

## QUESTIONNAIRE

### ADVISORY COUNCIL OF JURISTS – TERMS OF REFERENCE ON TORTURE

#### BACKGROUND PAPER ON TORTURE

#### ACTIVITIES OF NATIONAL HUMAN RIGHTS INSTITUTIONS:

1. Has your Commission received complaints from individuals or groups claiming torture? If so, how many complaints and please describe some of the most important cases and the role of your Commission in resolving the complaints.

**Yes. This Commission has received 3333 complaints (from inception till January 2005) relating to torture. Some of the important cases and role of this Commission has been described below:-**

- (i) **Case No.12982/96-97/NHRC (File No.24/2623/96-LD)**

**Son of the complainant was picked up by the police of Bhelupur, Uttar Pradesh and tortured to such an extent that he had to be hospitalized to save his life and had to undergo a major surgery of the spinal cord and face multi problems and regular following in the AIIMS. The State Government was directed to pay to the victim interim relief to the tune of Rs.10 lakhs and full medical reimbursement.**

- (ii) **Case No.17171/24/1999-2000**

**Son of the complainant was detained and tortured by the police personnel of Police Station Shikarpur, District Bulandshahar, Uttar Pradesh on the allegation of theft of DAP Manure from the Cooperative Society Store. Medical examination showed that injuries were caused to the person of the victim by some hard and blunt object. The criminal case registered against the victim was finally closed. The SSP, Bulandshahar in his report admitted that the allegation of the complainant stand substantiated and, therefore, criminal case against the Inspector in-charge of the police station has been registered. Commission granted compensation of Rs.10,000/- each to the victims.**

- (iii) **Case No.3069/30/1999-2000**

**The victim along with a few other persons was detained in the police station, Delhi and brutally beaten by the SHO and implicated in false cases. Based on the report of the Director General (Investigation) of the Commission, the Commission reached the conclusion that the Inspector manipulated the record of the police station and the Commission further held that the victim and others were illegally detained. Therefore, the Commission recommended compensation of Rs.10,000/- to all the five victims and the departmental inquiry against the Inspector.**

(iv) Case No.21883/24/98-99

The three victims in this cases were taken away by the Faizabad Police from Kanpur and not produced before the CJM. They were beaten mercilessly by police. Based on the report of the Director General (Investigation) of the Commission, the Commission reached the conclusion that the police had deprived the three persons of their liberty. Therefore, the Commission recommended compensation of Rs.40,000/- to the two victims and Rs.10,000/- to the third persons and action against the errant police personnel was recommended.

(v) Case No.1299/13/98-99

In this case, a police Sub Inspector and 5 Constables stopped the complainant and his friends and allegedly beat them when they were returning from another village. As a result, the left leg of the complainant was fractured. The police report confirmed that the Sub Inspector of Police had misused his official position and the incident occurred outside his area of jurisdiction. Therefore, the Commission recommended payment of immediate interim compensation of Rs.30,000/- to the complainant and the amount may be recovered from the Sub Inspector if the Government so wished.

vi) Case No.64/11/1999-2000

In this case the victim was brutally beaten by the police during a raid on gambling place. On account of brutal beating by the police, the victim spinal cord broke and he was paralyzed from below the neck. During inquiry, a police constable had been placed under suspension and an inquiry had been ordered against him, as also the concerned Sub-Inspector. Subsequently the Confederation of Human Rights Organisations informed the Commission that the victim had died. Accordingly, the Commission directed the State Government to institute criminal action against the concerned police officials for the murder of the victim and also to expedite the departmental proceedings against the police officials. The Commission also recommended that a sum of Rs.2 lakhs be paid by the State Government to the next of kin of the deceased as immediate interim compensation or deduct this amount from the salary of the guilty police officials.

vii) Case No.1432/12/97-98/NHRC

An intimation was received from the Additional District Magistrate, Bhopal about death of an under trial prisoner in the Central Jail of Bhopal. The Commission was thus of the view that the brutal treatment and harassment by the police, and the negligence of the prison authorities and the doctor, had been the causes for the death, which otherwise could have been prevented. Therefore, the Commission directed the State Government to pay an immediate interim relief of Rs.2 lakhs to the next of kin of the deceased and to initiate appropriate criminal and departmental action against all the delinquent police officials, jail staff and medical staff responsible for the death of a man.

