

South Asia Human Right Documentation Centre

**22 Northend Complex, Ramakrishna Ashram Marg
New Delhi 110001, India**

e-mail: ravinairsahrdc@gmail.com

www.hrdc.net/sahrdc

Landlines 91- 11-23361120 and 91-11-23342717

Mobile number: 91-9810344765

22 September 2016

Submission to the 27th UPR Working Group session on India

South Asia Human Right Documentation Centre

**22 Northend Complex, Ramakrishna Ashram Marg
New Delhi 110001, India**

e-mail: ravinairsahrdc@gmail.com

www.hrdc.net/sahrdc

Landlines 91- 11-23361120 and 91-11-23342717

Mobile number: 91-9810344765

22 September 2016

Submission to the 27th UPR Working Group session on India

Annexure 4

Compensation

Indian citizens, who are unlawfully arrested, detained, tortured, and even killed while in police custody are not guaranteed a right to compensation. International standards require reparations and compensation for victims of violations of fundamental rights. Nevertheless, in India compensation for these offences is only issued at a judge's discretion.

In India, compensation is not an enforceable right. An effective compensation system would deter government officials from criminal activity and encourage victims to bring their cases to

court.¹ Currently, the system or lack thereof does neither in India. A mandatory right to compensation must be established for the victims of State imposed abuse.

Dr. Srikrishna Deva Rao, presently Vice-Chancellor, of the National Law University Odisha, has earlier stated, “The question of compensation and rehabilitation is perhaps the most under exposed problem of overall human rights and now there is a growing awareness and requirement in this area by the national and international community... it is a duty of the state to investigate violations... a duty to afford remedies to victims.”² Additionally, as the South Asia Human Rights Documentation Centre (SAHRDC) highlighted, without compensation democracy is seriously threatened -- “The protection of the State from having to pay just compensation for human rights violations undermines the legitimacy of the Government.”³

Indian Jurisprudence

Article 32 of the Indian Constitution, entitled Remedies for Enforcement of Rights Conferred, states, “(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed, (2) the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate.”⁴

RudulSah v. State of Bihar (1983) was the first case in which the Supreme Court of India interpreted the Constitution, specifically Article 32, to include a right to compensation for victims of unlawful imprisonment. In this case, the petitioner was acquitted on 3 June 1968, but not released from jail until 16 October 1982 fourteen years later.⁵ RudulSah petitioned the court seeking his release as well as compensation for fourteen years of unlawful imprisonment. The Supreme Court held that the petitioner’s right to life and liberty under Article 21 of the Constitution had been violated and that compensation for the deprivation of a fundamental right could be granted under Article 32.⁶ Article 21 of the Constitution states that, “no person shall be deprived of his life or personal liberty except according to procedure established by law.”⁷ The court granted 35,000 rupees in compensation.⁸

Only a year after *RudulSah*, in *Sebastian M. Hongray v. Union of India* (1984), the Supreme Court issued a writ of habeas corpus for the production of two missing persons.⁹ When the army

¹ SAHRDC Human Rights Feature, India: Extra Judicial Killings Under the Spotlight, 23 January 2003, http://www.hrdc.net/index.php?option=com_content&view=article&id=151:india-extrajudicial-killings-under-the-spotlight&catid=12:hrf-fortnightly&Itemid=109.

² Rao, Srikrishna Deva, Gross Violations of Human Rights, Compensation and Rehabilitation: Issues of Law and Policy.

³ SAHRDC Human Rights Feature, Sovereign Immunity and the Climate of Impunity: The Need for Change in India, 20 December 2000, http://www.hrdc.net/index.php?option=com_content&view=article&id=109:sovereign-immunity-and-the-climate-of-impunity-the-need-for-change-in-india&catid=12:hrf-fortnightly&Itemid=109.

⁴ The Constitution of India, 1949, Art. 35 (1-2).

⁵ SAHRDC, Handbook of Human Rights and Criminal Justice in India, Second Edition, 2007 p. 56.

⁶ Id at 121.

⁷ The Constitution of India, 1949, Art. 21.

⁸ SAHRDC, Handbook of Human Rights and Criminal Justice in India, Second Edition, 2007 at 121.

