

Can we have a world without

By Mukul Sharma

Torture dehumanises both the victim and the perpetrator

JUNE 26 is the International Day in Support of Victims of Torture, marking the 25th anniversary of the adoption of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Sixty years after it was proclaimed, the words of the Universal Declaration of Human Rights remain as relevant as ever, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Torture dehumanises both the victim and the perpetrator. The pain and terror deliberately inflicted by one human being upon another leave permanent scars: shattered bones, twisted limbs, recurring nightmares that keep the victims in constant fear. The damage goes beyond the trauma and suffering of the person who is tortured and those around them: each case of torture weakens the values and solidarity that hold a society together. Prohibition of torture is one of the most basic rules of democratic laws. Yet despite all the efforts to stop it, torture remains widespread in India. It is practised systematically and is relatively common. India is one of the few countries in the world that has not ratified the Convention Against Torture, although it has been a signatory since October 1997. Ratification is necessary for appropriate changes to be made in the prevailing laws, and to enable institutions and authorities to be accountable. (The reminders of the National Human Rights Commission to ensure its ratification by the Indian Government have been well documented in all its annual reports till the latest in 2004-2005). Requests to visit the country by the UN Special Rapporteurs on torture and on

extra-judicial executions remain pending since decades. Torture has not been specially defined in the Indian Constitution or specifically prohibited in penal laws, even when Right to Life and Personal Liberty assures every individual a life of dignity and physical security.

There is a long tradition of judicial activism in India, with courts liberally interpreting the scope of fundamental rights set out in the Constitution. Access by individuals to claim these rights has been assured through the development of Public Interest Litigation: "in the

The judgment referred to international human rights standards and to the fact that Article 21 of the Constitution of India protects the right to life, a provision that has been held by the Indian courts to include a guarantee against torture. It also made general recommendations relating to amendments to the law on burden of proof and the need for police training, and put forward arguments against the right to sovereign immunity for agents of the state responsible for torture and in favour of compensation. The judgment's most far-reaching legacy is its 11 'requirements'

(NHRC) on 11 June 2008, asking Jammu and Kashmir government to pay three lakh rupees to the kin of a deceased subjected to torture during unlawful detention. Banarasi Das Sharma was arrested by the police along with his two sons on May 2, 2000 and kept in PS Pacca Danga, North Jammu for his suspected involvement in espionage. His two sons were let off but he was unlawfully detained for a week and flogged to such an extent that he became permanently crippled. He was released on May 9, 2000 and died on October 19, 2000. On NHRC's notice, the State authorities



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public interest" on issues of fundamental rights on behalf of those unable to do so themselves. In September 1996 the Supreme Court of India made a landmark judgment in the case of Basu v State of West Bengal, expressing concern that 'torture is more widespread now than ever before'. It stated that 'custodial torture' is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward.'

to be followed in all cases of arrest and detention (para. 35). The 'requirements' would, the Court hoped, 'help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation' (para. 39).

Law no deterrent: However, this has not deterred officials from inflicting torture on individuals in their custody, nor others in society to discriminate, humiliate and torture people of particular caste, religion, socio-economic, gender, disability and sexual background. Take, for example, the ruling of the National Human Rights Commission

submitted a report saying that Banarasi Das was kept by the verbal orders of senior officers of Army Intelligence. The Defence Ministry denied its involvement. The Commission after examining the reports from both the J& K Police and the Defence Ministry found that 'though the two authorities have blamed each other yet the fact was that Banarasi Das was kept in detention at Pacca Danga for seven days and the factum of his detention was not entered in the records.'

Campaigns against torture today are more than focusing on stopping the torture of political

Is it torture?

prisoners by the state. Torture and ill-treatment can also be inflicted in many other settings. Abuses such as 'disappearances', harsh prison conditions, excessive use of force in land acquisition and industrialisation by law enforcement constitute torture or ill-treatment. Violence in the community and at home, such as caste attacks and domestic violence, also violate the prohibition of torture, when states fail to address these acts effectively through protection, prosecution and redress.

Despite their many forms, acts of torture share

new developments in India: In the name of fight against terrorism, increasing use of torture, arbitrary detention, unfair trial, suppression of political dissent. However, these do not stop terror

common features. Torture is cruel and inhuman. It should be straightforward. Torture and other cruel, inhuman or degrading treatment are prohibited, full stop. There are no circumstances - war or threat of war, emergency or threat of emergency - that can be used to justify violating this ban. Every human being has the right to be free from torture or other ill-treatment - whether citizen or alien, whether suspected of a crime or not, whether labelled as 'the enemy' or not. Torture is wrong, whatever motivates it and whoever authorises it.

The 'ticking bomb' scenario - the hypothesis

put forward to seek to justify one-off torture to extract information about an imminent attack - is a crude device improvised to manipulate public fears. There is no such thing as one-off torture; torture all too easily seeps across the moral and legal landscape. If used to obtain information, rather than purely to humiliate the individual or spread fear in the community, that information cannot be trusted, let alone used in a fair trial. Torture is an injustice, not a route to justice. It is a threat to long-term security, not a means to win hearts and minds.

Torture is terror: Torture has at least three new developments in contemporary India: In the name of security and fight against terrorism, there is increasing use of torture, arbitrary detention, unfair trial, suppression of political dissent. However, torture does not stop terror. Torture is terror. Second, some of the tools of the torturer's trade seem almost medieval - shackles, leg irons, thumb-screws, handcuffs and whips. However, in recent years there has been a marked expansion in the manufacture, trade and use of other kinds of technology used by security and police forces, especially coercive techniques like narco-analysis, truth serum, brain fingerprinting and others. There is a need to put pressure on governments and on companies to stop this new torture trade. Thirdly, torture is feeding more and more on discrimination and inequality. Discrimination is creating a climate in which torture of the 'other' group subjected to intolerance and discriminatory treatment are taken as accepted. Specific standards and safeguards for the protection against torture of minorities, women, children and others are needed. Ultimately, my security will not be best protected by torturing and ill-treating detainees but by respecting everyone's human rights. **COURTESY THE HINDU**

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