Rajasthan, to go back and beaten

up one Pastor Kalu. The next day, 600 Christians who had come from Kerala to attend the ceremony organized by Emmanuel Mission were stopped by Bajrang Dal activists.²⁸⁸ The National Commission for Minorities sent a two-member team to probe the incidents in Kota.²⁸⁹

In Karnataka, six persons identified as Shekar, Ramachandra, Poornachandra Keekar, Bhasker, Naveen and Manju were reportedly arrested on charges of vandalizing King Jesus Church, injuring devotees including two infants and sexually assaulting women in an attack in Channapatna town in May 2005.²⁹⁰

In Manipur, a church was vandalized and later torched by miscreants at Laming village in Thoubal District on 19 April 2005.²⁹¹

In Maharashtra, about 20 locals barged into a Bible reading session on suspicion that a religious conversion was going on and allegedly beat up three of the eight missionaries from the United States in a hall near Malwani church in Mumbai on the night of 11 June 2005. The attackers also allegedly kidnapped one of the missionaries. The police arrested two persons on charges of abduction and assault.²⁹²

In July 2005, the BJP government in Madhya Pradesh proposed amendments to Freedom of Religion Act to check conversions following the publication of an official probe committee report that found alleged disproportionate rise in the population of Christians in the state. The report quoted census figures which showed about 80 per cent rise in Christian population in Jhabua from 14,000 in 1991 to 26,000 in 2001.²⁹³

While the Hindu right-wing groups demanded ban on conversion, they themselves converted tribals into Hinduism. On 17 April 2005, 45 Adivasis were reportedly reconverted to Hinduism at a Vishwa Hindu Parishad (VHP) sponsored function

at Popra village in Malda district of West Bengal.²⁹⁴ On 1 May 2005, about 567 Christian tribals were reportedly reconverted to Hinduism in a re-conversion ceremony organized by VHP at Bijepur block in western Orissa's Bargarh district.²⁹⁵

b. Attacks on the minorities by the AOGs in J&K

Religious minorities of Jammu and Kashmir were specific targets of the armed opposition groups (AOGs). On 12 May 2005, the armed opposition groups threw a grenade into Tyndale Biscoe Memorial High School, a Christian missionary school at Lal Chowk, Srinagar killing two women guardians and injuring 50 people including 20 school children.²⁹⁶

On 29 July 2005, militants slit the throats of five Hindus identified as Karnail Singh, son of (s/o) Tota Singh, Dharam Singh, s/o Rambo, Saran Singh, s/o Sheru, Ashok Kumar and Sahber Singh both sons of Mangal Singh, after dragging them out of their houses at Dhar Sankari in Rajouri district of Jammu and Kashmir.²⁹⁷

Again on 10 October 2005, militants slaughtered 10 Hindus of two families in the Budhal area of Rajouri district of Jammu and Kashmir.²⁹⁸ On 23 October 2005, seven Hindu families comprising of about 31 persons reportedly fled their hamlet in Rajouri district after militants threatened to kill them.²⁹⁹

XV. Status of the refugees

a. Refugees under the government of India

According to Annual Report 2005-06 of Ministry of Home Affairs, there were 1,08,414 Tibetan refugees and the government of India reportedly spent an amount of about Rs. 18.17 crore on their resettlement.³⁰⁰

About 50,750 Tamil refugees from Sri Lanka were staying in 103 refugee camps

in Tamil Nadu and one camp in Orissa. In addition, about 17,064 refugees were staying outside the camps on their own.³⁰¹ In August 2005, the Union Home Ministry reportedly withdrew the subsidy on rice being provided to them citing administrative inconvenience. The Central Government's annual commitment on rice subsidy was Rs 7 crore per year while the State government bore an expenditure of around Rs 25 crore on cash doles, shelter, food, clothing and utensils in the camps, which were subsequently reimbursed by the Union Government.³⁰² The Government of India spent around Rs. 354 crore for providing relief and accommodation to them from July 1983 to December 2005.³⁰³

An estimated 82,000 Chin-Burmese have fled to India ever since the military regime took over power in 1988. About 70,000 were in northeast Indian state of Mizoram, which borders Myanmar's Chin State, while 10,000 were in Manipur and 2,000 in Delhi.³⁰⁴

The Myanmarese refugees did not receive any assistance from the government of India or the State governments. Their conditions were deplorable. In Mizoram, they lived under the fear of eviction and deportation by the Young Mizo Association and government authorities.

b. Refugees under the UNHCR

In 2005, there were about 11,400 refugees, mainly from Afghanistan and Myanmar under the United Nations High Commissioner for Refugees (UNHCR).³⁰⁵ Only about 1200 Burmese were recognized as refugees. The rest were undocumented and therefore, vulnerable to violations of their rights including arrest and detention.

In New Delhi, even the conditions of a few, who were receiving Subsistence Allowance (SA) from the UNHCR were not better as most of them had to share

their SA with other members of the community or relatives not receiving such allowance. Their conditions deteriorated further due to decrease in their Subsistence Allowance by half from the sixth month of grant of SA by the UNHCR.³⁰⁶

XVI. Violations of International Humanitarian Laws by the AOGs

Majority of the armed opposition groups were responsible for violations of international humanitarian laws during 2005. The armed opposition groups banned by the Government of India under the Unlawful Activities (prevention) Act, 1967 were United Liberation Front of Assam, National Democratic Front of Bodoland, People's Liberation Army, United National Liberation Front, People's Revolutionary party of Kangleipak, Kangleipak Communist Party, Kanglei Yaol Kanba Lup, Manipur People's Liberation Front, Revolutionary People's Front, All Tripura Tiger Force, National Liberation Front of Tripura, Hynniewtrep National Liberation Council, Achik National Volunteer Council, Babbar Khalsa International, Khalistan Commando Force, International Sikh Youth Federation, Lashkar-E-Taiba/Pasban-E-Ahle Hadis, Jaish-E-Mohammed/ Tahrik-E-Furqan, Harkat-UI-Mujahideen/ Harkat-UI-Ansar/ Karkat-UI-Jehad-E-Islami, Hizb-UI-Mujahideen/ Hizb-UI-Mujahideen Pri Panjal Regiment, Al-Umar-Mujahideen, Jammu and Kashmir Islamic Front, Liberation of Tigers of Tamil Eelam, Students Ismaliic Movement of India, Deendar Anjuman, Communist Party of India (Marxist-Leninist)-People's War and all its formation and front organizations, Maoist Communist Centre and all its formations and front organizations, Al Badr, Jamiat-

UI-Mujahideen, A-Qaida, Dukhtaran-E-Millat, Tamil Nadu Liberation Army, Tamil National Retrieval Troops, and Akhil Bharat Nepali Ekta Samaj.

According to the 2005 Annual Report of the Ministry of Home Affairs of the Government of India, during 2005, a total of 1466 civilians were killed by the armed opposition groups, including 557 in Jammu and Kashmir, 393 in the North East and 516 in the Naxalite affected States.

a. Torture

The armed opposition groups were responsible for brutal torture. In Jammu and Kashmir, the armed opposition groups slit the throats of the victims and chopped off the tongues or other body parts. On 14 August 2005, suspected members of Lashker-e-Toiba abducted and chopped off the tongue of Abdul Majeed of Sariliya-Sumi area of Gandoh tehsil in Doda district of Jammu and Kashmir on the charges of being an informer of security forces.³⁰⁷ In Manipur, the armed opposition groups kidnapped and shot the victims on their body parts to create chilling fear.

b. Killings

The AOGs have targeted innocent civilians and perpetrated a series of massacres of the innocent civilians. On 29 October 2005, at least 57 persons were killed and 153 injured in three bomb blasts in Delhi. The blasts took place between 5:30 pm and 6 pm at a crowded Delhi Transport Corporation bus and busy market places at Paharganj and Sarojini Nagar to cause maximum damage just two days before the Hindu religious festival Diwali.³⁰⁸

On 2 November 2005, at least six persons were killed and 16 others injured in a car bomb explosion allegedly carried out by the Jaish-e-Mohammad at Nowgam in the outskirts of Srinagar in Jammu and

Kashmir.³⁰⁹

On 31 January 2005 at 12:45 am, the cadres of the AOGs shot dead four members of a family identified as Naseema Begum, wife of Abdul Aziz, their daughters Rehana Banoo (5) and Razia Banoo (10), son Sabha Ahmed (15) after entering into their house in the guise of security personnel at Nashala Bijarani village about six kilometers from Doda town in Jammu and Kashmir.³¹⁰