⁹ Redress Trust & Commonwealth Human Rights Initiative, Reparation for Torture in India, Nepal, and Sri Lanka, March 2003 at 24; *Sebastian M. Hongray v. Union of India*, 1984 SC 571.

failed to produce the individuals the Court directed the State to pay one lakh rupees to each of the families.¹⁰

In *Bhim Singh, Mla vs. State of J&K and Ors.* (1986), the Supreme Court ordered the state of Jammu and Kashmir to grant Shri Bhim Singh, a Member of the Legislative Assembly of Jammu and Kashmir, 50,000 rupees for his illegal detention from 10 September 1985 to the 14 September 1985.¹¹ The Court stated, “If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals!”¹² The Court went on to write, “Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct.”¹³ Citing *RudulSahas* precedent the Court found within its power the right to award Bhim Singh monetary compensation holding that there was “no doubt” that his constitutional rights were violated.¹⁴ The Court stated, “In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case.”¹⁵

Additionally, in the 1989 case *Rajasthan KisanSangthan v. State*, the Supreme Court held, “that a person who was mistreated by the police in custody was entitled to monetary compensation regardless of the legality or illegality of detention.”¹⁶ In a similar manner the Supreme Court supported the right to compensation in *Saheli A Women’s Resource Centre v. Commr. of Police, Delhi*(1990). This case resulted in the death of a nine-year-old child at the hands of police.¹⁷ The Supreme Court denied the State’s argument of immunity and awarded a sum of 75,000 rupees in compensation.¹⁸

In *NilabatiBehera v. State of Orissa*(1993), the petitioner’s son was taken into police custody and killed; his body was found on a railway track.¹⁹ Once again the Supreme Court utilized Article 32 to grant monetary compensation. In this decision the Supreme Court also established that High Courts could issue compensation under Article 226 of the Constitution. The Supreme Court ordered the State of Orissa to pay 1,50,000 rupees to the petitioner, the deceased’s father, for this violation of human rights.²⁰

Although these cases helped to establish a right to compensation, the Supreme Court has not interpreted this right as absolute or mandatory. In *Sube Singh v. State of Haryana*(2006), the Court held that, “before ordering compensation, courts will examine whether the violation of the right to life is ‘patent and incontrovertible’, shakes the conscience of the court, and results in the

¹⁰Id.

¹¹*Bhim Singh, Mla vs. State of J&K and Ors*, 1986 SC 494.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Redress Trust & Commonwealth Human Rights Initiative, *Reparation for Torture in India, Nepal, and Sri Lanka*, March 2003 at 24; *Rajasthan KisanSangthan v. State*, 1989 Raj 10.

¹⁷ Redress Trust & Commonwealth Human Rights Initiative, *Reparation for Torture in India, Nepal, and Sri Lanka*, March 2003 at 24; *Saheli A Women’s Resource Centre v. Commr. of Police, Delhi*, 1990, 1 SCC 422.

¹⁸ Id.

¹⁹ SAHRDC, *Handbook of Human Rights and Criminal Justice in India*, Second Edition, 2007 at 56.

²⁰ Id.

death or disability of the arrested person.”²¹ The amount of compensation awarded and if any is awarded at all depends on the circumstances of the case and the judge that is hearing it. This discretion has resulted in many victims not receiving or not even seeking the compensation they deserve. In particular, the Redress Trust noted, “torture survivors have apparently not filed cases... in particular (because of) the resources required to pursue a case, evidentiary hurdles, and the small amounts of compensation awarded, if any.”²²

On top of this jurisprudence, there is *de facto* and *de jure* sovereign immunity for government officials in many respects. The Constitution, under Article 34, grants Parliament the power to establish immunity for anyone acting in support of the government in territories under martial law. Moreover, Article 300 allows the Central or State governments to be sued, but simultaneously grants Parliament power to enact immunity legislation.²³ So far Parliament has only enacted legislation establishing immunity, such as the Armed Forces Special Powers Act (AFSPA), and has not passed any legislation limiting it.

In the 1996 case, *D.K. Basu v. State of West Bengal*, the Supreme Court held, “for the violation of the fundamental right to life or the basic human rights... this Court has taken the view that the defence of sovereign immunity is not available to the State... for the established violation of the rights guaranteed by Article 21 of the Constitution of India.”²⁴ However, awards for compensation and determinations that a case involves a violation of a fundamental right and thus, sovereign immunity is inapplicable are still decisions made by individual judges on their discretion. As the SAHRDC reported, “courts often unjustly dismiss compensation claims in fundamental rights cases.”²⁵ Thus, *de facto* and *de jure* immunity remains an additional barrier, aside from the lack of mandatory compensation, which drastically limits reparation for victims and allows human rights abuses to continue throughout India. In a submission to the National Commission for the Review of the Working Constitution in India, the SAHRDC recommended constitutional reform to prevent immunity from infringing on fundamental rights.²⁶

Nonetheless, within this limited right to compensation, the courts have granted awards in the following situations: where the victim died in police custody, where the victim was raped, where the victim was unlawfully handcuffed, where the victim has been falsely arrested, where the victim was fired upon and killed by police in a public place, where the victim was illegally detained and abused, where the victim was beaten by police, and where the victim was killed in prison or “disappeared.”²⁷

²¹Id at 120.

