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Impunity Writ Large: A Study of Crimes Committed During Anti-Veerappan Operations

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1 Impunity Writ Large

A Study of Crimes Committed during Anti-Veerappan Operations

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This essay discusses the atrocities committed by police officials belonging to a Joint Special Task Force (JSTF) established by the governments of Tamil Nadu and Karnataka to capture Veerappan—a well-known forest brigand. It traces the widespread use of torture, inhuman and degrading treatment, extrajudicial killings and enforced disappearances of persons from poor and underprivileged communities living on the borders of the Satyamangalam forest. The essay analyses the atrocities through the lens of international legal standards as well as Indian criminal law standards. It critically evaluates the responses of the Indian State and democratic institutions, including the state governments, judiciary and the National Human Rights Commission which, it argues, have substantially contributed to impunity for the crimes perpetrated. The essay further discusses some legal principles that would be useful for attributing State and individual responsibility. It concludes by emphasizing the need for a comprehensive inquiry that could facilitate prosecution of the errant officials, while simultaneously ensuring that reparations are provided to victim-survivors and their families. The potential for domestic law reform and incorporation of international legal concepts such as command/superior responsibility and crimes against humanity are also discussed.
CONTEXT

In early 1993, a JSTF was established by the governments of Tamil Nadu and Karnataka to capture Veerappan—the well-known forest brigand—operating in 6000 square kilometres of the Sathyamangalam forest, in the border region of the two states. Walter Devaram, the then DGP of Tamil Nadu, led the JSTF during its initial phase of operation, and K. Vijayakumar during the later phase of the force, till the time when Veerappan was shot dead in October 2004. The JSTF had a general mandate to catch Veerappan: it could merely act as armed forces, and did not have the power to investigate. Upon arrest of a person, it was duty-bound to produce the person at the nearest police station, which would then investigate. In actuality, the JSTF far exceeded its mandate, terrorizing and intimidating persons living in villages near the forest shared by the two states, with the aim of extracting information that would lead to Veerappan’s capture at any cost. The JSTF’s actions resulted in numerous instances of illegal detention, custodial torture and killings, extrajudicial (‘encounter’) killings, enforced disappearances, sexual atrocities and gender-based crimes of a brutal nature, false charges against the victims under the draconian law—Terrorist and Disruptive Activities Act (TADA)—that led to the languishing of victims in jails for many years, as well as damage of property and forced displacement.

JSTF ATROCITIES

Walter Devaram—the first JSTF chief—admitted in an interview that if at all people in the areas surrounding the forests were helpful towards Veerappan, it was because he had been terrorizing them, including lining up all adults suspected of giving information to the police and killing them. Hence, given the constant fear and vulnerability that locals lived with, an empathetic and sensitive JSTF would have been required to win the people over so that they could pass on to the Force, vital information to assist in its operations. However, victims’ testimonies point to the contrary and tell a sordid tale of how they were illegally taken into police custody on the pretext of inquiry, transferred to police stations and camps where they were assaulted and tortured during interrogations. Some were released, many were lodged in the Mysore central jail
where they languished for several years after false charges under TADA had been lodged against them; many were killed through extrajudicial ('encounter') killings; some died in custody unable to withstand the torture and the fate of others remains unknown till date. The victims' testimonies, primarily before the Justice Sadashiva Committee—a panel of inquiry established by the National Human Rights Commission—in 10 sittings from January 2000 to November 2002 and before the People's Tribunal for Torture, held in Madurai in May 2008 and in Bangalore in August 2008, point to the following atrocities perpetrated by the JSTF:

- *Inhuman and degrading treatment:* Such treatment often preceded torture, and included being blindfolded, stripped naked, often in full view of police, persons of the opposite sex and their own family members, chained, being forced to torture other members of their families (for example, mothers were forced to administer electric shocks to their sons and *vice versa*) and other detainees, being subject to verbal abuse, sexual abuse (particularly of female victims), being provided with inadequate or no meals, being deprived of sleep, water and other basic necessities, not being allowed to go to the toilet or wash themselves.

- *Physical torture:* Administering electric shocks to various parts of the body (including earlobes, nose, neck, back, breasts and genitals), forcing to pass urine due to inability to bear the physical torture, tying victims to a wheel or hanging them from a hook in the ceiling/beam by their limbs and then beating and kicking them, forcibly making them beat other victims, applying a heavy roller on the thighs and legs of victims which was moved by two policemen using maximum force, indiscriminate beating on fingers, toes, feet and the whole of the body using batons, butts of rifles, clubs and boots, and filling orifices in the body with chilli powder and chilli paste. A victim deposed that the degree of torture was so high that he and his family members were about to die.

