



A Human Rights Watch Submission to the Office of the High Commissioner for Human Rights regarding the Universal Periodic Review of the Republic of India

1. Issue of concern: Impunity

India has always claimed an abiding commitment to the protection of human rights. When India sought election to the Human Rights Council it reinforced those commitments by making several voluntary pledges. In seeking re-election to the Council in May 2007, the Indian government stated it believes “that in a truly pluralistic society, the growth and well-being of citizens can only be guaranteed through a culture of protection and promotion of human rights.” Despite the existence of laws protecting human rights, India has failed to properly implement laws and policies to protect its marginalized communities, particularly Dalits, tribal groups, religious minorities, women and children.

Beyond failing to implement laws that vindicate human rights due to a lack of genuine political will, India has also maintained other laws shielding abusers of human rights—so that perpetrators remain unaccountable. Impunity is a major problem in India; serious crimes perpetuated by security forces are rarely investigated or prosecuted. Especially during counter-insurgency operations, security forces in India have been responsible for abuses such as extrajudicial killings, “disappearances”, and torture, especially in Punjab and Nagaland in the 1980s, and currently in Jammu and Kashmir, Assam and Manipur, and in states where there is a Maoist insurgency.

Human Rights Watch has investigated and reported a pattern of impunity due to Indian government policy. Our recent investigations in 2006 and 2007 have revealed an ongoing failure to prosecute those responsible for human rights violations during counter-insurgency operations in Punjab from 1985-1996 and continuing violations in Jammu and Kashmir.

Impunity occurs because there is reluctance by the government to hold its officials and troops accountable. A series of Indian laws also make it difficult or impossible to prosecute abusers employed by the state. In particular, police and paramilitary forces are protected under Section 197 of the Criminal Procedure Code, which provides that no court will recognize any offence alleged to have been committed by a public servant (including a member of the armed forces) in the discharge of official duty without the express sanction of the federal government. Permission to prosecute is rarely granted, even when an investigation has strong evidence of human rights violations.

The army is provided with additional immunity when they are deployed in areas of internal conflict under the Armed Forces Special Powers Act. Under this Act, no prosecution, suit or other legal proceeding shall be brought, except with the express sanction of the federal government against any person regarding anything done or purported to be done in exercise of the powers under this Act.

With such impunity provided to police and armed forces, abuses such as extrajudicial killings occur not only in counter-insurgency operations, but even in regular implementation of law and order. Even worse, there are incentives to kill suspected militants or dangerous criminals through rewards and promotions. For instance, in February 2007, police investigations into a “missing person” case of a carpenter Abdul Rahman Paddar in Jammu and Kashmir exposed a culture of extrajudicial executions where people are killed in custody by security forces who construct faked “armed encounters” with militants or criminals, staging executions to look like acts of defense. Policemen arrested for the killing of Paddar were also accused of executing four others, all in an effort to claim cash rewards handed out to teams that kill foreign militants. In April 2007, three policemen were arrested for constructing a “faked encounter” in Gujarat, killing a man in custody and falsely claiming he was a Lashkar-e-Toiba militant.

These cases are among the small handful that are properly investigated. Often the police or army’s argument of an “armed encounter” is accepted, although many officials privately admit to Human Rights Watch that extrajudicial executions are widespread. For instance, it is widely acknowledged that there are some policemen in Mumbai celebrated as “encounter cops” who claim to have shot down scores of criminals. While armed rebellions or criminal gangs pose a serious challenge to India’s national security, the lack of accountability of police and armed forces in fact leads to further violence and further human rights violations.

There has also been a failure to vigorously prosecute public officials, including police as well as politicians and their supporters, for their involvement in mass attacks on religious minorities, whether it was the attacks upon Sikhs in 1984, or upon Muslims in 1993 and in 2002. This is despite existing findings by government inquiry commissions such as the Nanavati Commission and the Srikrishna Commission that cited involvement of government officials in the mass killing of Sikhs in 1984 and of Muslims in 1993, respectively.

Although the Indian government claims that it has internal systems of inquiry and punishment to tackle violations by security forces, details of any prosecutions or convictions through such measures are seldom available. The families of victims in areas of armed conflict say that while militants (who are also responsible for human rights abuses) are eventually brought to justice, soldiers and paramilitaries are routinely shielded by their uniform, civilian superiors, and by laws that make it extremely difficult to prosecute them in civilian courts. Impunity not only affects victims and their families, but it leads to cynicism and distrust of authority in communities.

We cite as examples two well known cases of killings of prominent human rights defenders where perpetrators have not been brought to justice. The problems in securing justice in these cases reflect how difficult it is for an ordinary citizen to access justice when a crime is committed by state officials.

Jalil Andrabi, a human rights lawyer in Kashmir, was killed in March 1996. Under High Court orders, a special police team investigating the killing identified Major Avtar Singh and some other soldiers under his command as responsible for Andrabi's abduction and killing. Some 11 years later, Major Singh and his men have yet to be brought to justice and Andrabi's lawyer says that Major Singh has been allowed to immigrate to Canada.