²² Redress Trust & Commonwealth Human Rights Initiative, *Reparation for Torture in India, Nepal, and Sri Lanka*, March 2003 at 31.

²³The Constitution of India, Art.34, 300(1).

²⁴*D.K. Basu v. State of West Bengal*, 1997 1 SCC 416.

²⁵ SAHRDC Human Rights Feature, *Sovereign Immunity and the Climate of Impunity: The Need for Change in India*, 20 December 2000, http://www.hrdc.net/index.php?option=com_content&view=article&id=109:sovereign-immunity-and-the-climate-of-impunity-the-need-for-change-in-india&catid=12:hrf-fortnightly&Itemid=109.

²⁶Id.

²⁷SAHRDC, *Handbook of Human Rights and Criminal Justice in India*, Second Edition, 2007 at 120-121; Redress Trust & Commonwealth Human Rights Initiative, *Reparation for Torture in India, Nepal, and Sri Lanka*, March 2003 at 25.

In addition to seeking compensation in court, the National Human Rights Commission (NHRC) can grant compensation to the victims of police brutality. This power is granted to the NHRC under the Protection of Human Rights Act 1993.²⁸ Although the NHRC sounds great in theory, in practice members of the human rights community have criticized the NHRC for not recommending compensation in enough cases and for many times recommending too small of an award.²⁹ For example, a 17 year-old girl who was gang raped by police received a recommendation of only 50,000 rupees.³⁰ As the SAHRDC reported, “If the Commission is correct in its analysis of the permanent psychological and social effects of rape, as we believe it is, then why limit compensation to only 50,000 rupees? There is (supposed to be) a punitive component to these awards, not just a compensatory one,” though arguably even 50,000 rupees is not compensatory.³¹

International Standards

In a 1993 report, Professor Theo van Boven, then Special Rapporteur on the right to restitution, compensation, and rehabilitation for the victims of gross violations of human rights and fundamental freedoms stated, “the issue of State responsibility comes into play when a State is in breach of the obligation to respect internationally recognised human rights. Such obligation has its legal basis in international agreements, in particular international human rights treaties, and/or in customary international law.”³²

India is party to international agreements discussing state responsibility. Additionally, India is part of the international community bound by customary international law, so long as such law is not inconsistent with Indian law.³³ Specifically, Article 51(c) of the Indian Constitution dictates, “The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organised people with another.”³⁴ Nevertheless, India has failed to uphold international standards within customary international law regarding compensation, and has taken reservations to crucial articles of relevant treaties, such as the International Covenant on Civil and Political Rights (ICCPR).

Although the Supreme Court interpreted a constitutional right to compensation in *RudulSah* for State violations of fundamental rights India’s reservation to Article 9 of the ICCPR “has virtually blocked a statutory right to compensation.”³⁵ Article 9 (5) of the ICCPR states, “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to

²⁸SAHRDC, Handbook of Human Rights and Criminal Justice in India, Second Edition, 2007 at 121.

²⁹ SAHRDC Human Rights Feature, India’s NHRC Fails to Use its Meagre Powers, September 2007, http://www.hrdc.net/index.php?option=com_content&view=article&id=254:india-s-nhrc-fails-to-use-its-meagre-powers&catid=12:hrf-fortnightly&Itemid=109.

³⁰ Id.

³¹ Id.

³² United Nations document E/CN.4/Sub.2/1993/8; 2nd July 1993, par. 41.

³³ Gramophone Co. of India Ltd v Birendra Bahadur Pandey AIR 1984 SC 667.

³⁴The Constitution of India, 1949, Art.51 (c).