On the night 13 April 2005, the cadres of the AOGs tortured and slit the throats of Qamar Din and Roshan Din and shot dead another person identified as Mohammed Shafi for refusing to open the door at Mahore area of Udhampur district of Jammu and Kashmir.³¹¹

In Chhattisgarh, civilians became specific targets for participating or supporting the government sponsored *Salwa Judum* campaign against the Naxalites. On 29 September 2005, suspected Naxalites killed Mahadev Manjhi by slitting his throat after dragging him out of his house at Pandiyarapara village in Bijapur of Chhattisgarh.³¹²

On the night of 11 September 2005, Naxalites shot dead 15 innocent villagers at Bhelbadari village in Giridih district of Jharkhand.³¹³ In Maharashtra, suspected Naxalites brutally murdered Mondli alias Deepak Gawde, Sarpanch of village Umanur under Jimalgatta Sub-police Station in Aheri taluka on the night of 27 September 2005.³¹⁴

In Manipur, the armed opposition groups played the role of moral police and carried out execution of civilians in the most brutal way for failing to comply with their diktat. On the night of 22 April 2005, cadres of the proscribed Kanglei Yawol Kann Lup (KYKL)³¹⁵ killed five alleged drug dealers Md Sikandar, Md Sajid Khan, Md Munal, Md Balal and Md Sanideer at Khetrigao area in Imphal East district.³¹⁶

On the night of 31 May 2005, two non-tribal tobacco sellers were shot dead and another injured by unidentified gunmen at Kakching Bazar in Thoubal district of Manipur. Earlier banned Revolutionary People's Front announced that it would punish those found selling and chewing *zarda* and *khaini*.³¹⁷

The AOGs, particularly the Naxalites, continued to deliver kangaroo justice. On 19 January 2005, a Telegu Desam Party activist Bikkati Ramudu was awarded death sentence by the *Peoples' Court* at Kalagallu under Kuderu mandal in Anantapur district of Andhra Pradesh. He was reportedly shot death from close range from behind.³¹⁸ On 12 August 2005, Naxalites also killed a village Sarpanch, Rajman Uike of village Baghdadongari in Chhattisgarh after he was convicted in *Peoples' Court* on the charges of being a police informer.³¹⁹

Killing of "police informers"

Many innocent people were brutally killed on the charges of being "police informers". Maximum number of such killings were reported from Andhra Pradesh. On 29 January 2005, alleged Maoists dragged Dhole Zuru Matami from his house at Maweli village under Kasansur in Etapalli in Gadchiroli district of Andhra Pradesh and brutally chopped off his head with a sharp weapon on the charges of being a police informer.³²⁰

Often, the victims included former Naxalites who had surrendered to the police. On 10 August 2005, a former Maoist J Bachibabu was brutally killed by the alleged Naxalites at Pedavalasa village in Visakhapatnam district of Andhra Pradesh.³²¹

The AOGs in Jammu and Kashmir also killed people on the charges of being "police informers". On the night of 11 January 2005, 75-year-old Abdul Aziz

was shot dead at Bharneli village of Mahore tehsil of Udhampur district.³²² Again on 10 July 2005, armed cadres tortured and beheaded a tribal identified as Hukam Din on the charges of being a police informer at Bhulla village in Udhampur district.³²³

Killing of political party activists

Political party activists were mainly targeted by the armed opposition groups in Jammu and Kashmir and the Naxalite affected states, mainly Andhra Pradesh, Chhattisgarh, Jharkhand and West Bengal.

At least three Members of State Legislative Assembly (MLAs) were killed by the AOGs. They were Congress MLA Chittem Narsi Reddy who was shot dead by the Communist Party of India-Maoist (CPI-Maoist) in Mahabubnagar district of Andhra Pradesh on 15 August 2005,³²⁴ J&K Minister of State for Education Dr Ghulam Nabi Lone who was killed in a fidayeen attack at his high security official residence at Tulsibagh in Srinagar on 18 October 2005,³²⁵ and Communist Party of India-Marxist Leninist (CPI-ML) legislator from Bagodar, Mahendra Prasad Singh who was killed by the Naxalites at Durgi Dhawaiya village in Giridih district of Jharkhand on 16 January 2005.³²⁶

The other political parties whose activists and leaders were targeted during 2005 included Telegu Desam Party, Telengana Rashtra Samithi, Bharatiya Janata Party, National Conference, People's Democratic Party and Communist Party of India (Marxist). The highest number of killings of political leaders and activists were reported from Andhra Pradesh for their alleged anti-Naxalite stand.

c. Abductions

There were consistent reports of abduction by the armed opposition groups

from all over India.

On 18 January 2005, suspected Naxalites abducted a Border Roads Organisation (BRO) Supervisor Major Unnikrishnan from Gumankonda village in Gadchiroli district of Maharashtra and demanded Rs 400,000 as ransom for his release.³²⁷

On 27 July 2005, All Tripura Tribal Force (ATTF) cadres abducted five school-teachers identified as Phanindra Shil, Parimal Deb, Rita Paul, Bijay Debbarma and Akhil Debbarma of Ultabari SB School, and the driver of the autorickshaw in which they were travelling at Ultabari in Khowai sub-division in West Tripura. While Bijay and Akhil Debbarma were set free on the way, the rest were taken away.³²⁸ The woman teacher Rita pal was released on 1 August 2005.³²⁹

On 9 February 2005, suspected Maoist Communist Centre ultras abducted at least 19 labourers from two camps at Phulkusuma and Podanala villages in Sambalpur district of Orissa. The armed MCC cadres stormed the camps early in the morning and took away at least 23 men with them, Sambalpur Superintendent of Police Susant Kumar Nath said. However, they later released four labourers.³³⁰ On 12 February 2005, 14 other labourers were released.³³¹

On 8 March 2005, suspected CPI (Maoist) cadres abducted 10 villagers, including 2 from Sadokhar village under Chenari police station, and 8 from a Shivratri Mela near Gupta Dham in Rohtas district in Bihar after they reportedly refused to pay "tax". A boy, among those kidnapped, was later set free.³³²

d. Extortion

All the armed opposition groups resorted to extortion and imposed so-called "taxes". In open session of Autonomous State Demand Committee (Progressive)

party conference at Sariohjan in Assam on 12 January 2005, ASDC (P) leader and former Member of Parliament (MP) Dr. Jayanta Rongpi alleged that all government officers of Karbi Anglong district including the Deputy Commissioner and the Superintendent of Police had to donate 4 per cent of their salary to militant outfits.³³³

Despite signing ceasefire agreement with the government on 25 May 2005,³³⁴ National Democratic Front of Bodoland (NDFB) reportedly continued to serve extortion notices to businessmen, contractors, and government officials. In June 2005, the construction company engaged in building the 22-km Kokrajhar-Ramfalbil road and the 18-km Gaurang Tinali-Patgaon road in Kokrajhar district of Assam reportedly had to cease work following alleged extortion demand of Rs 1 crore from the company and intimidation to its workers by the NDFB militants.³³⁵ NDFB cadres also allegedly served an extortion notice of Rs 5 lakh to the District Elementary Education Officer, Nalbari, Nagen Ch Boro in July 2005.³³⁶

The Achik National Volunteers' Council (ANVC) allegedly extorted money from local coal barons and other businessmen in South and East Garo Hills of Meghalaya despite signing tripartite ceasefire with the Centre and the State government.³³⁷

Extortion was also rampant in Manipur. On 2 March 2005, the Principal of the Manipur Institute of Technology, Takyelpat, Mr. Thingom Kulachandra, was shot at his leg by unidentified gunmen at Mongsangei in Imphal, the capital of Manipur state allegedly for not paying Rs five lakh extortion that an underground outfit had demanded from the staff of Manipur Institute of Technology Takyelpat a few days before the incident.³³⁸ In June 2005, more than eight senior professors including some head of the departments of the

Regional Institute of Medical Sciences in Imphal resigned from their posts following alleged extortion demands from underground outfits in Manipur.³³⁹ On 26 October 2005, the government employees in Thoubal district of Manipur went on leave en masse in protest against extortion demands by the armed opposition groups.³⁴⁰

On 11 November 2005, at least two persons were killed and 19 others injured at a blast carried out by banned Kanglei Yawol Kann Lup (KYKL) at a Market in Manipur's capital Imphal. The KYKL stated that the bomb attack was carried out to target a particular shop which had refused to pay money to the outfit.³⁴¹

XVII. Application of the National Security Laws

National security laws like the Prevention of Terrorism Act, Terrorist and Disruptive Activities (Prevention) Act, Public Safety Act, Armed Forces Special Powers Act and Official Secrets Act continued to be misused. According to Home Ministry's assessment, 65 per cent people detained under POTA could have been tried under normal laws, while there was evidence against only 35 per cent of all the POTA detainees.³⁴² In May 2005, Justice Jeevan Reddy Committee to Review the Armed Forces Special Powers Act of 1958 submitted its report but the government of India failed to make it public.