Jaswant Singh Khalra, a human rights activist in Punjab, was killed in October 1995 after he exposed thousands of secret cremations by the Punjab police. It took ten years before a judge finally convicted six police officials for their roles in the abduction and murder of Khalra. During this time, police had attempted to intimidate key witnesses by framing false criminal cases against them which ranged from bribery, rape and robbery to establishing a terrorist organization. Eyewitness testimony implicates then-Director General of Police, KPS Gill, in Khalra's illegal detention, torture and eventual killing. However, as of November 2007, the Central Bureau of Investigation has yet to act upon a pending petition from Khalra's widow requesting prosecution.

2. The Government of India's actions to address impunity

Various committees have been set up to address issues of impunity and accountability particularly in areas of armed conflict. However the findings of such committees are often not publicly disclosed and/or routinely ignored.

In November 2004, following protests in the northeastern state of Manipur after the extrajudicial execution of a woman by security forces, the central government set up a five-member committee to review the Armed Forces Special Powers Act. The review committee submitted its report to the Home Ministry in June 2005. The report has still not been made public and no further action has been taken. A leaked copy shows that the committee recommended a repeal of the Armed Forces Special Powers Act.

In April 2007, a working group on Jammu and Kashmir appointed by the prime minister and led by Mohammad Hamid Ansari, now vice president of India, also recommended the repeal of laws sanctioning impunity, such as the Armed Forces Special Powers Act. The Indian government has not acted on either of these recommendations.

The government of India refers to the existence of the National Human Rights Commission (NHRC) as its symbol that human rights violations are being prevented and addressed. The government claims that its national human rights bodies have genuine autonomy and powers of investigation. In reality,

members and chairpersons of the NHRC are political appointees and this can reflect on their functioning.

The National Human Rights Commission cannot independently investigate violations by the armed forces under Section 19 of the Human Rights Protection Act. It can only seek a report from the central government and make recommendations. Since such reports are sought from the very agency that is accused of the violation, they rarely uncover abuses. According to the NHRC itself, this causes serious problems in determining accountability for human rights abuses committed by troops in areas of armed conflict. The NHRC complained in its 2002 Annual Report that government spokespersons, even at the highest levels, have misrepresented its powers and referred to the existence of the Commission, “[a]s a sure defense against violation of human rights by armed forces when allegations of such violations are brought against them. The Commission finds this tendency to use it to provide an alibi for possible wrong doing by the armed forces disturbing, to say the least.”

In a case related to the mass killings and secret cremations of thousands of civilians by police during counter-insurgency efforts in Punjab from 1984 to 1995, the Supreme Court granted the NHRC extraordinary powers to address all issues related to the case. More than a decade of proceedings later, as the NHRC prepares for final hearings to determine compensation in a small number of cases, it has failed to determine accountability for the killings because it chose to limit the mandate it received from the Supreme Court to only addressing cases where proper procedures were not followed by state authorities in cremating unidentified bodies. It failed to investigate how people died in the first place or hold any officials liable, instead relying on investigations of the Punjab police (the very perpetrators of the crimes) for its findings. Victims and their relatives have faced numerous challenges in pursuing legal cases for accountability in Punjab.

In recent years, the political leadership of India, including the prime minister, has repeatedly said that there will be zero tolerance of human rights abuses. Yet, as long as impunity continues to be sanctioned by law and in practice, human rights violations will occur because there is no effective deterrence.

3. Human Rights Watch’s recommendations

Human Rights Watch calls on the Indian government to:

- Repeal all legal provisions providing effective impunity to government officials such as Section 197 of the Criminal Procedure Code and the Armed Forces Special Powers Act.
- Publicly announce its opposition to human rights violations by making clear that torture, custodial killings, faked armed encounter killings and disappearances will not be tolerated under any circumstances.

- Demonstrate its opposition to such violations by vigorously investigating and prosecuting officials who order, commit or tolerate such practices.
- Ensure all individuals have equal access to justice and right to remedies, and examine the shortcomings in the effectiveness of existing justice mechanisms.
- Amend the Human Rights Protection Act to allow the National Human Rights Commission to independently investigate allegations of abuse by members of the armed forces.
- Provide victims and their beneficiaries with reparations through a prompt and effective procedure that redresses the entire scope of the violations.

Attachments:

Report “Everyone Lives in Fear”: Patterns of Impunity in Jammu and Kashmir

Report Hidden Apartheid: Caste Discrimination Against India’s Untouchables

Report Discouraging Dissent: Intimidation and Harassment of Witnesses, Human Rights Activists, and Lawyers Pursuing Accountability for the 2002 Communal Violence in Gujarat

Report Protecting the Killers: A Policy of Impunity in Punjab, India