³⁵ SAHRDC Report, Alternate Report and Commentary to the U.N. Human Rights Committee on India’s 3rd Periodic Report, July 1997, http://www.hrdc.net/index.php?option=com_content&view=article&id=15:alternate-report-and-commentary-to-the-u-n-human-rights-committee-on-india-s-3rd-periodic-report-under-article-40-of-the-international-covenant-on-civil-and-political-rights&catid=21:sahrdc-report&Itemid=106.

compensation.”³⁶ Yet, India’s reservation to Article 9 conditions, “under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.”³⁷ This resilient reservation has left a gaping hole in the protection of fundamental rights in India.

In addition to the ICCPR, Article 14 of the Convention Against Torture (CAT) establishes compensation for victims stating, “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.” India signed the CAT on 14 October 1997, but the country has yet to ratify the treaty.³⁸ India should ratify the CAT as soon as possible. The delay in ratification has led to criticism from various NGOs and political actors over the course of the last 19 years, including the Redress Trust and SAHRDC.³⁹ Most recently, on 24 and 25 June 2016 the National Convention in Solidarity with the Victims of Torture met in New Delhi and demanded that India ratify the CAT and enact the Prevention of Torture Bill, a piece of national legislation, which has been pending since 2010.⁴⁰ Additionally, the Convention called on India to facilitate the visit of the Special Rapporteur on Torture whose request for a visit has remained unresolved for years.⁴¹ The Redress Trust has also called on India to accept the Special Rapporteur on Torture’s invitation.⁴² Moreover this past March, the Lok Sabha Committee on Assurances referenced the delay in CAT ratification stating that, “19 years was too long a period to be wasted, when the country earnestly needed to enhance its prestige, image and status abroad as an emerging world power.”⁴³ The parliamentary panel asked the government to ratify the UN Convention, “since there is no place for organised torture in the modern civilised world.”

Further, Principle 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was adopted by the UN General Assembly on 9 December 1988 provides that, “damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to applicable rules on liability.” This resolution is another illustration of how compensation for unlawful arrests and detention, and tort law in India, is lagging far behind international standards.

The UN Commission on Human Rights report on Civil and Political Rights Including the Question of: Independence of the Judiciary, Administration of Justice, Impunity, reasserted a victims’ right to compensation. The report stated that, “a State shall provide reparation to victims

³⁶International Convention on Civil and Political Rights, Article 9 (5).

³⁷Human Rights Committee, ICCPR – Reservations, <http://www.pmindiaun.org/pages.php?id=867>.

³⁸ A Handbook on International Human Rights Convention, Core International Human Rights Treaties, Optional Protocols & Core ILO Conventions Not Ratified by India.

³⁹ Redress Trust & Commonwealth Human Rights Initiative, Reparation for Torture in India, Nepal, and Sri Lanka, March 2003 at 84, 93.

⁴⁰ India Asked to Ratify Convention Against Torture, 27 June 2016, <http://www.arunachaltimes.in/india-asked-to-ratify-convention-against-torture/>.

⁴¹ Id.

⁴² Redress Trust & Commonwealth Human Rights Initiative, Reparation for Torture in India, Nepal, and Sri Lanka, March 2003 at 84.

⁴³Gilani, Iftikhar, 19 Years After Signing UN Torture Convention India Yet to Ratify It, 21 March 2016, <http://www.dnaindia.com/india/report-19-years-after-signing-un-torture-convention-india-yet-to-ratify-it-2191876>.

for its acts or omissions constituting violations of international human rights and humanitarian norms,” and that measures should be taken to “ensure a victims safety from intimidation and retaliation,” when seeking to exercise their rights to a remedy.⁴⁴ The later comment is particularly important in relation to India and the climate of corruption and intimidation surrounding abuses of power. As the Supreme Court noted in *State of Madhya Pradesh v. Shyamsunder Trivedi and Ors*, “it is difficult to prosecute police officers in these types of cases because there is usually no direct evidence, and police officers tend to cover up for one another.” If victims feel intimidation from police officers and that retaliation will ensue seeking compensation will never seem feasible.

Additionally, the Rules and Procedures of the International Criminal Tribunal for the Former Yugoslavia makes clear that victims have a right to obtain compensation, even though the tribunal itself cannot award damages.⁴⁵ Rule 106 advocates for victims to obtain compensation in domestic courts, “pursuant to national legislation.”⁴⁶ Unfortunately, in India, the domestic courts and national legislation on compensation leave much to be desired.