- *Sexual and gender-based violence:* Almost all detainees—men and women—who testified said that they had been stripped of their clothes during the period of their detention. Both women and men were administered electric shock on their genitals; female victims particularly were subject to a range of sexual abuse and violence, including being forced to massage the bodies of JSTF officials for
long periods of time, being questioned indecently about sexual postures, being subject to brutal, repeated and mass rape by the JSTF forces, burning the thighs of women with cigarette butts as well as touching, fondling, squeezing their breasts, and verbal sexual abuse. Many had been sexually assaulted while blindfolded; some pregnant women were repeatedly assaulted and raped, leading to abortions; others were forced to deliver in the detention centre without any medical assistance; some victims were subject to brutal torture some days after the delivery. Threat of sexual abuse was frequently used as an act of power, as an instrument of repression and to silence victims and their families. Testimonies of male victims/survivors about sexualized forms of torture used against them indicate that homosexual assaults were committed too, though the extent is not known.

- **Mental torture:** Most victims/survivors were continuously pressurized to admit that they had assisted Veerappan, solely because they belonged to the same caste as him or lived in the area bordering the forest where he operated, though the victims repeatedly pleaded their innocence. During their detention, when one victim was taken in for interrogation, others waiting outside knew that (s)he would be tortured and could hear the screams of the victim being tortured, which amounted to mental torture and intimidation. Threats with dire consequences to their families, and refusal to inform the families of victims/survivors of their whereabouts as well as refusal to allow them to meet their family members while in detention also caused acute mental torture and trauma. Some victims talked of a complete ignorance about the fate of their loved ones who had been illegally taken into the custody of the JSTF; not knowing if they were dead or alive, and if alive, their whereabouts, also amounted to severe mental anguish. Many victims/survivors were prevented from returning to their homes as the JSTF officials set fire to their homes, particularly those situated in Nallur, Kollegal Taluk, Karnataka.

**Atrocities through the Lens of Law**

**Applicable International Law**

India's obligation to remedy these abuses is clear in international law. The Universal Declaration of Human Rights (UDHR), though not a
Convention is considered to have gained moral force over a period of time and is hence regarded as a part of customary international law, binding on all member States of the United Nations. Many rights spelled out in the UDHR, more elaborately stated in the Bill of Rights detailed below, have been violated.

The atrocities have resulted in violations of the provisions of the International Convention on Civil and Political Rights, 1966 (ICCPR), such as right to life (Article 6), freedom from inhuman or degrading treatment or punishment (Article 7), right to liberty and security of the person and freedom from arbitrary arrest or detention (Article 9), right to freedom of movement (Article 12), freedom of thought and conscience (Article 18), freedom of opinion and expression (Article 19) and right to marry and found a family (Article 23). As civil and political rights are closely inter-linked with social, economic and cultural rights, the atrocities have led to violation of standards set by the International Covenant on Social, Economic and Cultural Rights (ICSECR) as well. These include right to work (Article 6), protection and assistance to the family (Article 10), right to an adequate standard of living for self and family including clothes, housing and food (Article 11), right to enjoyment of the highest attainable standard of physical and mental health (Article 12), right to education (Article 13) and right to take part in cultural life (Article 15). India acceded to both the conventions in 1979 and therefore is duty-bound to protect its people and to provide redress to victims whose rights guaranteed under these conventions have been violated.

Much of the atrocities detailed above fall squarely into the definition of ‘torture’ as defined in Article 2 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT). The four criteria under the CAT definition, namely, severe pain or suffering, intention, purpose and state involvement are satisfied in the context of the JTF atrocities. Although the Indian government has not ratified the CAT, its act of signing the convention in October 1997 indicates that it has a moral duty not to contravene the standards set by the CAT. Moreover, right against torture is well-established under customary international law as a jus cogens/preremptory norm which is accepted by the international community of states as a norm from which no derogation is permitted even in times of threat to national security, such as through terrorist acts. The law on this issue has been
clearly stated both by the Committee Against Torture as well as the European Court on Human Rights.30

The acts of sexual and gender-based violence detailed earlier are in direct violation of the standards set by the Convention on the Elimination of Discrimination Against Women, 1979 (CEDAW), ratified by India in 1993. The CEDAW Committee, through a General Recommendation, stated that gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention.31 These rights and freedoms include right to life, right against torture and cruel, inhuman and degrading treatment or punishment, right to liberty and security, right to equal protection under the law, right to highest attainable standard of mental and physical health, and to just and favourable conditions of work.