a. Cases under the Prevention of Terrorism Act of 2002

There were 350 cases under POTA across India. Of these, over one-third were under trial and the rest were under investigation. The maximum number of cases was reported from Jharkhand, with 147 cases and 1127 accused, followed by Jammu and Kashmir (91), Andhra Pradesh (43), Delhi (23), Gujarat (14) and Maharashtra (13). In

Andhra Pradesh, less than 10 per cent of the cases had reached the POTA court. The scenario was not different elsewhere. As on 13 July 2005, only 22 out of the 147 POTA cases were under trial in Jharkhand and more than two-thirds of the accused were absconding. While Gujarat and Maharashtra had fewer cases registered under POTA, the number of accused in these states was surprisingly high. There were 456 accused in just 14 POTA cases in Gujarat, while in Maharashtra, 131 people were accused in 13 cases.³⁴³

In September 2004, the United Progressive Alliance (UPA) government repealed the controversial POTA and gave one year to the three Central POTA Review Committees, instituted in 2003, to review all the POTA cases. Justice Nag Committee was assigned to review cases in Jharkhand, Justice Jain Committee dealt with cases in Gujarat and Jammu and Kashmir, and Justice Usha Mehra Committee reviewed cases in the rest of the seven states - Himachal Pradesh, Uttar Pradesh, Delhi, Andhra Pradesh, Maharashtra, Sikkim and Tamil Nadu. The committees were to consider only prima facie evidence provided to them by investigative agencies.³⁴⁴

However, the constitutional validity of the Central POTA Review Committees and their decisions on POTA cases were challenged by the State governments of Tamil Nadu and Gujarat. In January 2005, the Tamil Nadu Government challenged two key provisions of the Prevention of Terrorism (Repeal) Ordinance 2004, promulgated in September 2004, and sought to quash all the proceedings of the Central POTA Review Committee. The first of the two impugned provisions, Section 2(3)(a), pertained to a mandate to review all cases registered under the POTA within 12 months. The other, Section 2(4)(b), conferred the powers of a civil court on the committee with powers to call for any pub-

lic record from any court or office.³⁴⁵ On 21 July 2005, the Madras High Court quashed a December 2002 Tamil Nadu Government order declaring the entire State a notified area for the purpose of Section 4(a) of the Prevention of Terrorism Act. The court also quashed the charge under Section 4(a) of POTA against Mr R.R. Gopal, editor of Tamil bi-weekly '*Nakkheeran*', by which he was accused of possessing a firearm within a 'notified area'.³⁴⁶

On 29 January 2005, the Gujarat High Court gave an interim stay against the Justice Jain Committee questioning the Constitutional validity of the Committee on the ground that it had been conferred with unfettered powers.³⁴⁷ In February 2005, the Supreme Court vacated Gujarat High Court stay order and directed the court to dispose of a petition challenging the Justice Jain Committee's constitutional validity within seven weeks.³⁴⁸

On 9 April 2005, the Justice Jain Committee completed its hearings on the applicability of POTA on 14 cases including Godhra train carnage, ISI conspiracy case, Tiffin bomb blast and former Gujarat Minister Haren Pandya assassination cases. The Committee heard 200 accused in the 14 cases.³⁴⁹ The Justice Jain Committee recommended dropping of all charges against 131 accused under POTA in the Godhra train case while it upheld the application of POTA in the Akshardham case in which 46 persons were killed.³⁵⁰ On 13 April 2005, the Gujarat High Court stated that the Justice Jain Committee's findings would not be binding on the state government and the final decision to revoke POTA would lie with the designated POTA court.³⁵¹ On 10 June 2005, the state government of Gujarat also reportedly rejected the observations of the Justice Jain Committee of dropping all the charges against all the accused in the Godhra train carnage case.³⁵²

As many as 135 persons were still detained under POTA as on 13 December 2005. Of them, 87 were in Gujarat, 18 in Jharkhand, 4 in Maharashtra, 3 each in Andhra Pradesh and Uttar Pradesh, 2 in Himachal Pradesh and 1 in Delhi. 17 others remained under the cases registered by the Central Bureau of Investigation. However, human Rights activists disputed the figures given by the Minister of State for Home S Regupathy in a written reply in the Lok Sabha. They insisted that there were still large number of persons detained under POTA. According to the Minister, only 13 persons detained under POTA were convicted as in September 2004 when the Act was repealed.³⁵³

Delhi had 23 POTA cases.³⁵⁴ In February 2005, the Justice Usha Mehra Committee, in the first case of its kind in Delhi, directed that the case against Rajesh Bhai Prajapati, a resident of Mumbai, be withdrawn in the absence of any evidence against him. Mr Prajapati had approached the Justice Usha Mehra Committee with a complaint expressing grievance about application of POTA in his case. He was arrested on 18 January 2002 from Mumbai on alleged charges of delivering hawala money to certain individuals associated with the Lashkar-e-Toiba for terrorist activities in Delhi on the Republic Day. He was produced in Patiala House Courts on 20 January 2005 and charges against him were framed on 30 April 2002. He had undergone 2 years in judicial custody.³⁵⁵

In late September 2005, the POTA Court at Patiala House reportedly rejected the Delhi government's plea against the Justice Usha Mehra Committee's decision to release Ibotombi Sapan, a Manipuri student arrested under section 3(4) of the Act by the Delhi police on 15 March 2005. Earlier on 11 May 2005, the Justice Usha Mehra Committee had found no prima facie case against Sapan to prove that he

was harbouring a terrorist. The Delhi police had arrested Sapan, a graduate of Journalism and Mass Communication from Indira Gandhi National Open University (IGNOU) with another person on alleged charge of arranging medical assistance for members of Manipuri terrorist organisation, the People's Liberation Army (PLA) that is banned under POTA, and its political wing, the Revolutionary People's Front (RPF).³⁵⁶

As on 12 July 2005, there were 91 POTA cases in Jammu and Kashmir.³⁵⁷ The number of detentions under draconian laws including POTA and Public Safety Act was also very high.³⁵⁸

In Maharashtra, 131 people were accused in 13 cases.³⁵⁹

On 11 June 2005, a special POTA court acquitted all the eight accused in the Ghatkopar blast case. On 2 December 2002, two persons were killed and 49 were injured when a bomb blew up a BEST bus.³⁶⁰

On 14 June 2005, the Justice Usha Mehra Committee in its recommendations to the State Secretary of Maharashtra asked to discharge two accused, Mohammed Ansari alias Urman Laduwala and Mommed Ansar Sheikh alias Hasan Batteriwala, held for conspiring the twin blasts in Mumbai in 2003 as there was no material against them.³⁶¹

In early May 2005, the Justice Usha Mehra Committee directed the Tamil Nadu government to close two separate cases under the anti-terrorism law against Tamil National Movement (TNM) leaders. In the first case, the Review Committee cleared National Movement chief P Nedumaran and four others - Suba Veerapandian, Paavanan alias Podukottai Paawanan, Thayappan and Shahul Hameed who were charged under POTA for their alleged speeches supporting the banned LTTE under POTA in April 2002. In the second

case, the Review Committee asked the government to drop charges under POTA against TNM General Secretary Paranthaman for his alleged interview to a private channel criticizing the then Jayalalitha government for its stand against the LTTE.³⁶²

In Uttar Pradesh, despite the recommendation of the Justice Usha Mehra Committee for release of Sheikh Miraj Hassan, a Kashmiri student studying in Shamli, Mr Hassan continued to languish in Meerut Jail as on 24 August 2005. Earlier in May 2005, the committee had found no prima facie case against Hassan, who was arrested in March 2003.³⁶³

b. Cases under the Terrorist and Disruptive Activities (Prevention) Act

Although the Terrorists and Disruptive Activities (Prevention) Act (TADA) was allowed to lapse in 1995 by P V Narasimha government, still 147 persons were reportedly being detained for offences under the Act as on 14 December 2005. Of these, 59 cases were registered by CBI, 20 each in Assam and Punjab, 14 each in Gujarat and Maharashtra, 12 in Jammu and Kashmir, 5 in Rajasthan, 2 in Delhi and 1 in Haryana.³⁶⁴

On 21 April 2005, the Supreme Court acquitted Independent MLA Mukhtar Ahmed Ansari from Uttar Pradesh in a TADA case registered against him on 10 December 1993 for lack of evidence to convict him. Earlier, he had been sentenced to 10 years imprisonment by a trial court in 2003.³⁶⁵

