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## Peoples' Vigilance Committee on Human Rights (PVCHR)

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November 28, 2011

Office of the High Commissioner for Human Rights  
Civil Society Unit  
Palais des Nations  
8-14, Avenue de la Paix  
CH-1211 Geneva 10  
Switzerland

**Re: Submission by PVCHR regarding India for the Universal Periodic Review 13<sup>th</sup> session scheduled (21st May - 1st June 2012).**

Dear Sir/Madam,

PVCHR works to ensure basic rights for marginalized groups in the Indian society, e.g. children, women, Dalits and tribes and to create a human rights culture based on democratic values submit information regarding the state of Impunity.

We hope this information will be considered during India's evaluation under the second UPR session of the UN Human Rights Council.

### **India: State of impunity<sup>i</sup>**

It has been 64 years since India – the largest democracy in the world – attained independence. Yet, justice for all is still a far cry. Money and muscle power, together with political string pulling, often result in denial of justice for the hapless, the 'have-nots' ravaged by poverty and illiteracy.

Ironically, even after having shed the colonial yoke, its legacy continues in the administrative framework of our independent India. Atrocities, extortion, fake encounters, refusal to register complaints against the well-heeled, arbitrary arrests on false charges, illegal detention and custodial deaths are in commonplace. In the absence of a modern social audit system, the keepers of the law, who normally perform under a demanding environment, often unleash a 'police raj', especially in rural India.

A crippled National Human Rights Commission (NHRC) and its state subsidiaries with limited recommendatory control and a dysfunctional Legal Aid System depict a gloomy picture indeed. In a system of defunct legal procedures, the economically weaker and socially backward sections often fall victim, languishing in legal tangles where only money talks. Official reports show the impact of 100 days' guaranteed work at Rs 120 a day under the National Rural Employment Guarantee Act (NREGA) is suspect.

The Scheduled Castes, indigenous groups and other backward classes face atrocities and discrimination in all spheres of life. The data collection of 123 survivors in the pilot project under RCT-PVCHR on testimonial therapy, in which 89 per cent of survivors belong to Scheduled Castes, indigenous groups and other backward classes (OBC) verify this. The general impression is that Dalits and tribals not only do menial work, they also form the major source of churning out anti-socials and criminals. Unfortunately, a culture of silence has permeated the society historically. The privileged class is conveniently convinced that they cannot be wrong. That is why one finds most of the custodial torture, violence and deaths that are committed against marginalised and deprived castes going unrecorded. Many Dalits are tortured and subjected to humiliation like being garlanded with shoes, their faces blackened or being forced to ride an ass.

When a person from an upper caste commits any crime, punishment may be meted out after a trial. In the case of the lower castes, however, the entire community is punished, mostly without any trial. This punishment is doled out by the higher castes, with implicit support from the police. It is very common to find the police unwilling to register cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.<sup>ii</sup> This legislation, which is meant to ensure proper investigation by a high-ranking police official within 30 days, is rarely adhered to. As a consequence, the accused often moves out of jail with a lesser sentence.<sup>iii</sup>

According to Justice K Ramaswamy, former Supreme Court judge and member of National Human Rights Commission, police register complaints as ‘code offences’ instead of ‘act offences’ so that upper caste perpetrators do not face severe sentences.<sup>iv</sup> Different human rights institutions like NHRC and National Commission on Scheduled Castes are trying to combat these ‘misdeeds’.<sup>v</sup>

The reluctance on part of the police to register and investigate crimes makes the victims much more vulnerable. The police usually jump to the conclusion that a poor victim will be unable to pay bribes or fight the case for a prolonged period. By this time, the crime evidence is destroyed or has ‘gone cold’, ultimately resulting in a lost battle. Crime victims who do not have the clout of money are unlikely<sup>vi</sup> to be able to get local influential figures to intervene on their behalf, while their perpetrator may have police protection due to political connections.

