

Fifty-four years in jail without trial: the plight of prison inmates in India

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Machang Lalung, aged 77, was released from incarceration last month in the northeast Indian state of Assam after spending more than half a century behind bars awaiting trial.

Lalung had been arrested at his home village of Silsang in 1951 under section 326 of the Indian Penal Code for “causing grievous harm.” According to civil rights groups who have investigated Lalung’s case, there was no substantive evidence to support the charge against him. In any event, those found guilty of this offence typically receive sentences of no more than 10 years’ imprisonment.

Less than a year after he was taken into custody, Lalung was transferred to a psychiatric hospital in the Assamese town of Tezpur. Sixteen years later, in 1967, doctors confirmed that he was “fully fit” to be released, but instead he was transferred to Guwahati Central Jail, where he was imprisoned until this summer.

“It seems the police just forgot about him thereafter,” Assamese human rights activist Sanjay Borbora told the BBC. Borbora was among those who brought Machang’s case to the attention of the National Human Rights Commission (NHRC). As a result of the Commission’s intervention and other protests, Lalung’s case was finally heard and he was released after paying a token bond of one Indian rupee.

“He is a simple villager and his life has been destroyed by a cruel system. He should sue the authorities for millions of rupees, but I do not think he is even aware he could do it,” said Borbora.

According to a *Scotsman.com* news report, the NHRC has taken up the cases of four other men awaiting trial in Assam: Khalilur Rehman has been in custody for 35 years, Anil Kumar Burman for 33 years, and Sonamani Deb for 32 years, while Parbati Mallik has been detained in a psychiatric unit for 32 years.

Though these individual cases have now gained media attention, the phenomenon of accused persons having to endure unconscionable delays awaiting trial is the norm in the Indian justice system. In 2002, some three quarters of all persons held in Indian prisons had not been sentenced to jail, but were “under trial”—that is, awaiting trial.

The largest number of under-trial or remand prisoners is to be found in the jails of Uttar Pradesh, Manipur, and Meghalaya, where more than 90 percent of the prison population have reportedly not faced trial.

According to a National Crime Research Bureau (NCRB) study, *Crime in India 2002*, nearly 220,000 cases took more than 3 years to reach court, and about 25,600 exhausted 10 years before they

were completed. A staggering number of prison inmates awaiting trial have already been imprisoned longer than the most rigorous sentence that they could ever be given for the offence they are alleged to have committed.

Many of India’s prisons date back to the era of British colonial rule, with thousands of prisoners kept in crumbling facilities largely unchanged since the beginning of the last century. The only major all-Indian prison reform ever implemented dates back to the Indian Jails Committee of 1919-1920.

The Indian prison system perpetuates many of the injustices of the penal system set up by the British. For example, inmates of foreign origin or of high caste and social status are routinely imprisoned under relatively better conditions and segregated from those inmates who are poorer and of lower social position. Larger or less-crowded cells, access to books and newspapers, and more and better food are offered to those prisoners classified as “Status A” prisoners.

Meanwhile, the poor and especially tribal and Dalit (ex-untouchable) inmates are subject to various forms of abuse, ranging from the denial of visitors and refusal to provide medical care, to prolonged labor, sexual harassment, rape and “concealed” physical and mental torture.

“Our judicial and penal system in its actual working obviously discriminates between the rich and the poor.... If you are poor and have once landed in jail—for whatever reason or no reason—the probability of your being back in jail off and on is fairly high,” concluded Raman Nanda, who compiled a prison investigation in 1981, one of the few sources of information available about the Indian prison population.

“Most of those who are nabbed by the police and are unable to have themselves bailed out are the poor. Those with resources, the big criminals, the smugglers, corrupt politicians, tax evaders are people who are rarely caught. Thus our institutions penalise not the violators of law but the poor,” stated Nanda’s study.

In the 1980s, the All India Commission for Jail Reforms (The “Mulla” Committee) found that the majority of the prison population was from a “rural and agricultural background” and that first offenders involved in “technical or minor violations of law” accounted for a large number of prisoners. Many inmates are imprisoned for non-payment of fines or an inability to afford good legal representation.

Among the worst-affected groups are women with children and the mentally ill. Female prisoners account for 3.12 percent of the

total jail population and are allowed to keep their children until they reach the age of five. According to available statistics, 1,400 children younger than five are accompanying their mothers in jails.

Last year, the Pakistan-based *Dawn* news site quoted Zahira, a mother of two and woman prisoner in the Trihar prison, as saying, “Our fate depends on the mood of the wardens or medical officer. I didn’t have regular check-ups during my pregnancy, which is against the rules. Irfan (her infant son) was not weighed at birth. There are no cribs, baby food or warm milk.”