The Inter-American Court of Human Rights has also repeatedly held, “that the State's obligation to provide reparations and the corresponding victim's right to receive them, is customary law and that it constitutes one of the fundamental principles of contemporary international law on State's responsibility.”⁴⁷ Further, the Rome Statute of the International Criminal Court requires the establishment of “principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation.”⁴⁸

In 2002, the Commission on Human Rights highlighted the need for a clear international standard for compensation stating, “It is clear that, under international law, there is a well-established right entitling victims of human rights abuses to a remedy and reparations for their loss and suffering. The corpus of law regulating this principle, however, is dispersed and not systematized. There is a multiplicity of interpretations and terms that carry the potential to obfuscate a clear rendering of the applicable international standards preventing victims from obtaining full reparations.”⁴⁹ The Commission argued that, “such an instrument would be a valuable tool for States to fulfill their obligations to guarantee effective remedies.”⁵⁰ From these suggestions emerged the Commission’s recommendation to adopt the “Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law”. The Draft Principles had previously been

⁴⁴ UN Commission on Human Rights, Civil and Political Rights Including the Question of: Independence of the Judiciary, Administration of Justice, Impunity, 56th Session (2000).

⁴⁵ International Criminal Tribunal for the Former Yugoslavia, Redress, <http://www.redress.org/international-criminal-tribunals/international-criminal-tribunal-for-the-former-yugoslavia>.

⁴⁶ Id.

⁴⁷ Commission on Human Rights Resolution 2002/44, on “The Draft Basic Principles And Guidelines On The Right To A Remedy And Reparation For Victims Of Violations Of International Human Rights And Humanitarian Law.”

⁴⁸ Rome Statute of the International Criminal Court, Article 75 Reparations to Victims.

⁴⁹ Commission on Human Rights Resolution 2002/44, on “The Draft Basic Principles And Guidelines On The Right To A Remedy And Reparation For Victims Of Violations Of International Human Rights And Humanitarian Law.”

⁵⁰ Id.

cited by the Inter-American Court of Human Rights and had been used by various governments as a standard for implementing new victim relief programs and remedies.⁵¹

On 16 December 2005, the UN General Assembly adopted Resolution 60/147 entitled, “Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” based off of the Draft Principles. Article 20 of this Resolution discusses compensation stating,

“Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and circumstance of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education, and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”

More generally, Article 11 establishes victims’ right to remedies stating, “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to... (b) adequate, effective and prompt reparation for harm suffered.” Although non-binding this Resolution speaks highly of the standards the international community has set for victims’ compensation and reparations. India clearly does not match this standard having failed to provide compensation in a significant number of cases.

The Current State of Affairs

From January 2010 until March 2013, 3949 cases of illegal arrests and 4467 cases of unlawful detention were registered with the National Human Rights Commission (NHRC) in India.⁵² The Commission recommended compensation in 45 cases of illegal arrest and 67 cases of unlawful detention.⁵³ Furthermore, between 2007 and 2012 the NHRC received 1,671 complaints of fake encounters.⁵⁴ Fake encounters are instances where the police/army officers claim to have killed in self-defense, but instead plant evidence to establish that the individual was armed and dangerous. The NHRC has awarded 10,51,80,000 rupees in monetary compensation for 191 of the 1,671 complaints, meaning the NHRC determined that 191 kills were fake encounters and unjustified.⁵⁵ On average, 5 lakhs to 20 lakhs was awarded to the next of kin for these offenses.⁵⁶ In addition to criticism for the meager number of compensation recommendations the

⁵¹ Id.

⁵² National Human Rights Commission of India, Questionnaire Related to the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court.

⁵³ Id.

⁵⁴ Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India, 2016 SCC OnLine SC 685.

⁵⁵ Id.

⁵⁶ Id.

Commission has handed down, the NHRC has also received criticism for its lack of recommendations for criminal prosecution. For example, between March 2003 and September 2006, the Commission recommended prosecution or disciplinary action in only two instances.⁵⁷ On 8 July 2016, in *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India*, the Supreme Court held that it would, “consider the grievance of the NHRC that it has become a toothless tiger.”⁵⁸ In the same case, the Supreme Court concluded that further information was needed for the 1528 cases of alleged fake encounters brought before them and that once such information was collected by petitioners the cases would be reexamined.⁵⁹ 62 of the 1528 cases had been documented and the NHRC had informed the Court that 31 of the 62 were not genuine encounters.⁶⁰ The status of official charges against Army officers and compensation for victims is halted until the information for each case is collected.