2. Has your Commission conducted research on the issue of torture? If so, please provide the results of this research.

**The Statute of the Commission requires it to undertake and promote research in the field of Human Rights (Section 12(g) of the Protection of Human Rights Act, 1993). The Commission has undertaken many research studies. The following studies cover, inter alia , the issue of torture:**

- **Poor People in custody – experience of biases in the Criminal Justice System (On-going)**
- **Rights of Women Prisoners in Indian Jails – a sociological study (on-going)**

3. Has your Commission undertaken awareness and education campaigns relating to torture? If so, please provide details of these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.

**Yes. Following the intervention of the Commission, modules have been introduced on human rights in the Training courses for the police, paramilitary forces and the army and the public servants. The Commission has also organized training programmes and sensitization workshops for judicial officers and based on these programmes has produced a handbook on Human Rights for judicial officers. In addition, the Commission has been organizing training programmes for the Police and Prison officials.**

4. Has your Commission monitored the conditions in and visited centres of detention to assess the conditions in which detainees are kept and the treatment they receive? If so, please provide details of any findings.

**Visits to Jails in various States/UTs have been regularly undertaken by the Chairperson, Members and Special Rapporteurs of the Commission. Mr. Chaman Lal, Special Rapporteur of the Commission and Chief Coordinator, Custodial Justice Cell has frequently carried out detailed inspections of various Prisons at the district and Central level. In addition to making a broad assessment of the living conditions, state of sanitation, extent of medical cover, production in court, overcrowding of prisons, wage claims and the availability of recreational facilities, the Special Rapporteur has also dealt with specific problems of convicts and under-trials. The special needs of women prisoners and children have also been reviewed and commented on.**

5. Has your Commission intervened in court proceedings on the issue of torture? If so, please provide details of the cases, the role of the Commission and the outcome of the cases. Please provide copies of any submissions and court decisions.

**None. No occasion has arisen as yet.**

6. Has your Commission addressed the issue of torture in its annual reports? If so, please provide a copy of the relevant sections.

**Yes. The Commission's annual reports regularly refer to the issue of torture and the work done in this field. Excerpts from the Commission's Annual Report from 2001-02 are enclosed.**

7. If your government has ratified the International Covenant on Civil and Political Rights, Convention Against Torture and/or Convention on the Rights of the Child, has your Commission been approached by the government to contribute to the periodic reports to the relevant Committee, or has your Commission provided a shadow report to the relevant Committees? If so, please provide copies of the sections relevant to the issue of torture.

**The ICCPR and the Convention on the Rights of the Child have been ratified by the Government of India. The Commission in 1994-95 first raised the need for India to accede to the CAT. In order to put forth all its arguments and objections, the Commission presented a comprehensive memorandum to the Prime Minister in April, 1997. This immensely contributed to India signing the CAT on 14<sup>th</sup> October, 1997. However, the CAT has not yet been ratified. The Commission has repeated been urging its ratification as well. The Government has approached the Commission to contribute to the periodic reports under ICCPR and CRC. However, the Commission has not contributed to the periodic reports in order to maintain its own autonomy and independence. The Commission has also not given any shadow report to the UN Treaty bodies.**

8. Does your Commission have regional offices and are these offices involved in torture issues? If so, in what way?

**The Commission does not have regional offices. However, State Human Rights Commissions are functioning in 14 States which act on complaints of human rights violations including torture. Human Rights Cells have been set up in Police headquarters in each State.**

9. Does your Commission work in collaboration with civil society including the private sector, government or UN agencies or multilateral donors such as the World Bank on the issue of torture? If so, in what way?

**Yes. The Commission collaborates with civil society, and the Government, on torture. Recently the Commission undertook a Joint Project with the British Council on "Human Rights Investigation and Interviewing Skills" and "Strengthening Role of Human Rights Cells in State Police Headquarters to improve Custody Management".**

10. Has your Commission identified laws/policies/practices in your country that impact on torture?

**The Commission recommended the insertion of Sec. 114(b) into the Indian Evidence Act 1872, where a rebuttal presumption be introduced that injuries sustained by a person in police custody may be presumed to have been caused by a Police Officer. The Commission has also supported the recommendation of the Indian Law Commission that Sec. 197 of the Criminal Procedure Code (CrPC) be amended to obviate the necessity of governmental sanction for the prosecution of a Police Officer where a prima facie case has been established.**

11. Has your Commission proposed legislation relating to torture, or helped develop national police?

**No. However, it has suggested a number of changes to existing laws to address the issue of Torture. (please see response to question 10)**

## **DOCUMENTATION**

Constitutional Provisions relating to

- Torture, including references to other ill-treatment and refoulement or extradition; and
- Relevance of international law in the domestic jurisdiction

**The Constitution of India lays down under Article 21 that “no person shall be deprived of his life and personal liberty except according to the procedure established by law”. Article 22 of the Constitution further provides protection against arrest and detention in certain cases.**

Relevant legislation referring to:

- Torture and other forms of ill-treatment
- Treatment of individuals in all forms of detention
- Legal and other safeguards aimed at the prevention of torture

The Supreme Court gave a number of judgments on the issue of torture. It held that the Right against torture is a fundamental right of each individual.