The JSTF atrocities also amount to violations of standards set by the UN Convention on the Rights of the Child, ratified by India in 1992. The victims of JSTF atrocities included not only men and women, but children too, as testified by the victims. For example, Muniyamma speaks of how her second son, then aged 16 years, was taken into custody by the JSTF officials, and subsequently killed while his two younger brothers were detained in the custody of the JSTF for more than one-and-a-half years, and their whereabouts continue to be unknown.32 Mani speaks of how children in her family had been taken into the custody of the JSTF and that she has not seen them since.33 Nallamma speaks of how she was forced to give birth to her child in the detention centre without any medical assistance, and the child remained with her at the detention centre/torture cell for the next one year and five months before being handed over to her parents.34 Lakshmi testified that at the M.M. Hills police station, there were about 60 persons, including small children, to whom she was forced to administer electric shocks by the JSTF officials.35 T.P. Kelathi speaks of how he was brutally tortured and administered electric shocks in the presence of his 17-year-old son, and testifies to the torture perpetrated on the son in his presence.36 Such testimonies indicate serious violations of the Child Rights Convention, including right to life, survival and development (Article 6), right to be cared for by his/her parents (Article 7), the right to live with their parents and to remain in contact with them (Article 8), freedom of thought and
conscience (Article 14), protection from all forms of violence (Article 14), right to health and health care (Article 24) and right to education (Article 28).

Many victim-survivors have testified that they continue to be ignorant of the fate of their family members who had been detained by the JSTF officials in the early 1990s, as the officials have not revealed the fate of such detainees. Such testimonies speak about the arrest, detention and other forms of deprivation of liberty by JSTF officials, followed often by a concealment of the fate of the disappeared person, due to which the person was deprived of the protection of law. The atrocities elaborated through such testimonies attract the definition of 'enforced disappearance' as stated in Article 2 of the Convention on Enforced Disappearances. It is true that India has only signed and not ratified the Convention, and the Convention came into existence in 2006; many years after JSTF atrocities were committed. However, the predecessor of the Convention—the UN Declaration on Enforced Disappearances—was in existence during the years when JSTF atrocities were committed. The Declaration formed part of the international standards on human rights, and can be used as a yardstick against which the Indian State's response can be measured. Both the Declaration and the Convention state in categorical terms that an act of enforced disappearance is an offence to human dignity, and prohibit the States from practising, permitting or tolerating enforced disappearances.

The victims' testimonies bear many similarities with regard to the acts of torture. For example, many testimonies speak of blindfolding, being stripped naked, being administered electric shocks and being suspended naked from the beam of the camp and beaten. Many deposed about being shown photographs of the bodies of their loved ones who had been killed by the JSTF officials. A pattern emerges with regard to the sexual and gender-based violence that the victims' testimonies speak of—particularly the repeated rapes, verbal abuse of a sexual nature and molestation—indicating that these crimes were not aberrations committed by the JSTF officials in exceptional circumstances, but were part of a systematic policy of intimidating, brutalizing and humiliating the victims. The Sadashiva Committee recorded the depositions of 192 victims between the years 2000 and 2002, naming 38 JSTF officials by name. However, the number of victims who survived the atrocities was several hundreds more, given the fact that at each sitting, the Committee
had the time to hear only a small number (not more than 20–5 per cent) of the victims who were present and willing to give their testimonies.\textsuperscript{41} If we add to this figure an approximate number of persons who 'had disappeared', who died as a result of the torture they were subjected to, who were extrajudicially killed as well as other survivors who could not be identified and brought before the Committee for giving their testimonies, by any stretch of imagination, it can be concluded that the attacks were not a few isolated incidents but were widespread in nature, affecting a large number of civilians.

One or more of a list of criminal acts, when committed as a part of 'a widespread or systematic attack directed against any civilian population, pursuant to a plan or policy of the State or an organization' under circumstances when the perpetrators do so with the 'knowledge of the attack' is defined as 'crimes against humanity' in the Rome Statute of the International Criminal Court (hereinafter referred to as the ICC Statute). The list of criminal acts include murder, extermination, imprisonment or severe deprivation of liberty, torture, rape, sexual slavery, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity, enforced disappearance of persons and other inhumane acts of a similar character that cause intentional suffering.\textsuperscript{42} The sexual offences listed in the ICC Statute are couched in gender-neutral terms and would apply equally to male and female victims. The atrocities described by the victims-survivors, detailed earlier, constitute criminal acts listed above. Although it may be argued that India has not acceded to the ICC Statute, and is hence not bound by these provisions, the ICC Statute now forms part of the latest standards of international law, and may be used as a yardstick against which national laws and human rights situations may be measured, though prosecution under domestic law for the international offence of 'crimes against humanity' is perhaps not possible unless India enacts some domestic legislation in this regard.