In February 1998, an 18 year-old boy, Mohammad Aamir Khan, was “arrested” by police and “taken into a small room, where he was (allegedly) tortured and made to sign blank papers.”⁶¹ Khan stated that only when he was brought into court a week later did he realize he had been held in police custody and that the torture he endured was at the hands of government officials to illicit confessions.⁶² Khan was charged with murder and terrorism in 19 cases and accused of masterminding 17 bomb blasts that occurred in Delhi from 1996-1997.⁶³ He was released in 2012, after 14 years in prison, following the acquittals of 17 cases with two other cases pending appeal.⁶⁴ The Delhi High Court stated, “The prosecution has miserably failed to adduce any evidence to connect the accused appellant with the charges framed, much less prove them.”⁶⁵ Khan is a practicing Muslim and although “there is no consolidated data on religious affiliations of those arrested in terrorism cases, there is a wealth of anecdotal evidence of bias against Muslims.”⁶⁶ Khan is still fighting to be awarded compensation for his unlawful imprisonment. As *The New York Times* reported, “he will (likely) have to fight for some time.”⁶⁷ Human rights attorney Nandita Haksar, who helped Khan co-write a book on his experience, stated, “The NHRC had issued notice in March 2014 directing the Delhi Police Commissioner to give a detailed report on the cases against Aamir. Now he has got the news that the NHRC has announced its intention of awarding five lakh rupees to him, “but, as of April 2016, Khan had yet to receive any of the award.”⁶⁸

⁵⁷ SAHRDC Human Rights Feature, India’s NHRC Fails to Use its Meagre Powers, September 2007, http://www.hrdc.net/index.php?option=com_content&view=article&id=254:india-s-nhrc-fails-to-use-its-meagre-powers&catid=12:hrf-fortnightly&Itemid=109.

⁵⁸ *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India*, 2016 SCC OnLine SC 685 at 183.

⁵⁹ *Id.* at 182.

⁶⁰ *Id.* at 181.

⁶¹ Malavika Vyawahare, Mohammad Aamir Khan’s 14 Lost Years, 13 March 2013, <http://india.blogs.nytimes.com/2013/03/13/mohammad-aamir-khan-was-arrested-on-terrorism-charges-and-acquitted-after-14-years-in-jai/>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Chintan Girish Modi, Free After 14 Years, the Spy Who Never Speaks Out, 15 April 2016, <http://www.thehindu.com/todays-paper/tp-national/free-after-14-years-the-spy-who-never-was-speaks-out/article8477196.ece>.

In a similar story, in May 2014 the Supreme Court acquitted four of the six individuals found guilty of the Akshardham temple attacks.⁶⁹ The other two individuals were already out, one on bail after having been in prison seven years, and the other after having completed a five-year sentence.⁷⁰ The four individuals acquitted had been in prison for 11 years.⁷¹ In this decision the Court stated, “instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and imposed grievous charges against them which resulted in their conviction.”⁷² Ajmeri Suleman Adam, one of the acquitted, retracted his confession and described his experience in custody as follows, “Singhal Sahib abused me and told (me) that... I should agree that I am the criminal of Akshardham carnage. I told them I had never gone to Akshardham... then they beat me in such a way that I became unconscious and fell down.”⁷³ Although the Court acknowledged this case as a “gross violation of fundamental rights and basic human rights,” the Court failed to award monetary compensation.⁷⁴ Not only did the Court not award compensation for the torture and coercion that the men suffered when being forced to confess to crimes they did not commit, but the Court also did not acknowledge the loss of over a decade of their lives.

In 2008, seventeen Muslim men were arrested for charges of terrorism and for allegedly being associated with the Students Islamic Movement of India (SIMI).⁷⁵ In May 2015, all of them were acquitted including Raziuddin Nasir, son of cleric Maulana Naseeruddin.⁷⁶ Naseeruddin stated, “I was in jail when I heard Bangalore police arrested him... when Raziuddin was first arrested, he was accused of stealing a bike. But Bangalore police simultaneously framed him in a big terrorism conspiracy... A lot of injustice has been done to us (my family). Police arrest us and by the time the court acquits us, each of us has already spent years in jail.”⁷⁷ The court did not order any compensation in this case and Nasir remains in jail for charges related to the 2008 Ahmedabad blast case.⁷⁸ From 2010 until 2015, five members of Naseeruddin’s family were acquitted after spending years in jail for alleged terrorism.⁷⁹

In comparison to these cases, Ricky Jackson, who spent 39 years in prison, in the United States, received \$2,000,000 in compensation for his unlawful imprisonment upon acquittal.⁸⁰ The sole witness, a 12 year-old boy, falsely accused Jackson and two of his friends of murder in

⁶⁹ Ravi Nair, Akshardham Judgment – I, Economic & Political Weekly, Vol. 49, Issue 25, June 2014.