In Punjab, 51 people were jailed under TADA. In April 2005, Chief Minister Amarinder Singh announced review of 17 cases of those detained on terrorism charges.³⁶⁶

c. Cases under the Public Safety Act

The Public Safety Act (PSA) of Jammu and Kashmir was invoked extensively. The Act empowers the district magistrates to send suspects to jail for up to two years without trial.³⁶⁷ On 3 October 2005, the state government of Jammu & Kashmir admitted that 140 foreign nationals were serving prison terms under the PSA alone. However, the government failed to state as how many of these cases involved in militancy related activities. There had been cases of innocent people being detained under the PSA in the past.³⁶⁸

Pursuant to the meeting between Prime Minister Manmohan Singh and the Hurriyat delegation held in Delhi on 5 September 2005, the Joint Screening Committee reviewed the cases of all detainees held under the Jammu and Kashmir Public Safety Act, 1978. On the recommendation of the Joint Screening Committee the state government ordered the release of 44 detainees, including seven women activists of Dukhtaran-e-Millat.³⁶⁹ The Union Home Ministry advised the state government to examine the cases and make its recommendation at the earliest for consideration of a Joint Screening Committee.³⁷⁰ ■

CHAPTER 9

Afghanistan

I. A country in transition

Ruled by President Hamid Karzai, Afghanistan has not been included in the ranking of the *SAARC Human Rights Violators Index 2006*. It is not only because Afghanistan became a member of SAARC in November 2005 but also because it is a country in transition, its security is ensured by international forces and it is yet to develop the edifice of the State structure, as it faces increased onslaught from the Taliban. At least 1,600 people died in conflict-related violence in 2005. Ninety-one US troops died in combat and accidents in 2005, more than double the total of 2004. Yet, the parliamentary elections held after 40 years on 18 September 2005 were largely violence free.

Afghanistan remained intolerably insecure despite disarming and reintegration of 60,646 former combatants and recovery of 35,000 light and medium weapons and 11,000 heavy weapons by the end of 2005 under the United Nations backed Disarmament, Demobilisation and Reintegrated Programme launched in October 2003.¹ Many of the provinces were still ruled by warlords who despite having deplorable human rights records continued to play critical role in Afghanistan politics.

On 27 September 2005, Ashraf Ramazan, a newly elected Member of Parliament, and his guard were shot dead in northern Mazar-e-Sharif of Balkh province.² On 8 October 2005, two persons identified as Habib Rahman and Khal Bai

were reportedly arrested by the provincial police for the murder of Ramazan.³ On 4 December 2005, an elected member of *Wolesi Jirga* (Lower House), Commander Asmatullah Mohabbat was reportedly killed along with three others when his faction fought a rival group in provincial capital Mehtarlan of Laghman province.⁴

The security of the country to a large extent was looked after by the coalition forces. There were no national accountability mechanisms for these troops.

The National Commission for Reconciliation in Afghanistan headed by Sibghatullah Mojadeddi, who briefly served as Afghan President following the fall of Soviet backed regime, failed to bring the Taliban to the reconciliation process.

II. Human rights violations by the security forces

Both the US-led coalition forces and the Afghan security forces were accused of serious human rights violations, in particular, torture and indiscriminate use of fire-arms and inability to make distinction between the combatants and non-combatants.

a. Torture and custodial violence

There were consistent reports of torture, inhuman and degrading treatment of the Afghan prisoners by the United States security forces in Afghanistan. In December 2005, Afghan Independent Human Rights Commission (AIHRC) stated that it had received over 113 complaints regarding the US forces' mistreatment of

Afghan prisoners. The Commission had asked the government and coalition forces to launch an investigation into the cases. The US officials did not permit the AIHRC to visit the detention centres and prisons run by the US forces.⁵

On 5 February 2005, United Nations Independent Expert on Human Rights in Afghanistan, Cherif Bassiouni stated that the foreign forces in Afghanistan have taken upon themselves the right, without any legal process, of arresting people, detaining them, mistreating them and possibly even torturing them.⁶ Eleven Kuwaiti detainees alleged that they had been subjected to abuses including beatings with chains, electric shock and sodomy by U.S. troops in Afghanistan and Pakistan before they were sent to the prison camp at Guantanamo Bay. Some of them even confessed of being members of ousted Taliban regime or the Al-Qaida terror network to escape abuses.⁷

New evidence released by US army to the American Civil Liberties Union after a long legal battle revealed that US forces in Afghanistan were engaged in widespread Abu Ghraib-style abuse, taking “trophy photographs” of detainees and carrying out rape and sexual humiliation in the main detention center at Bagram near Kabul and at a smaller US installation in the southern city of Kandahar.⁸ On 19 December 2005, New York-based Human Rights Watch charged the US of running a secret prison known as dark prison where suspected terrorists were held in total darkness for days together from 2002 till about last year. The prisoners were chained to the walls, deprived of food and drinking water and continuously subjected to loud heavy-metal or rap music in order to disorient them and break down their will. HRW further alleged that the prison was inaccessible to the International Committee of the Red Cross (ICRC) or other independent agencies.⁹

In the last week of September 2005, two US soldiers identified as Army Sgt. Kevin D. Myricks and Army Spc. James R. Hayes were reportedly charged with assault of two detainees that included conspiracy to maltreat, assault and dereliction of duty. The two soldiers allegedly punched the two detainees in the chest, shoulders and stomach in early July 2005 at a military base in southern Uruzgan province.¹⁰

b. Violations of the right to life

There were reports of serious violations of the right to life at the hands of the coalition troops and the Afghan security forces due to disproportionate use of force.

On 1 March 2005, US troops reportedly killed a woman and two children in a firefight with Taliban in Mohammad village in Paktika bordering Pakistan. In another incident on 2 May 2005, a village boy was reportedly killed in Kunar province in clashes between US troops and Taliban.¹¹

On 11 May 2005, four persons were reportedly killed and seventy-one were injured when Afghan police and the US troops opened fire on protestors who turned violent while demonstrating against a report of desecrating the Quran by the US investigators in Jalalabad.¹²

The coalition forces often failed to make distinction between the combatants and non-combatants, especially during aerial bombings. On 1 July 2005, seventeen civilians including women and children were reportedly killed when the US warplanes bombed a suspected Taliban hideout at Chichal village in Kunar province during a search for the team of elite US soldiers who went missing since 28 June 2005.¹³

The coalition soldiers were also accused of burning of two dead Taliban rebels in October 2005 in contravention of

international law and the tenets of Islam. According to Islamic customs, cremation of corpses is banned and bodies of the Muslims must be buried.¹⁴

The Afghan security forces too have been accused of torture and custodial death. In early July 2005, a teenage boy identified as Mohammad Sadeq was allegedly tortured to death in Frayab police custody in Maimana district. Sadeq was arrested on charges of kidnapping and indulgence in homosexuality in June 2005. While the police claimed that the boy had hanged himself, the relatives of the victims alleged that he was killed by the police in cold blood at the police headquarters.¹⁵

An investigation into the beatings and deaths of two Afghan detainees, Dilawar and Habibullah, which was completed in October 2004, found that both the deaths were homicides and noted that both men had sustained blunt-force injuries to their legs. They were also chained to the ceiling for prolonged periods. Disciplinary proceedings had been initiated against only two low-ranking reservists, Willie Brand and Sgt. James P. Boland of the 377th Military Police Company, based in Cincinnati. Willie Brand was charged with involuntary manslaughter in the death of Dilawar, whose body was found on 10 December 2002 in an isolated cell used for interrogations at Bagram Air Base. Further, he had been charged with aggravated assault, simple assault, maiming, maltreatment and false swearing under oath. Sgt. James P. Boland was charged with assault, maltreatment and dereliction of duty in Dilawar's death and with dereliction of duty in the death of other detainee, Habibullah on 3 December 2002.¹⁶ Sgt. Selena M. Salcedo, 24, pleaded guilty to dereliction of duty and assault and admitted that she kicked prisoner Dilawar, grabbed his head and forced him against

a wall several times. She was demoted but spared a prison sentence.¹⁷

III. Judiciary and administration of justice

Pursuant to Article 11(2) of the Bonn Agreement of December 2001, the Afghanistan's Interim Authority established a Judicial Commission through a Decree No. 1243 on 21 May 2002. As the Commission bogged down in bureaucratic hitches and political rivalries, a new Commission namely Judicial Reform Commission (JRC) was appointed on 2 November 2002 with the mandate to rebuild the domestic legal system "in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions". The JRC is responsible for preparing drafts of new Criminal, Criminal Procedure and Family Codes, and for surveying the existing judicial system in Afghanistan.¹⁸ As the JRC addressed many challenges; several critical laws were drafted or adopted in the intervening months.