Applicable Indian Law

Undoubtedly many of the atrocities detailed earlier are also defined and recognized as crimes in the Indian Penal Code (IPC). These include criminal conspiracy (Section 120B), murder (Section 302), attempt to murder (Section 307), voluntarily causing hurt (Section 323)/hurt-
ing by dangerous weapons or means (Section 324), kidnapping or abducting with the intent to secretly and wrongfully confine a person (Section 365) and criminal intimidation (Section 503). The sexual offences committed by the JSTF can be prosecuted under the provisions of rape (Section 375), attempt to rape (Section 375 read with Section 511), assault to a woman with the intent to outrage her modesty (Section 354) and word/gesture/act intended to insult the modesty of a woman (Section 509). Gender-based crimes related to pregnant women would be covered by the provisions of causing miscarriage (Section 312), causing miscarriage without a woman's consent (Section 313) and death by an act with the intent to cause miscarriage and without a woman's consent (Section 314).

However, these provisions do not reflect the widespread or systematic nature of the crime committed. Moreover, the provisions related to sexual offences stated in the IPC are narrow, archaic, patriarchal and do not reflect the experiences of women victim-survivors of JSTF atrocities. For example, under the IPC, the offence of rape would require penile penetration of the vagina—a requirement which some of the most brutal forms of sexual torture perpetrated by JSTF officials would not attract. Further, the gender-specific nature of the present IPC provisions on sexual offences makes it virtually impossible to prosecute JSTF officials for acts of sexual torture against men and boys. As expressed by the Law Commission of India in its 172nd report, provisions related to sexual offences need to be overhauled. Through the Criminal Law Amendment Bill, 2012, the government has taken the initiative to introduce major amendments in substantive, evidentiary and procedural law related to sexual assault. Members of the civil society are presently engaged in this advocacy process in order to ensure that the proposed amendments are in tandem with ground realities of many marginalized groups, including women, children and sexual minorities.

RESPONSES OF THE STATE AND DEMOCRATIC INSTITUTIONS

State Governments

When the state governments established the JSTF, they created no internal mechanisms for accountability of the officials to ensure transparency in functioning. The possible misuse of powers by the JSTF ought to
have been foreseen by the state governments, in the light of the experience of other states such as Punjab in the 1980s, where sweeping powers to state officials resulted in gross human rights violations. In addition, three other acts of the governments indicate their callousness towards the atrocities. On 25 August 2000, both the governments publicly committed themselves to earmark Rs 5 crore each towards rehabilitation and compensation to victims of atrocities by the JSTE.55 Neither government has kept its promise till date, betraying the faith of the victims/survivors as well as human rights defenders. The state governments only complied with the National Human Rights Commission’s (NHRC’s) directive dated 15 January 2007, asking them to pay Rs 2.8 crore to 89 persons who suffered from JSTF’s atrocities. Second, the governments announced cash awards, out-of-turn promotions and allotment of housing plots to the JSTF personnel for gunning down Veerappan on 18 October 2004, with complete disregard of the NHRC guidelines for encounter killings and without a thought to the hundreds of affected families who were still awaiting justice.56 The officials were praised as ‘a model of valour, dedication and professionalism’.57 The Karnataka government’s act of handing over compensation to victims at an NHRC prize distribution function in the presence of the same JSTF officials who had tortured them reflects the total absence of empathy for the ordeals of the victims/survivors.58 The state governments that have placed the JSTF officials on a pedestal and turned a blind eye to the atrocities they have committed are least likely to initiate prosecution against them of their own accord. The Central Government has been a silent spectator and has failed to intervene, even in the face of such dismal failure of state governments to discharge their duties towards civilians under the Indian Constitution and statutory law.

Judiciary

When JSTF atrocities were brought to the notice of the Madras High Court in 1993, through a habeas corpus petition, it rejected the report of a fact-finding team appointed by the People’s Union of Civil Liberties (PUCL), stating that it was possible that such propaganda may be spread about the police officials in order to distract the attention of the police from Veerappan.59 It would have augured well for the court to have established its own fact-finding team to look into the serious
allegations of torture, rather than an outright dismissal of the petition. When the victim-survivors were produced before the designated TADA judge in Mysore, the judge failed to record the torture that victims had been subject to. Many victims revealed how the presence of the JTF officials in the court room, and the intimidation tactics adopted by these officials prior to producing the victims before the TADA judge, prevented their disclosure about the torture or illegal detention they had suffered. Apart from failing to create a conducive atmosphere in court for the victims to speak freely of their torture, it appears that even when victim-survivors gathered the courage to inform the judge about the atrocities, little action was taken.