⁷⁰ Id.

⁷¹ Id.

⁷² Adambhai Sulemanbhai Ajmeri & Ors Appellants vs. State of Gujarat, 2014 7 SCC 716.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Johnson T A, Seven Years Later, 17 ‘SIMI men’ Acquitted, 1 May 2015, <http://indianexpress.com/article/india/india-others/former-simi-chief-nagori-16-other-suspected-activists-acquitted-by-court/>.

⁷⁶ Id.

⁷⁷ Muzamil Jaleel, This is our Country too... Why No Justice for Us, Says Maulana Naseeruddin, 4 May 2015, <http://indianexpress.com/article/india/india-others/former-simi-chief-nagori-16-other-suspected-activists-acquitted-by-court/>.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Rachel Dissell, State to Pay Ricky Jackson \$5.92 for Each Hour He Spent in Prison, 20 March 2015, http://www.cleveland.com/court-justice/index.ssf/2015/03/state_pays_ricky_jackson_592_f.html.

1975.⁸¹The witness recanted his statement in 2015 and subsequently Jackson was released. Although some still contest whether \$2,000,000, or \$51,900 a year, is enough compensation for 39 years of imprisonment (Jackson can also expect compensation for lost wages, attorneys fees, etc.), it surely is more than Jackson would have received in India.

In April 2015, the Allahabad High Court ordered a probe by the Central Bureau of Investigation into the custodial death of Khalid Mujahid, a Muslim living in Uttar Pradesh.⁸²Mujahid was accused of being involved with the UP court blasts of 2007 and died in mysterious circumstances, in 2013, after being transported in a police van from court back to jail.⁸³After falling ill in the van and fainting near the Barabanki border, Mujahid was rushed to a hospital where he was declared dead that evening.⁸⁴ Although the government claimed that he died due to medical complications, the co-accused, Tariq Qasmi, claimed that contrary to the government's statements Mujahid was, "not unwell and was laughing during the journey."⁸⁵Mujahid's family maintains that the police killed him. Further, *The Hindu* reported that, "even a five-member panel of doctors had stated that the cause of Khalid's death could not be ascertained."⁸⁶ In December of 2012, after four and a half years, a one-man RD Nimesh Commission submitted its report on Mujahid's case establishing, "the arrests as fake and illegal and recommended their (Mujahid and Qasmi's) release and action against errant police officers," but the current state government did not implement this decision.⁸⁷As a result of this failure of implementation Mujahid is now dead and Tariq Qasmi remains behind bars.⁸⁸This case exemplifies the issues plaguing victims of state abuse in India and their attempts to receive compensation. In this case as in many others, being able to set the facts straight is necessary before compensation can even be considered.

Recommendations

The Law Commission of India, the Redress Trust, and the SAHRDC have all suggested constitutional changes to guarantee the right to compensation and to make the right enforceable.⁸⁹ Some experts suggest that compensation should be paid directly from the accused

⁸¹John Luciew, Man Gets \$1 Million for 39 Years in Prison On Wrongful Conviction: Justice?, 20 March 2015, http://www.pennlive.com/nation-world/2015/03/man_gets_1_million_for_39_year.html.

⁸²Indiatomorrow.net, Allahabad High Court Orders CBI Probe into Khalid Mujahid's custodial death, 27 April 2015, <http://www.indiatomorrow.net/eng/allahabad-high-court-orders-cbi-probe-into-khalid-mujahids-custodial-death>.

⁸³Id.

⁸⁴A. Mirs ab, Magistrate Rejects Police Report on Khalid Mujahid's Mysterious Death; Signals Impediment by State, 7 November 2014, <http://twocircles.net/2014nov07/1415338491.html#.V4TBH45QXtk>.

⁸⁵Id.

⁸⁶Id.

⁸⁷Indiatomorrow.net, Allahabad High Court Orders CBI Probe into Khalid Mujahid's custodial death, 27 April 2015, <http://www.indiatomorrow.net/eng/allahabad-high-court-orders-cbi-probe-into-khalid-mujahids-custodial-death>.