Although Chapter 7 (Articles 116-135) of the Afghan Constitution of 2004 provides for the establishment of an independent judiciary, the Afghan judiciary was rudimentary in terms of legislations, physical infrastructure and human capacity. Approximately one fourth of the judges have not completed high school education.¹⁹ The lack of qualified judicial personnel posed serious hindrances to the proper functioning of the courts, and judgments were found to be often based on judges' personal understanding of Islamic law and tribal codes of honor. Pressure from public officials and the families of accused persons also threatened judicial impartiality. Trials were usually public and decisions made through the *shura* system were made collectively by groups of local elders.

Defendants have the right to be present and to consult with an attorney and have the right to appeal.²⁰

Approximately 80 percent of all disputes went to shuras for decisions. All the judges of the country's Supreme Court including Chief Justice Fazel Hadi Shinwari are religious scholars and their interpretation of laws were found to be more based on Islamic (Sharia) laws than internationally accepted principles of administration of criminal and civil justice. Both Chief Justice Shinwari and Deputy Chief Justice, Abdul Malik Kamawi, have been members of the militia group, the Ittehad-e-Islami led by Abdul Rab Rasool, since the anti-Soviet resistance days of the 1980s.²¹

Afghanistan government has reportedly been focusing on the Supreme Court, while leaving aside the justice system as a whole that was considered rotten. While the German government has trained tens of thousands of Afghan police, efforts to revamp the court system - led by Italy - have lagged behind, with few judges or prosecutors trained enough to know how to handle the cases that the Afghan police hand over to them.²²

Under the law, defendants have the right to be represented by an attorney, but this right was inconsistently applied. There had been a lack of awareness of the constitutional rights. There was also no functioning public defender system. Defendants were not allowed to confront or question witnesses. The courts reportedly heard cases in sessions that lasted only a few minutes. In cases involving murder and rape, judges generally sentenced convicted prisoners to execution, although relatives of the victim could instead choose to accept other restitution. Under the new constitution, capital punishment is conditional upon approval of the President of Afghanistan. Local elders and shuras sen-

tenced persons to unsanctioned punishment including flogging or death by stoning, as well as ordering, in murder cases, the defendant to provide young girls in marriage to the victims' family. In such proceedings, the accused typically had no right to legal representation, bail, or appeal.²³

IV. Effectiveness of National Human Rights Institutions

Pursuant to the Bonn Agreement (Agreement on Provisional Arrangements in Afghanistan pending the Re-establishment of Permanent Government Institutions), the Afghanistan Interim Administration led by Hamid Karzai established the Afghanistan Independent Human Rights Commission (AIHRC). Following signing of a Decree by the President of the Interim Administration of Afghanistan on 6 June 2002, the Commission commenced its operations. On 7 January 2004, the Commission became constitutionally entrenched following the adoption of a new Constitution by the Loya Jirgah (the Afghan Grand Assembly).²⁴ On 14 May 2005, Afghanistan President Hamid Karzai endorsed the Law of Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission (Decree No. 16).²⁵

The functions of the AIHRC are - monitoring the situation of human rights in the country; promoting and protecting human rights; monitoring the situation of and people's access to their fundamental rights and freedoms; investigating and verifying cases of human rights violations; and taking measures for the improvement and promotion of the human rights situation in the country.

The AIHRC played a critical role on transitional justice, promoted the rights of women and children, and investigated

reports of human rights abuses.²⁶ In 2005, AIHRC received around 268 human rights complaints which reflect 4236 cases of various human rights violations. 42 other cases have been specified during monitoring missions. More than 85 % of these cases have been addressed and resulted in positive consequences that prevented human rights violations.²⁷ It also received 113 complaints of human rights violations at the hands of the Coalition Forces between June 2004 and May 2005.²⁸

Given the fact that some of the warlords and local militia commanders (up to 60 % deputies in the lower house)²⁹ who perpetrated serious rights abuses during the three decades of war, were elected and still in power, AIHRC faced threats while pursuing cases involving these warlords and militia commanders. On the night of 10 November 2005, house of one of AIHRC's Jalalabad Regional Office female staff members was attacked with grenade.³⁰

The AIHRC had also been denied access to the detention centres manned by the coalition forces.

In 2005, the AIHRC had been instrumental in the passing of a number of key pieces of legislation and approval of policies such as Prison Management Law, and the Juvenile Justice Law (Laws of Investigation on Children's Violations).³¹

V. Repression on human rights defenders /aid workers

There were reportedly more than 2,400 national and international registered NGOs operating in Afghanistan. On 30 May 2005, 90 national and international NGOs signed a new NGO code of conduct to regulate their activities in the country. The NGO code of conduct makes the NGOs accountable and transparent and makes it mandatory to make available their financial and activity reports upon

request by relevant and interested parties.³² On 15 June 2005, President Karzai signed the new NGO law namely, Law on Non-Governmental Organizations,³³ which replaced the Regulation for the Activities of Domestic and Foreign NGOs in Afghanistan (NGO Regulation), enacted in 2000 by the Taliban regime.³⁴

The NGO workers faced serious threat from the armed groups. In 2005, 31 aid workers lost their lives at the hands of the armed groups while 23 aid workers were killed in 2004, 12 were killed in 2003.³⁵

Both Afghan and foreign aid workers were targeted. On 22 February 2005, two Afghan aid workers identified as Zahir (driver) and Mohammad Nadir (pharmacist) were reportedly found dead on a road in Maiwand district of Kandahar province. The car they had been driving was stolen and they were shot with Kalashnikovs.³⁶ In another incident on 28 September 2005, unidentified gunmen suspected to be robbers reportedly shot dead an Afghan staffer of a non-governmental organization identified as Nasratullah, resident of Kohistan district of the Kapisa province, while his Bangladeshi colleague, Shaheedullah sustained injuries while on the way to office in the Chinki area of Saidkhel district in Parwan province. The victims were employed with the Bangladesh Rural Advancement Committee (BRAC) that works for reconstruction activities in Afghanistan.³⁷

Among the foreign aid workers, on 16 May 2005, Clementina Cantoni, an Italian aid worker of CARE International was reportedly abducted by four armed men after stopping her vehicle on a street in the center of Kabul.³⁸ She was released after 24 days of captivity. Cantoni had been in Afghanistan for three years working on a woman's program for Afghan widows.³⁹

VI. Violence against women

Although there have been some improvement in the situation of women in Afghanistan during 2005 in terms of access to public life, education, health care, and employment, they continue to suffer from discrimination, violence, poor health, illiteracy, and poverty across the country. Their lack of access to even the basic amenities is depicted by alarmingly high maternal death rate of 600 per 100,000 women. Some 70 pregnant women died every day often during childbirth.⁴⁰

Violence against women such as domestic violence, forced marriage, trading off to settle disputes or debts, rapes, and child marriage remained endemic in Afghanistan. In view of the societal acceptance of violence against women, victims have rare chances of redressal. The existence of gender-biased laws and the failure of the government to bring about changes in such laws have contributed to persistence of violence against women.

a. Restrictions on participation in public life

The appointment of Habiba Sorabi⁴¹ as the new and first female provincial governor of Bamiyan on 2 March 2005 could be described as a landmark development with respect to empowerment of women in Afghanistan. Article 22 of the 2004 Constitution of Afghanistan prohibits any kind of discrimination based on gender.

