

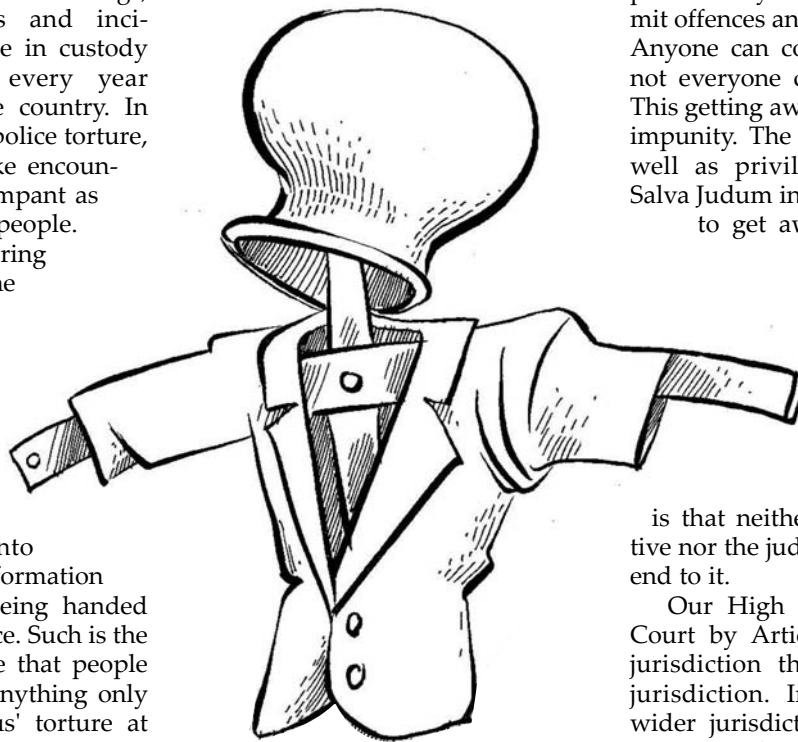
# Terrorism of the police kind

*Neither the State nor organisations like the NHRC are looking at the issue of police high-handedness, bias and extremities of the law that often take the toll of common man's human rights. Unless we seriously address this issue, the State machinery will continue to persecute, torture and execute innocent people in the name of order,* says **K Balagopal**

**S**adly, extra-judicial killings, disappearances and incidents of torture in custody are growing every year throughout the country. In Andhra Pradesh alone police torture, custody deaths and fake encounters have become so rampant as to create dread among people. If one tours the bordering districts of the state, one invariably comes across stories of torture and arrests of common people because of alleged Naxalite connections. People narrate stories of being threatened into revealing whatever information they have to escape being handed over to the Andhra Police. Such is the reputation of the police that people will reveal just about anything only to escape the 'infamous' torture at their hands.

Jammu & Kashmir and Punjab are two states where cases of disappearance run into thousands. Torture is common. Electric shocks given to sensitive parts of the human body is a very common form of torture in Andhra Pradesh. Even more than physical beating, people dread these electric shocks because these destroy a victim's individuality for life.

The police, the army and the



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paramilitary forces are able to commit offences and get away with them. Anyone can commit an offence but not everyone can get away with it. This getting away is what amounts to impunity. The forces of the State as well as privileged gangs like the Salva Judum in Chhattisgarh are able to get away with them. They

have impunity; they commit offences and get away with it. The reason why this goes on year after year, decade after decade,

is that neither the political executive nor the judiciary wants to put an end to it.

Our High Courts and Supreme Court by Article 226 give a wider jurisdiction than the English writ jurisdiction. India does require a wider jurisdiction than the English writ jurisdiction. Why have our courts slavishly followed that principle? They could have institutionalised a different way of looking at it as Article 226 is wide enough to do so but they have chosen not to. They resort to a strange measure of asking the victim to file a private complaint in case of being unjustifiably victimised by police. There is no such way of taking up private complaints in criminal court.

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The magistrate has different ways of taking cognisance. One of the ways of taking cognisance is on a complaint made by someone. Even a phone call received by the magistrate is sufficient to take cognisance. To equate them as equally efficacious ways of initiating prosecution does not make any sense. Prosecution requires investigation. An ordinary citizen does not have any power to search someone's house, to seize any object from anyone, to take anybody into custody or interrogate the person. A citizen probably doesn't even have the power to ask a forensic expert to submit a report on anything. How is then a citizen supposed to prosecute privately? It is not as if the courts do not know this, they do but they have decided not to go beyond this. *Habeas corpus* for them is to convert illegal custody into legal custody and they don't want to go beyond that.