The absence of adequate psychiatric institutions and medical services in India contributes to the large prison population. Individuals with severe mental illnesses, branded as “non-criminal lunatics,” are often imprisoned. With many mentally vulnerable prisoners left to suffer without support in a brutal environment, it is not surprising that there is a high rate of suicides of prison inmates and police detainees. However, there is also evidence that authorities term as suicides deaths that were caused by police and jail guard abuse.

The National Human Rights Commission (NHRC) was created as a statutory body in 1993 and has since periodically issued directions about jail conditions. It suggested a prison reform bill in 1996, but this has been ignored by various governments, including those led by the Hindu-supremacist Bharatiya Janata Party (BJP) and Congress and supported by the Left Front.

In fact, there is evidence that the situation facing India’s prisoners is getting worse. At the end of 2002, there were 322,357 inmates in the jails of 26 States and 6 Union Territories, although their authorised capacity was just 219,880, meaning there was overcrowding, according to the government’s own norms, of 46.6 percent.

The maximum overcrowding was recorded in the jails of Mizoram (442 percent), followed by Jharkhand (260 percent), Delhi (211 percent), Haryana (165 percent), Andaman and Nicobar (139 percent) and Chhatisgarh (115 percent). As compared to the previous year, it was noted that jail overcrowding had increased in the states of Delhi, Madhya Pradesh, Goa, Uttar Pradesh, Andhra Pradesh and the Andaman and Nicobar Islands.

New Delhi’s Tihar Prison, also known as the “Central Jail,” is said to be the world’s largest prison facility. Although built to house 4,000 inmates, it currently holds 12,000, 80 percent of whom are awaiting trial.

Starting with the 1991 reforms, the Indian bourgeoisie has been imposing rigorous cuts in education, health care, social services and agricultural subsidies. The unprecedented social devastation and growth of inequality that has resulted from the policies of successive Indian governments have found partial expression in the country’s growing crime rate. The police have responded to this social crisis with frequent arbitrary round-ups in poor areas and discrimination against socially vulnerable sections of the working masses.

The police repression that has accompanied the past 14 years of free-market economic reforms has caused India’s already antiquated and overstretched prison system to descend into an even greater state of chaos and human misery. According to Indian Home Ministry records, deaths while in remand or custody increased from 1,340 in 2002 to 1,462 by the end of 2003.

According to an NHRC report, a large proportion of the deaths in custody were from natural and easily curable causes aggravated by poor prison conditions. Tuberculosis caused many deaths, and HIV/AIDS remained a serious health threat among prison inmates.

Non-governmental organisations that deal with prisoner abuse allege that deaths in police custody, which occurred within hours or days of initial detention, often implied violent abuse and torture. The Home Ministry reported that there were 28,765 complaints lodged against police for April 2003 for abuse including deaths. In May of last year in Ambedkarnagar, Uttar Pradesh, police arrested a daily labourer and tortured him when he failed to pay a Rs. 50,000 (US\$1000) bribe. According to media reports, police admitted the victim to the hospital under a false name after injecting him in the rectum with petrol.

Police also threatened to harm his family if he reported the incident. In July 2004, the NHRC requested a report from Punjab’s Inspector General of Prisons after a man incarcerated in Amritsar’s Central Jail claimed the Deputy Superintendent and other prison officials branded him on his back when he demanded water and better treatment. Doctors found fresh scars on his back that had been inflicted with hot iron rods. By year’s end, no action had been taken.

The rape of persons in custody is also part of the broader pattern of custodial abuse. Prisoner charities argue that rape by police, including custodial rape, was more common than NHRC figures indicate, since many rape incidents go unreported due to the victims’ shame and fear of retribution.

A statement from the Asian Legal Resource Centre, on custodial deaths and torture in India, handed to the National Human Rights Commission and to the Sixty-first Session of the UN Commission on Human Rights in Geneva, notes: “Any person, who dares to complain about police officers in India, faces the wrath of the law enforcement agency.

Abhijan Basu, who was serving his prison sentence at the Presidency Jail, West Bengal, was one such person who was not so lucky. Officers at the prison murdered him because he dared to complain about the inhuman conditions and the poor quality of food. Three prison wardens set him ablaze on November 12, 2004.

“Torture in India is widespread, unaccounted for and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts of the country. Torture is used as a cheap and easy method of investigation and also as a tool for oppression. In the hands of the wealthy and influential, Indian law enforcement agencies have also strengthened links with criminal elements. Even the judiciary in India cannot sever this nexus, between police and criminals.”

The state of India’s penal and justice systems speaks volumes about the true nature of human rights and social equality in a country routinely held up by the Western media as the “world’s largest democracy.”



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