However, women continued to face discrimination for access to public life as the country struggled between the Sharia law and the Afghan constitution. Female police officials, who were appointed following the establishment of a female police unit in February 2004 faced discrimination from their male colleagues. Six female police officers in Kunduz spent the first four months on the job cleaning the

police station. They were paid \$60 (3,000 AFNs), \$10 dollars (495 AFNs) less than their official salary, and they were forced to wear burkas (veil) over their uniforms because of the threats of violence.⁴²

Some local authorities excluded women from all employment outside the home. In some areas, women were forbidden to leave the home except in the company of a male relative. Women in Logar province were prohibited from traveling to the area of town where a community radio station was based, and male journalists were often not allowed to interview women. In Paktika Province, female parliamentary candidates were not allowed to leave their homes while girls were forbidden from attending schools and needed the permission of their male elders to conduct activities outside the home. Even in Kabul, male relatives had forbidden some female students from attending universities outside the country.⁴³

By 12 August 2005, 50 of the total 350 women candidates had reportedly withdrawn their candidacies from the 18 September 2005 parliamentary elections. They were threatened with personal harm by Islamic militant groups as well as by ordinary people who oppose public role for women in Afghan society.⁴⁴ On the night of 1 October 2005, some unidentified men broke into the house of election candidate Dr Torpekai Alam in the eastern Nangarhar province and gave her a sound thrashing. Dr Torpekai had earlier received threats.⁴⁵

A large number of women in Zabul, Nangarhar, Khost and other provinces were deprived from exercising their right to vote in the 18 September 2005 Parliamentary elections partly because of Joint Electoral Management Body's failure to set up separate polling centres for women and alleged attempts at rigging and also because male relatives disallowed reg-

istration of women as voters.⁴⁶

b. Forced marriage and domestic Violence

Forced marriages have long been a custom in Afghanistan. Daughters have been used as currency to settle debts, to facilitate advantageous, if expensive, marriages for male children, or to settle inter-family quarrels. Although the practice seems to be on the wane in capital Kabul, it exists all over Afghanistan where women have been virtually reduced to objects of trade. At the end of her 10-day visit to Afghanistan on 18 July 2005, Professor Yakin Ertürk, UN Special Rapporteur on Violence Against Women cited forced and child marriages as the primary source of violence against women and that in addition to being in themselves serious forms of violence, forced and child marriages in combination with polygamy considerably increase the likelihood that women will be subjected to violence within the family, including sexual violence by significantly older males.⁴⁷

Afghanistan's new constitution sets the minimum age of marriage for females at 16 and for males at 18 but these constitutional requirements could hardly prevent the tradition of marrying off under-aged daughters in order to receive money (Baad) or to settle feuds (badal). Nearly 60 percent of marriages in Afghanistan involve girls below the legal age of 16, and some girls were married as young as nine. A study by Afghan Independent Human Rights Commission (AIHRC) reportedly found that 90 per cent of the 500 girls, who had been given away or traded as part of inter family/ clan conflict resolution practices, were less than 14 years old. After marriage, most became the 'property' of the family or individual who received them.⁴⁸

During 2005, at least 144 forced marriages were reportedly performed in south-

ern province of Helmand alone. Majority of these forced marriages were performed to settle feuds "badal" and huge payment of dowry. According to a report of the AIHRC, more than 38 % of the women have been wedded off against their will and consent, and more than 50% of women mentioned that they were not happy with their family life.⁴⁹

Abdullah Ansari Hospital in Herat of Gazni Province received as many as 234 burn women victims during the period between 22 March 2004 and 3 February 2005, and 84 of those women had died as a result of their burns.⁵⁰ Families often attributed these deaths to cooking accidents, most of which in reality because of domestic violence and cruelty.⁵¹

20 year-old Zakira was reportedly forcibly given in marriage by her uncle to a 60-year-old brother of the man, whom he had murdered in order to stop revenge killings between the families. Zakira, who was reportedly ill, was hapless to oppose the settlement than accepting it as fate.⁵²

In September 2005, five months after being married at the age of 12, Lila poured petrol over herself and set herself ablaze in a bid to escape from the constant brutal beating by her 17-year-old husband.⁵³

In November 2005, 25-year-old Nadia Anjuman, well known in literary circles in Afghanistan and neighbouring Iran, died after being severely beaten by her husband in western Herat town. Provincial Police Chief Nisar Ahmad Paikar confirmed that her husband was arrested for the murder.⁵⁴

c. Cultural cruelties and traditional justice system

Despite the fall of the fanatic Taliban regime, Afghans were yet to be free from the hangover of the cultural cruelties and excesses perpetrated by the Majaheedins. Just as the Taliban fighters refused to accept defeat, the spill over of the cultural

excesses of their regime haunted the Afghans, most particularly the women.

According to interior ministry statistics, 558 women met violent ends since the collapse of the Taliban regime. Of these, 274 were murdered and a further 284 women committed suicide. The actual figures could be quite high considering that the Ministry did not receive crime statistics from many provinces and districts.⁵⁵

On 22 April 2005, twenty-nine-year-old Amina was publicly stoned to death near Faizabad, the capital of the north-eastern Afghanistan province of Badakshan following the decision by the local ulema (religious council) to 'sentence' her to death by stoning, after they allegedly found her guilty of adultery. Accused of adultery by her husband, she was reportedly dragged from her parents' house and stoned by her husband and local officials. Amina had reportedly asked her husband, who had been away in Iran for five years, for a separation on the grounds that he could not support her.⁵⁶ On 27 April 2005, Badakshan police reportedly arrested six people, including father of the victim and a local mullah on the charge of killing Amina after the interior ministry sent a delegation to the remote village to probe the incident.⁵⁷

In early May 2005, dead bodies of three women were found dumped near a road outside Pul-e-Khumri town of Baghlan province. Forensic tests reportedly revealed that the victims were raped before being strangled to death. A warning note found attached to the chest of one of the victims, who was working for a Bangladeshi NGO reportedly read, "This is retribution for those women who are working in non-government organisations (NGOs) and those who are involved in whoredom." A group calling itself "Afghan Youths Convention" claimed responsibility for the killing.⁵⁸

On 18 May 2005, twenty four-year-old Shaima Rezayee, former host on a Tolo TV program "Hop", was shot dead at her home in Kabul. In March 2005, shortly after leaving her job, Reyazee told radio interviewers that there were rumors that someone wanted to kill her. In March 2005, a government agency of religious scholars issued a statement publicly accusing Tolo TV and another station of "broadcasting music, naked dance and foreign films, which are against Islam and other national values of Afghanistan".⁵⁹

In early August 2005, 15-year-old Humaira was killed by her fiancé, Salim, who reportedly beheaded her on the charges of flirting with another man.⁶⁰

VII. Violations of the prisoners' rights

Prisons were known for overcrowding, inadequate food, poor sanitation facilities, insufficient blankets, infectious diseases and lack of health care facilities. Several prisoners of Balkh prison were reported to be suffering from mental illnesses as a result of poor prison conditions including lack of space, clean water and medical facilities. Those requiring attention were in need of advanced medical treatment.⁶¹

The Afghan intelligence agency allegedly ran at least two private and illegal prisons while it claimed to have had closed about 36 such detention centers during the past three and a half year.⁶²

In addition, the United States forces operated at least two detention centers in Afghanistan based in Bagram and Kandahar. On 4 August 2005, the US Embassy and the Karzai government signed an agreement on shifting the detainees from the Bagram airbase and the Guantanamo Bay jail to Afghan government custody.⁶³ According to ICRC, there

were reportedly about 500 detainees at Bagram detention center and about 70 detainees at Kandahar at the end of April 2005.⁶⁴ Some of them were detained for as long as two or three years without any trial.⁶⁵ There were reports of torture of detainees at detention centers run by the US forces.⁶⁶ The International Committee of Red Cross (ICRC) was provided limited access. The ICRC was reportedly not allowed to have access to the detainees immediately after their arrest when the risk of torture or mistreatment is at its peak.⁶⁷

There have been reports of more than 6,000 convicted prisoners held in 34 government-run prisons in 8 of the 34 provinces of Afghanistan. Of these, approximately 219 were women, who were housed in 14 detention centers. There were only 31 active rehabilitation centers for juveniles. In the absence of separate juvenile correctional facilities, many juvenile offenders have been detained with adult prisoners in many places including Pul-e-Charkhi Prison.⁶⁸

On 16 January 2005, US forces released 81 suspected Taliban fighters from its detention facility at Bagram. Some of the freed detainees alleged that they had been mistreated and tortured in custody. One Shah Alim, a 19-year-old from the eastern province of Kunar, said that the US forces poured water on him; deprived him of sleep and beat him during detention as part of torture. Another detainee, Abdul Manan, 35-year-old, also from Kunar stated that he had very bad memories of the interrogation because of torture by the US forces.⁶⁹

Cherif Bassiouni, United Nations-appointed independent expert on human rights in Afghanistan complained that prisoners were inappropriately shackled in overcrowded cells and they were exposed to freezing temperatures because of broken and missing windows. He also described

the conditions at Pul-e-Charkhi prison as sub-standard.⁷⁰

VIII. Freedom of the press

During 2005, Afghanistan witnessed a considerably high growth of news outlets, continuing an expansion of the media that began with the fall of the Taliban regime in December 2001. There were over 250 publications registered with Afghan Ministry of Information and Culture in addition to 42 radio stations and eight private television stations.⁷¹

Conservative religious elements clashed with liberal factions over journalists' rights. Those journalists who broached up so-called controversial subjects like religion, women's rights, and regional warlords faced threats, harassment, arrest, and jail as part of an emerging pattern of press freedom abuse that targeted such reporting as "anti-Islamic."⁷²