Other institutions like the National Human Rights Commission (NHRC) have also been equally hesitant. As far as torture is concerned, the IPC itself penalises it. You do not require a new law to say that torture for the purpose of extracting information is an offence, as it is an offence under the IPC. If it results in serious injury, the punishment can go up to 10 years of imprisonment, as it is a serious offence under the IPC.

Thirty years ago the Law Commission made a recommendation, "if somebody dies in police custody, there shall be a presumption in law that his death has been caused by the police." Thirty years hence, we still don't find this amendment incorporated in the law today. Amendments that strengthen human rights are seldom allowed.

In the proposed 2006 amendments to the CrPC, the DK Basu guidelines have been incorporated. These guidelines spell out the course of action the police are supposed to take. Yet it does not provide for punishing and prosecuting those police officers who violate the guidelines. It is at par with any other rule or procedure laid down in the CrPC.

We still do not have a set method to follow. There is no initial arrest memo. An arrest memo is the one thing they have adopted from all the DK Basu guidelines. Such a memo is issued on the day they decide to produce the person in court. He may have been in custody for 10-15 days but the day he is produced in court, they produce a memo and obtain signatures very lawfully, following the DK Basu guidelines, from the father/mother/wife and the arrestee's relative knows that if he/she doesn't sign, the person in custody will face the hell and may never see the court. Hence they sign.

Thus DK Basu guidelines have unfortunately, become a way of sanctifying illegal arrests. If tomorrow a person has to go to court, the court will say that your own wife or family member have signed to affirm that you were arrested on the date mentioned and not 10 days before.

The real question is who will prosecute? We all know that in this country to prosecute a police officer and survive is almost impossible. It is a part of impunity that police officers are allowed to wreak vengeance and the State prefers to remain a quiet bystander.

Law allows the NHRC to have its own investigative machinery. The NHRC can use it to investigate the offences of human rights violation on registering complaints. This is provided for both the State Human Rights Commissions (SHRCs) and the NHRC. But the investigative machinery of NHRC has a top-heavy

structure. People like retired DGs of police or other high ranking former police officers are appointed. Sadly, they can give orders with best of intentions but cannot investigate cases of human rights violations themselves. The need is to appoint inspectors or sub-inspectors of police who can actually investigate. In order that all serious allegations of human rights violation can be investigated, a sufficient number of such people need to be recruited. It should be ensured that this force should be recruited separately and not made out of transferred officers from the central or state police forces.

The NHRC has now become an agency that only holds seminars like any other debating forum. It has the power to investigate and make recommendations but the utilisation of these powers still remains a far cry. The NHRC should take all cases of human rights violation under its purview and investigate and not limit itself to the case of violation by the paramilitary or police forces. Since the NHRC does not seem inclined to do so, torture goes on with impunity.

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son taken in custody could cross LoC unless he escapes from custody.

A common plea that police take is that there is public sanction for what we do. In the Chambal valley, we are told that the police are regarded as heroes. They are a brand name there. But if in 1968, 1000 so-called dacoits were killed by them in the Chambal valley and in 2007 the killings are still going

encounter. If not a sizeable section, a highly articulate one does believe that a tough police force is required.

This maybe because of the opinion that is being manufactured, or general sense of insecurity among people. Whatever may be the reason, there is a strong feeling among public mainly middle classes that the criminal justice system is lax. They believe that talks of human rights increases crime and disorder, diminishes security and, thus, the police have to be tough. And only tough police can prevent, say harassment of young college going women by goons. They may well ask for such police force throughout the country that can catch the culprits and parade them naked through the streets. Unless we are able to satisfactorily

answer this element of the consciousness held by whichever section of the public, we

A separate offence of custodial death can be created as happened with dowry death cases. They are no more categorised as culpable homicide or murder. An altogether separate offence, with a presumption clause has been created given the nature and scale of dowry deaths. The courts will never take initiative in these matters because the courts, as much as the political executive, want impunity. And so despite all the sacrifices and efforts of human rights activists in Punjab and J&K, these issues remain unresolved and disappearances continue.

The standard answer given by the authorities is that people cross the LoC to get weapons to fight the Indian forces and, thus, thought to have disappeared. Police is neither asked nor do they answer how a per-

son. This means that something is definitely wrong somewhere. Public sanction to all these actions is flaunted to justify torture and extra-judicial

as human right activists will simply end up simply having dialogues without much meaning.

—The author is a prominent human rights activist