### Indian Laws against torture

#### **- The Indian Penal Code**

**Section 220 – Indian Penal Code punishes a person, who having authority commits for trial or confines any person knowing that in doing so, he is acting contrary to the law**

**Section 330- Indian Penal Code punishes voluntary causing hurt for extorting confession of any information, which may lead to be detection of an offence.**

**Section 331- punishes voluntary causing grievous hurt to extort or compel restoration of property.**

**Section 376(2) - Punishes rape committed in police custody**

**Section 376(B) - Punishes for sexual intercourse by public servant with woman in his custody.**

### **The Indian Evidence Act 1872**

**Section 25 - of the Indian Evidence Act states that no confession made to a police officer shall be proved as against a person accused of any offence.**

**Section 26 - of the Act state that no confession made by any person whilst he is in custody of police officer unless it is made in the immediate presence of a Magistrate shall be proved as against such a person.**

### **The Code of Criminal Procedure 1973**

**Sec. 41-44 Cr. P.C. enumerates the circumstance under which, police officer shall be proved as against a person accused of any offence.**

**Section 49 - provides that the person arrested shall not be subjected to more restrain than is necessary to prevent his escape.**

**The Code also provides certain rights to the arrested persons, which act as legal safeguards. The detainee has the right to be taken before a Magistrate without delay under Section 56 and 76). He has the right not to be detained for more than 24 hours without judicial scrutiny (Sec 57 and 76). He also has the right to be examined by a medical practitioner at the request of the arrested person (Sec. 54).**

**The Supreme Court of India, in a series of judgments, has clearly outlined the ethical obligation of law enforcement agencies. Landmark**

**judgments in this arena include D.K. Basu Vs West Bengal (1996) and Joginder Kumar Vs State of Punjab.**

### **ISSUE RAISED IN THE TERMS OF REFERENCE**

1. Do the police and other disciplinary forces in your country currently follow set minimum standards of interrogation?

If so, are you able to provide a copy of these minimum standards.

**Set minimum standards are laid down under the Code of Criminal Procedure 1973. These are to be read with important judicial pronouncements by various courts including the important rulings pronounced by the Apex Court in the country. Specific training about minimum standards of interrogation as well as interrogation methods is provided to police / disciplinary forces officials during induction training as well as refresher courses.**

2. Do your national courts recognize customary international law as a source of law to be complied with? Include any cases that refer to the rule of customary international law prohibiting torture.

**Yes, customary international law is recognized as one of the sources under the Indian law for compliance so long it is not in conflict with statutory law.**

3. Does your Constitution or national law allow for any derogation from the prohibition on torture and other forms of ill-treatment? If so, please provide the relevant sections.

**No**

4. Set out any legislation, rules or practices of courts in admitting or rejecting any statement that is made by an accused as a result of torture or any other form of ill-treatment?

**The Indian Criminal Courts while considering the matters of admission of statement made by the accused follow the provisions in the Indian Evidence Act and the Code of Criminal Procedure.**

5. Describe the remedies available and provided in practice to victim of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms and medical rehabilitation.

**Victims of torture can approach senior police officers, criminal court of law, the National Human Rights Commission as well as invoke the writ jurisdiction of the High Court and Supreme Court for making complaints and seeking redressal/compensation and medical rehabilitation.**

6. Provide information about the protection afforded to persons being forcibly returned to a country in which they may face torture or other forms of ill-treatment.

**The provisions of international law and international treaties are followed in these matters.**

7. Have the national courts been asked to consider any cases of alleged torture that have taken place outside the territory of your country and not involving citizens of your country? If so, please describe the position of national courts in exercising their jurisdiction in such cases. For example, General X was a Balkan military officer accused of torturing civilians during the regional conflict. He is currently holidaying in your country. What would the position of your national courts be if they were asked to try him for torture?

**In such matters our courts cannot exercise jurisdiction**

8. Have the national courts considered the extent of their jurisdiction over international intervention forces? If so, please provide details of the cases and copies of the judgments, if possible.

**NO**

9. Describe the nature and extent of procedures and safeguards, both legal and practical, in place to protect against torture by non-state actors.

**Ample provisions have been made in the Indian Penal Code / Code of Criminal Procedure 1973 to protect against torture by non-state actors as well as action in the even of commission of torture.**