Article 34 of the new constitution provides for freedom of the press and expression. However, criticizing or writing against the principles of Islam is prohibited. Journalists continued to be harassed, intimidated and threatened by members of the intelligence service during 2005.⁷³ On 13 March 2005, Independent Afghan TV channels, Tolo TV and Afghan TV were reportedly criticized by Afghanistan's national Ulema Council for reportedly airing programs opposed to Islam and national values.⁷⁴

a. State repression

Journalists covering the war against the Taliban were targeted. In early July 2005, Roohullah Anwari and Sher Shah Hamdard of *Radio Free Europe* also popularly known as *Azadi Radio* and photo journalist of the *Associated Press*, Dr. Shoaib with his driver were detained for several days without specific charges while

covering a US military operation against Taliban rebels near Pakistani border in eastern Kunar province.⁷⁵ On 10 July 2005, they were released after reportedly being assaulted in custody.⁷⁶

Local governments too initiated punitive action against the media persons. On 2 September 2005, local authorities of Jalalabad in eastern Afghanistan province of Nangarhar reportedly arrested Ezatullah Zawab, a correspondent of *Pajhwok Afghan News* and editor of *Meena* magazine following his criticism of the province's information, tourism and religious affairs departments of being incompetent.⁷⁷ He was released on 8 September 2005.⁷⁸

On 1 October 2005, Ali Mohaqiq Nasab, the chief editor of *Haqiq-e-Zan*, a monthly woman's rights magazine, was reportedly arrested by police for publishing an article that questioned the severity of punishments for adultery and theft under Islamic law. He was sentenced to two years in prison by a Kabul court after the end of a summary trial on blasphemy charges on 22 October 2005.⁷⁹ On 21 December 2005, the Kabul High Court released Ali Mohaqiq Nasab after reducing his sentence to six months and suspended the remaining three months.⁸⁰

b. Attacks by the AOGs and religious fanatics

The Taliban were responsible for attacking the media especially those allegedly working with the United States. Those killed were Sayed Sulaiman Ashna, senior journalist with *Tolo TV* and *Radio Arman* on 6 June 2005,⁸¹ a radio journalist named Maiwand who was killed in a bomb attack on a military convoy in Do Saraka in the southeastern province of Khost on 22 October 2005⁸² and Fahim Ihsan, reporter for the Mazar Governmental Television, reportedly

killed under mysterious circumstances after receiving death threats and being beaten in connection with his controversial and critical reports on local government officials on his television program *Shere-Ma-Khane-Ma* on 17 December 2005.⁸³

On 14 September 2005, three journalists, Mohammad Taqi Siraj, chief editor of weekly *Bamiyan*, Abdul Baseer Seerat, Kabul film production cameraman and Mohammad Jawad were reportedly kidnapped by unidentified gunmen while working on a documentary film in the Nooristan province. They reportedly managed to escape from captivity while their captors were sleeping during the night of 20 September 2005.⁸⁴

IX. State of IDPs and returnee refugees

Millions of Afghans had fled their homes during the two decades of conflict after the Soviet invasion of Afghanistan in 1979. About 5 millions of them were living in Pakistan while around 2 millions lived in Iran. In 2002, United Nations High Commissioner for Refugees (UNHCR) began a Voluntary Repatriation Programme to assist the refugees to return to Afghanistan both from Pakistan and Iran. Between 2002 and 2005, more than 3.5 millions refugees including over 2.7 millions from Pakistan,⁸⁵ the highest being 445,000 refugees in 2005⁸⁶ and over 1.4 million from Iran returned to Afghanistan. An estimated 2 million refugees still remained in Pakistan while at least 900,000 remained in Iran. About 844,000 out of 1.4 million Afghans who returned home from Iran received assistance from the UNHCR.⁸⁷

Lack of security, land and other resources posed serious impediments to repatriation and rehabilitation of the displaced Afghans. According to the findings

of a census conducted by the Pakistan federal Population Census Organisation with assistance from the UNHCR in February 2005, more than 82 percent (2,517,558 Afghans, out of a total 3,047,225) of Afghans living in Pakistan were reluctant to go back to their country owing to non-availability of means of livelihood, lack of shelter and the fragile security situation.⁸⁸

As the repatriation process had been progressing in a rapid pace, shelter and providing means of livelihood especially to those having large family remained an uphill task. According to the UNHCR, the lack of land to build homes or cultivate had long been among the major challenges hindering Afghan refugee repatriation. Under the Afghan law, government land would only be distributed to eligible returnees in the province of origin as provided on the national Identity card. Besides, the voluntary repatriation scheme mandatorily required a returnee to obtain voluntary repatriation form so as to be eligible to receive land and assistance on arrival in Afghanistan.⁸⁹

In 2005, Afghanistan government began a program of land distribution to over 300,000 returnees and the Afghan Ministry of Refugees and Repatriation had distributed over 13,000 plots of land mostly in provinces of Farah, Logar, Faryab and Parwan.⁹⁰ But the return of such a large number of refugees in a relatively short time created additional pressures for reintegration operations on aid agencies.⁹¹

X. Violations of the rights of the child

Ravaged by conflicts, children in Afghanistan were the worst sufferers of two decades of war. Hundreds of them have been killed while many were sexually assaulted, trafficked and tortured. Approximately, 60 % of children had lost a

family member while 35 % of children had lost their relatives or friends. About 9000 children were disarmed under the disarmament, demobilization and reintegration (DDR) program. Recruitment of children in the Afghan army had reportedly ceased but some of the local commanders continued to retain children for physical and sexual exploitations.⁹²

a. Access to health care

Access to quality health care was limited throughout Afghanistan. For every 1,000 Afghan children born, 165 die within the first year,⁹³ and one of every five children dies before reaching the age of five. This figure stood at 257 infants in 1000 births— the vast majority from preventable diseases like pneumonia, measles, tetanus, diarrhoea, malaria and typhoid. Every year 85,000 children died of diarrhea. According to the AIHRC, only one doctor was available for every 50,000 children.⁹⁴ For 26 million Afghan people, there were just 900 clinics for reproductive health and childbirth. The funds committed by the United States for basic healthcare had reportedly been diverted to building roads just before the Presidential elections in 2004.⁹⁵

On 23 January 2005, the Afghanistan Public Health Minister, Sayed Mohammad Amin Fatemi stated that in the 3rd week of January 2005, at least 28 Afghan children died from outbreaks of whooping cough and measles in Deh Rawud district of Uruzgan and in Gezab district of Dai Kundi provinces.⁹⁶

b. Child labour

There were reportedly an estimated 1 million child labourers aged between seven and 14 years.⁹⁷ Of these, about 60,000 have reportedly been working in the streets. Majority of child labourers were involved in domestic work, a considerable number

of children were involved in heavy and dangerous works, such as construction. On its part, the Afghanistan Government provided vocational training and literacy programmes to around 38,000 child labourers across the country by the beginning of 2005.⁹⁸

c. Trafficking

President Karzai issued a decree mandating the death penalty for child traffickers convicted of murder, and lengthened prison terms. But trafficking of children to Iran, Pakistan, and Saudi Arabia for forced begging, labour, and sexual exploitation were rampant.⁹⁹ In 2005, AIHRC and UNICEF reportedly received more than 150 reports of child trafficking between March and December 2005.¹⁰⁰ At the end of 2005, according to the AIHRC, authorities repatriated 317 children from Saudi Arabia, Pakistan, Zambia, and Oman.¹⁰¹

In 2005, approximately 50 child traffickers were arrested but prosecution of traffickers was inconsistent. Reports indicated that out of a possible 20 suspected cases of child trafficking, two resulted in convictions, three resulted in acquittals, and six were still being prosecuted.¹⁰² The National Plan of Action Against Trafficking adopted in July 2004 had little impact during 2005.