Most women in India suffer directly or indirectly from the existing norms of a patriarchal society. They become either primary or secondary victims and face all kinds of torture. In a recent case of illegal detention and torture, the wife of Vinod Kumar Gupta<sup>vii</sup> in Uttar Pradesh endured double tier psychological trauma.

In the RCT-PVCHR collaborative study, it appears that 27.64 per cent of the women facing torture and organised violence were psychologically supported through testimonial therapy. In fact, Uttar Pradesh remains at the top in crimes against women, primarily due to rape, torture for dowry and harassment.<sup>viii</sup> Discriminatory and organised action against women includes domestic violence, dowry-linked violence and sexual harassment.

All these are indicative of the extent of the problems and are sufficient to establish that human rights initiatives in India lack a gender perspective. Dalits are considered untouchables in Indian society, yet rape of Dalit women is not

considered a taboo by the upper castes. In fact, the latter uses rape as an instrument of continuous subjugation.

Discriminatory attitudes and lack of sensitisation to the dynamics of crimes involving sexual or domestic violence leave victims without critical police aid or redress to which they are entitled.<sup>ix</sup> The police attitude that domestic violence is primarily of a private nature is the most unfortunate trivialisation of a grave social evil, that too, when the police are empowered to arrest the perpetrator without any warrant.<sup>x</sup>

The Protection of Women from Domestic Violence Act, 2005, was enacted to augment women's immediate protection from violence through emergency relief, including access to temporary protection order and domestic violence shelters.

In reality, the situation, however, depicts a complete reversal. The lawyers and activists say that due to poor implementation of the law, women facing imminent and life threatening violence remains hostage to police attitude. This attitude of the police perhaps stems from its traditional legacy of 'rule of lords', the same as its colonial masters. This is the common bond between the police and the feudal lords in India, which do not believe in the concept of welfare state.

The culture of impunity is the biggest threat to the rule of law in India. Victims are often threatened to make submission or give statements before the magistrate so that the case weakens and nothing happens to the offenders.

If at all the department or the court decides to take cognisance of the statement of the victim and orders an inquiry against the accused police personnel, it directs the superior officer to undertake an investigation. It does this knowing fully well that both work in the same office and the higher officer is familiar with the movements and intentions of his subordinates. In the absence of evidence or weak evidence on cases like custodial torture, encounter or disappearances, the court relies more on the police report, resulting in acquittal in most instances.

The insensitivity of the judiciary and human rights institutions make them extremely culpable in contributing to the 'impunity' that persists and aggravates the problem. Evidence indicates that the poor are increasingly being marginalised. The limitation of the enforceable power of the National Human Rights Commission, India, has been a matter of concern for everyone.

'Legal' impunity is embedded in provisions like Sections 197 and 132 of the Indian Criminal Procedure Code (CrPC), 1973 as well as Section 6 of the Armed Forces (Special Powers) Act (AFSPA), 1958.

In fact, almost every section of the Criminal Procedure Code (CrPC), 1973 provides some kind of impunity. For example, Section 46 empowers the police to shoot to kill any accused charged with a crime punishable by death if that accused person attempts to escape from police custody. The police forces of Andhra Pradesh and Uttar Pradesh have made extensive use of this section to cover up fake encounters, killing hundreds of hapless detainees.

Experience shows that the government habitually denies sanction for prosecution of members of the police and security forces whenever any 'private criminal complaint'

is filed against them. In many cases, the police routinely refuse to record the First Information Report (FIR) against misdeeds of police personnel. In cases where FIRs are lodged following sustained campaigns by the families of victims and human rights defenders, these are never properly investigated.

In the rarest of rare cases, under immense pressure from the public, the government ordered investigations by agencies of state governments or that of the Centre into complaints against police or security personnel. Unfortunately, even when such investigations established prima facie cases against the accused police or security personnel, the guilty persons went unpunished as bureaucrats in the ministries of home and defence denied sanction for prosecution of the guilty.