⁸⁸Id.

⁸⁹SAHRDC Report, Alternate Report and Commentary to the U.N. Human Rights Committee on India's 3rd Periodic Report, July 1997, http://www.hrdc.net/index.php?option=com_content&view=article&id=15:alternate-report-and-commentary-to-the-u-n-human-rights-committee-on-india-s-3rd-periodic-report-under-article-40-of-the-international-covenant-on-civil-and-political-rights&catid=21:sahrdc-report&Itemid=106; Redress Trust & Commonwealth Human Rights Initiative, Reparation for Torture in India, Nepal, and Sri Lanka, March 2003 at 84.

officer's salaries rather than by the State to create an added deterrent.⁹⁰ With this system, individual officers, not only the State, will feel the financial crunch.

Furthermore, the Redress Trust has made the following suggestions: revoke legislation granting immunity to government officials, improve the capacity of the NHRC, open a mandatory judicial inquire into custodial deaths, undertake an annual review of police actions and allegations of abuse, and publish and distribute a human rights handbook for police officers, which includes international standards.⁹¹

Notably, three legislative proposals have been suggested for the compensation of custodial crimes, but none of them have been adopted. In 1992, at the Chief Minister's conference, the NHRC suggested a scheme of compensation through a central registration system.⁹² This system never saw the light of day. Then in 1995, the National Commission for Women drafted the "Compensation to the Rehabilitation of Victims of Rape and Sexual Assault" bill, which established that the Government would pay compensation in cases of custodial rape.⁹³ This bill was drafted in accordance with the 1995 Supreme Court judgment, *Delhi Domestic Working Women's Forum v Union of India & Ors*, but subsequently was never adopted.⁹⁴ Lastly, in 2001, in the Lok Sabha, G.M. Banatwall put forward a bill entitled, "The Custodial Crimes (Prevention, Protection, and Compensation)."⁹⁵ Part of the bill stipulated that, "no previous sanction of the government would be necessary for the prosecution of a police officer or a public servant accused of a custodial offence."⁹⁶ Additionally, the bill established that in determining compensation a court would "take into account all relevant circumstances, including the type and severity of the injury suffered by the victim, the mental anguish suffered by the victim, the expenditure already, or likely to be incurred on the treatment and rehabilitation of the victim, the actual and projected earning capacity of the victim, and the impact of its loss on the persons entitled to compensation (including family members)."⁹⁷ The Indian Parliament should adopt this 2001 proposal or another similar bill, however as of yet nothing of the sort has been passed.

Conclusion

In conclusion, India does not meet international standards for compensation and without a mandated right to compensation India's commitment to democracy is questionable. Violations of fundamental rights cannot continue to exist without being rectified, perpetrators cannot continue to harness immunity, and victims cannot continue to have only bleak hopes for compensation within the court system.

⁹⁰ SAHRDC Report, Alternate Report and Commentary to the U.N. Human Rights Committee on India's 3rd Periodic Report, July 1997, http://www.hrdc.net/index.php?option=com_content&view=article&id=15:alternate-report-and-commentary-to-the-u-n-human-rights-committee-on-india-s-3rd-periodic-report-under-article-40-of-the-international-covenant-on-civil-and-political-rights&catid=21:sahrdc-report&Itemid=106.

⁹¹ Redress Trust & Commonwealth Human Rights Initiative, *Reparation for Torture in India, Nepal, and Sri Lanka*, March 2003 at 84.

⁹²Id at 32.

⁹³Id at 32.

⁹⁴Id at 32.

⁹⁵Id at 32.

⁹⁶Id at 33.

⁹⁷Id at 33.

Amending the Constitution to establish mandatory compensation for state abuses such as unlawful arrest and detention, torture, and custodial deaths would be ideal. A second prospect would be to pass a compensation scheme within Parliament similar to past proposals that require the State to pay victims adequate compensation based on a case-by-case basis and a number of relevant factors. The current right to compensation within Indian jurisprudence is ineffective and insufficient. A victim's right to compensation cannot remain in the balance on the mere discretion of whichever judge is assigned the case. This right must be mandated within the Constitution and/or appropriate legislation. As Dr. Srikrishna Deva Rao stated, it is the duty of the State to afford victims remedies and the time for the State to assert this duty is well overdue.⁹⁸

⁹⁸Rao, Srikrishna Deva, *Gross Violations of Human Rights, Compensation and Rehabilitation: Issues of Law and Policy*.