d. Juvenile justice

Under the law, the minimum age for fixing responsibility for criminal offence is 7 years.¹⁰³ While 16 juvenile prisoners including two girls were reportedly released from a jail in Kandahar on 2 October 2005 on President Hamid Karzai's directives,¹⁰⁴ about 134 juvenile offenders were still detained in correction facilities in Afghanistan. In 12 out of 34 provinces, there was no specialized correction center and the children in conflict with the law were being detained with the adult prison-

ers thereby exposing the juveniles to physical and sexual exploitation.¹⁰⁵ Juvenile offenders charged with murder were generally found to be detained with adult prisoners. In Pul-e-Charkhi Prison, many juveniles were detained with adult prisoners.¹⁰⁶ In 2005, there were at least 45 juvenile convicts aged from 7 to 18 detained with adults across Afghanistan.¹⁰⁷ 70% of the 134 juvenile offenders were awaiting trial and the rest were convicted. There were also a number of children detained with their mothers in jail. They have not committed any offences but they have to live in jail because there was no one to look after them at home.¹⁰⁸

e. Attacks on girl child's education

Afghanistan achieved a significant leap in school enrollment over the last couple of years. Half of all school-age children in the country went to school and one-third of them were girls.¹⁰⁹ In 2005, about 6,546,848 students aged between 6 and 18 years attended schools in grades 1-12.¹¹⁰ As per statistics of the United Nations Assistance Mission in Afghanistan, more than half a million¹¹¹ Afghan girls were enrolled in school during 2005. But there were big regional differences in attendance levels. While about 50% of girls went to school in major cities like Kabul, Herat, Mazar-e Sharif and Badakshan, these figures hide dramatic disparities with girls representing less than 15 percent of the total enrollment in nine provinces in the east and south.¹¹² According to UNICEF, 60 percent of girls under 11 - more than 1 million - were still not attending lessons.¹¹³

The fundamentalists stepped up their war against education, burning schools, beating and killing teachers, and threatening parents with death. About two hundred schools in Kandahar and 165 in Helmand were closed for security reasons

following increased attacks on schools, teachers and students by the militants.¹¹⁴

On the night of 23 June 2005, six armed militants reportedly broke into a girls' school in the Baraki Barak district of the central Logar province and set the school on fire after tying the two guards Hamidullah and Noor Hasan to a tree.¹¹⁵

On the night of 12 July 2005, one girls' school was reportedly bombed and two others, one primary school in Char Gosh village and another in Zir Koh area were torched by unknown persons in Shindand district.¹¹⁶

On the night of 21 July 2005, suspected militants reportedly torched a girls' school providing education to 700 in the Charshanba Tipa district of the northern Baghlan province. The teachers and headmaster of the school were warned of dire consequences if they did not stop teaching 'immoral lessons' to the students.¹¹⁷

On the night of 24 August 2005, another girls' school was set on fire by unidentified extremists in the Alingar district of the eastern Laghman province after sprinkling petrol.¹¹⁸

On the night of 29 October 2005, unidentified persons reportedly torched a girl's primary school under renovation in Logar province. The fire destroyed the school, the tents, the chairs, generator and a vehicle.¹¹⁹

On 15 November 2005, Abdul Ali, headmaster of Khanjakak High School in Panjwayi district, was shot dead by two unidentified assailants in front of the students. On the same day, a security guard of a nearby primary school was killed and his body was dumped in a stream.¹²⁰

On 16 December 2005, a school teacher identified as Laghmani of a secondary school was reportedly dragged from the classroom and shot dead at the school gate by two alleged Taliban gueril-

las after he ignored their order to stop teaching girls in Nad Ali district of Helmand province.¹²¹

On 17 December 2005, Taliban militias reportedly attacked a high school in Lashkargah, the capital of the troubled southern province of Helmand and shot dead a guard and an 18-year-old male student. Before leaving the school, the militants called on people to shut down schools and warned them of killing if they did not.¹²²

XI. Violations of International Humanitarian Laws by the Taliban

The Taliban terrorists were responsible for blatant violations of international humanitarian laws including arbitrary killings. Afghan authorities estimated that between 1,800 and 2,000 illegal armed groups were still active across the country.¹²³

A large number of civilians have been killed by the Taliban in indiscriminate firing and land mine explosions. On 3 January 2005, two civilians were reportedly killed when a land mine exploded near the air base in Shindand district in western Herat Province.¹²⁴

On 1 April 2005, four Afghans including two children were reportedly killed and five others injured by unidentified assailants in two separate bomb attacks in southern Kandahar province and northern provincial capital Mazar-i-Sharif respectively.¹²⁵

On 21 September 2005, seven members of a singer group of Aqchi district of Jozjin province were reportedly killed by unidentified gunmen on the border of Jozjan and Balkh provinces while returning from Bargah area of Chamtal district of Balkh province after performing in a wedding ceremony.¹²⁶

On 24 October 2005, six civilians including a child were reportedly killed and three others injured when rockets fired by alleged militants at a US-led coalition convoy 10 miles south of Kabul missed their target and instead hit three civilian cars in which they were travelling on a main north-south road in Logar province.¹²⁷

Dozens of foreign and local aid workers have been killed by the Taliban for undertaking reconstruction works in the south and east of Afghanistan since the overthrow of their government by US-led forces in 2001.¹²⁸ In first week of April 2005, four Indians were reportedly killed and two injured when their vehicle was destroyed in a bomb explosion in Kandahar.¹²⁹ On 18 May 2005, five Afghans, three engineers, a driver and a policeman, working on a United States funded project to end opium farming were reportedly killed in an ambush by alleged Taliban in Helmand province of southern Afghanistan.¹³⁰

On 22 November 2005, Indian engineer Maniappan R Kutty working for Indian Border Road Organization was reportedly shot dead by the Taliban after the deadline set by them for the organization to withdraw within 48 hours was not complied with. He was abducted on 19 November 2005 along with two Afghan police guards and a driver while driving in Nimroz province of southwest Afghanistan.¹³¹

Apart from the security forces, civil officials of the Afghan government have also been targeted by the Taliban. On 20 June 2005, district governor Mullah Sakhi and one policeman were reportedly killed by alleged Taliban fighters in Washer district in Helmand province.¹³² On 21 August 2005, three Taliban gunmen shot dead pro-government religious scholar, Maulvi Abdullah Malang and another person while returning home from a mosque in southern

Kandahar province.¹³³

On 11 November 2005, the deputy governor of southern Nimroz province, Namatullah Yusuf Zai was reportedly shot dead by alleged Taliban militants while driving to Kabul to attend a meeting on peace and reconciliation. Some hours later, a former local district chief, Sher Mohammed Aghunzada was reportedly shot dead by two alleged Taliban insurgents inside a mosque while he was praying.¹³⁴

The so-called collaborators of the United States have been specific targets. On 7 June 2005, a Pakistani truck driver and his assistant were reportedly killed when the Pakistani-owned fuel tanker was attacked by alleged Taliban rebels after it delivered gasoline to a US base at Spin Boldak district in southern Afghanistan. Afghan and US-led coalition forces reportedly arrested five men in this connection.¹³⁵

On 30 June 2005, alleged Taliban fighters reportedly killed nine village elders, four policemen and two other civilians in Lander village in the central province of Uruzgan. The civilians were accused of cooperating with the Americans.¹³⁶

On 10 August 2005, a woman identified as the wife of a local elder, Malik Rozi Khan was reportedly shot dead at her home on suspicion of spying for US led coalition forces in the Mizan District of Zabul Province. The alleged members of the Taliban also reportedly kidnapped the victim's brother and father.¹³⁷

On 13 September 2005, Hameedullah, resident of Hafiz Atash village was killed by alleged Taliban rebels for allegedly providing information to American troops in Khak Afghan district of Zabul province.¹³⁸

Pro-government religious leaders have been specific targets by the Talebans. On 13 July 2005, Maulvi Saleh Mohammad, pro-government religious scholar was shot dead by alleged Taliban insurgents in the southern Helmand

province while on his way to grand mosque where he was a prayer leader. Earlier, Kandahar Ulema Council head Maulvi Abdullah Fayyaz was killed by the Taliban on 29 May 2005.¹³⁹

On 16 October 2005, Mawlawi Mohammad Gul, provincial religious council member of Helmand province was reportedly shot dead by alleged Taliban militants while on his way to home after attending Ramadan prayer in Lashkar-Gah.¹⁴⁰

On 15 December 2005, Mulla Ahmad Shah, a member of Kandahar's Ulema Shoura which is a pro-government council of Islamic clerics was reportedly shot dead by unidentified gunmen in the Kandahar city while going to a mosque.¹⁴¹

On 2 December 2005, head of Shawali Kot district, Ayatullah Popal was reportedly killed along with two of his bodyguards

when a bomb placed under his car by alleged Taliban militants was detonated in Kandahar province. On the same day, one policeman was reportedly killed and five others wounded in an ambush by Taliban fighters while patrolling in Nawzad district in Helmand province.¹⁴²

Those who had participated in the elections were also targeted. On the night of 31 August 2005, Mullah Amir Muhammad was reportedly be-headed by alleged Taliban rebels for supporting one candidate for the September 18th elections in Gareshtak district in the southern province of Helmand.¹⁴³ On 13 September 2005, alleged Taliban militants reportedly shot dead seven civilians after finding a registration paper for the upcoming election in their car in Uruzgan Province.¹⁴⁴ ■

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