This practice has divided the citizens of India into two categories – one ruled by law and who can be punished by the law courts for their misdeeds. The other comprises those who are protected and cannot be punished by law courts unless their employer, the State, sanctions their prosecution. The freedom enjoyed by the killers of the Dalits and minorities – be it the Sikhs, Muslims, Christians and Buddhists – whether it was in Parasbigha, Bhagalpur, Delhi, Kanpur, Maliana, Hasimpura, Meerut, Mumbai, Ahmedabad, Baroda or Godhra – bear testimony to this double standard in our administrative system.

### **Prevention of Torture Bill - 2010 and Right to Health**

The Human Rights Information and Documentation Systems International (HURIDOCS)<sup>xi</sup> database of human rights violations tallies 73 forms of torture that takes place in detention. Each technique engenders short-term and long-term consequences, sometimes unique. The likelihood of profound and long-lasting psychological effects from torture is independent of the intensity, nature, or duration of the abuse, although such effects may be partly related to poorly understood psychological attributes of the victim. Torture may attack the body, but the ultimate target is the mind of the victim during, and after, imprisonment.<sup>xii</sup>

Although the UN Convention Against Torture (UNCAT) recognizes that torture can be purely psychological in character and bans “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted”, many policy makers and citizens underestimate the profound and intentional damage psychological forms of torture can produce. The psychological consequences for the individual can be more disabling than residual physical disabilities. Even after the memories of the pain of a physical assault have abated or disappeared altogether, torture survivors tell their therapists of intrusive memories of mock executions and watching or hearing the torture of others.<sup>xiii</sup>

A right to health care for survivors of torture is explicitly stated in the UNCAT that came into force on 26 June 1987.<sup>xiv</sup> The treaty calls on the states to make it as an “*enforceable right.*” Few international treaties provide such an explicit statement of the right to care. The UNCAT calls on states to make the “means for as full rehabilitation as possible” along with other forms of redress, an “*enforceable right.*” The treatment and rights of torture victims are also addressed in other international instruments.<sup>xv</sup>

Testimonies of the survivors studied by PVCHR highlight the urgency of addressing detainees’ right to health. The prison jurisprudence recognizes the inalienable rights

of the prisoners. This right has been upheld by the Supreme Court of India in its landmark judgement in *Parmanand Katara vs. Union of India* (1989). According to Article 12 of the ICESCR, "everyone has a right to enjoyment of the highest attainable standard of physical and mental health." Under United Nations' General Assembly Resolution 44/111, "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation." One way to ensure that all prisoners have access to health services is to link together prison and public health care. The World Health Organization made several recommendations to this effect in the Declaration on Prison Health as Part of Public Health (2003). This right to health care and a healthy environment is linked to the persons with HIV inside the prison, to rights, like non-discrimination, privacy and confidentiality. Prisoners cannot fend for themselves in their situation of detention, and it is the responsibility of the state to provide for health services and a healthy environment. In this context, the testimonial therapy especially emphasizes on the overall well being of the survivors.<sup>xvi</sup>

The health status of prisoners has highlighted the urgency of the role of medical professionals in fighting impunity and establishing right to health. Although medical workers in general do not require knowledge of human rights and law, their ethical duties require them to assume the role of advocates on behalf of their patients. This is particularly true in the closed and isolated environment of prisons, where human rights abuses occur with impunity and where health workers are sometimes the first witnesses of such violations.<sup>xvii</sup>

Guaranteeing Prisoners should highlight (1) Separation of power between the judicial system and medical professionals. There should be proper medical cadre dedicated to service for the prisoner, including psychologists and psychiatrics; (2) specialized training programmes for the prison staff with focus on priority on humanitarian law and rehabilitation.; (3) a through medical profiling of the prisoner at the time of entering and leaving the prisoner; and (4) compulsory medical insurance of the prisoner.

Please do not hesitate to contact us at [pvchr.india@gmail.com](mailto:pvchr.india@gmail.com) if you have any questions or require any additional information.

***Thanking You***

**Sincerely Yours**

A handwritten signature in blue ink, appearing to read 'Dr. Lenin Raghuvanshi', with a flourish at the end.

**(Dr. Lenin Raghuvanshi)**

**Executive Director**

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<sup>i</sup> <http://www.amazon.com/Justice-Liberty-Equality-Critical-Frontpage/dp/9381043043>

<sup>ii</sup> Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1995, Sec. 3. For the discussion of this provision see Human Rights Watch, Broken People: Caste Violation against India's Untouchables (New York: Human Rights Watch 1999). Police fail to register FIR under this Act both due to bias and lack of familiarity with the Act. See also Human Right Watch, Hidden Apartheid: Caste Discrimination against India Untouchables.

<sup>iii</sup> (Justice Ramaswamy, *Attitude and Approach* unpublished paper presented at Judge Colloquium organised by NHRC and HRLN, December, 2005, quoted in National Campaign on Dalit Human Rights, (Shadow Report to the UN CERT 2007)

<sup>iv</sup> (Human Rights Watch, Broken People: Caste Violence against India's 'Untouchables', Human Rights Watch, New York, 1999)

<sup>v</sup> [www.scribd.com/.../National-Human-Rights-Commissions-intervention-in-case-of-police-firing](http://www.scribd.com/.../National-Human-Rights-Commissions-intervention-in-case-of-police-firing)

<sup>vi</sup> K V Thomas , *Corruption in Indian Police*, p.8 Centre for Media Studies and Transparency International India, TII CMS corruption study 2007 with focus on BPL household

<sup>vii</sup> <http://pvchr.blogspot.com/2010/02/india-again-vinod-kumar-gupta-and-his.html>

<sup>viii</sup> <http://ncw.nic.in/>

<sup>ix</sup> National Commission for Women, *Course curriculum on Gender Sensitisation of Judicial Personnel*, April 2009

<sup>x</sup> Section 498 A, Indian Penal Code

<sup>xi</sup> <http://www.huridocs.org/>

<sup>xii</sup> Douglas A. Johnson and Steven H. Miles, "As Full Rehabilitation as Possible": Torture Survivors and the Right to Care, *Realizing the Right to Health* (Ed), Andrew Clapham and Mary Robinson, Swiss Human Rights Book, Vol:3, 2009, Page 217.

<sup>xiii</sup> Dr. Jose Quiroga and Dr. James M. Jaranson, 'Politically-Motivated Torture and Its Survivors: A Desk Study Review of the Literature', in 15(2-3) *Torture: Journal on Rehabilitation of Torture Victims and Prevention of Torture* (Copenhagen: International Rehabilitation Council for Torture Victims (IRCT), 2005. See also [www.irct.org](http://www.irct.org).)

<sup>xiv</sup> <http://www2.ohchr.org/english/law/cat.htm>

<sup>xv</sup> These include: The Standard Minimum Rules for the Treatment of Prisoners (1977); Additional Protocols to the Geneva Conventions of 1949 (1979); the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); International Covenant on Economic, Social and Cultural Rights as elaborated in General Comment No. 14 (2000); the Rome Statute of the International Criminal Court (2002); the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005); and the Convention on the Rights of Persons with Disabilities, 2007.

<sup>xvi</sup> Slim Slama, Hans Wolff and Louis Loutan, *The Right to Health in Prisons: Implications in a Borderless World, Realizing the Right to Health* (Ed), Andrew Clapham and Mary Robinson, Swiss Human Rights Book, Vol:3, 2009

<sup>xvii</sup> Slim Slama, Hans Wolff and Louis Loutan, *The Right to Health in Prisons: Implications in a Borderless World, Realizing the Right to Health* (Ed), Andrew Clapham and Mary Robinson, Swiss Human Rights Book, Vol:3, 2009