A further fact points to the callousness of judiciary. Special Rapporteur of the NHRC, Chaman Lal, in his report after visiting the central jail at Mysore, stated that the trial of 51 TADA detainees had not yet commenced years after they had been taken into judicial custody, because the place of trial, reportedly for security reasons, could not be agreed upon. The failure of the higher judiciary, the state governments and the NHRC to intervene and direct the release of those illegally detained, as there was no legal justification for keeping such persons in custody without a trial, indicates the scant regard accorded to life and liberty of the victims/survivors. Clearly, the horrific nature of the atrocities committed warranted a clear direction to the jail authorities to provide medical assistance and counselling/psychological support to almost all the detainees. However, very few victim/survivors spoke of having been provided medical assistance while in jail. Many detainees deposed that the charge sheet filed by the prosecution was in Kannada—a language that they could not understand—and hence they were unable to answer properly when the charges were framed and the judge asked them questions. However, what gained persuasive value before the Sadashiva Committee in deducing police excesses and awarding compensation to some victims was the TADA court’s acquittal of 46 out of 50 persons who were accused, as it disbelieved the confessional statements produced by the police as evidence.

In September 2011, in a historic judgment, the Dharmapuri sessions court in Tamil Nadu convicted 215 officials of torture, unlawful restraint, rape, misuse of office and looting in the Vanchi village of Dharmapuri district, Tamil Nadu, with sentences ranging from a year to 17 years of imprisonment. The convicted persons consisted of 84
police officials, 126 forest department officials and five revenue officials. In the name of search and inquiry, the STF-led team reportedly raided the village in search of sandalwood that they suspected villagers to have hidden. The villagers, mostly adivasi women, were dragged out of their homes and fields, assembled under a banyan tree and beaten mercilessly, recalled a victim N. Muthu. Later the women were bundled into the Forest Rangers Office in Harur (Taluka headquarters), where they were subjected to brutality and raped. In all 18 women were raped by the different people, for which 17 accused persons have been convicted. Earlier, the Madras High Court had handed over the investigation to the CBI, which charged sheeted the 269 officials. In a typical case of delayed justice, 54 accused persons and 34 victim-survivors had died during the 19-year period of investigation and trial. While the accused persons were reportedly planning to appeal the judgment in the high court, the advocates of victims who survived also planned to appeal as the sessions court did not award any compensation to them for the loss of livelihood, cattle, destruction of houses besides physical injuries and trauma, except for Rs 15,000 each to the rape victims, and that too out of the fines collected.

National Human Rights Commission (NHRC)

Despite being vested with sweeping powers,\(^n\)\(^{44}\) the NHRC decided to act only after receiving complaints from various sources for three years,\(^n\)^{45} when it requested its Special Rapporteur to visit the central jail in Mysore to ascertain allegations regarding the conditions of persons held without any specific charge. Based on the report confirming that 51 persons were languishing in judicial custody in the Mysore Central Prison without trial for the past several years, a panel of enquiry (the Sadashiva Committee) was established on 28 June 1999.\(^n\)\(^{56}\) There was a further delay of six months before the panel had its first sitting at Gebichettipalayam (Tamil Nadu) on 27–29 January 2000. Reports suggest that the NHRC failed to identify victim-survivors, invite their testimonies before it or provide travel arrangements, food and accommodation to facilitate their depositions, undermining the importance of access to justice as an integral part of justice delivery.\(^n\)\(^{57}\)

Furthermore, the panel used technicalities to limit its own jurisdiction and refused to inquire into the most heinous offences.\(^n\)\(^{46}\) In another part
of the report, the assertion to inquire into 60 cases of ‘encounter deaths’ registered by the police of the two states in 1990–8 in the interests of justice, despite these having been duly enquired into by relevant authorities as per the prescribed law, indicates that a committee with political will can overcome apparent technical obstacles.\textsuperscript{59} It may be recalled that the strategy of limiting its own mandate has been used in other instances too—the NHRC drew criticism for a similar self-restricted jurisdiction in the Punjab mass cremations case, when, despite being given a broad mandate by the Supreme Court with regard to the whole of Punjab, it chose to limit its investigation to only 2097 unlawful cremations in the district of Amritsar.\textsuperscript{60}

When an interim stay on the proceedings of the panel was secured in March 2000,\textsuperscript{61} the NHRC did nothing substantive to get the stay vacated, leading to further delay and a possible denial of justice. After the sittings ended on 13 November 2002, the panel took more than a year to submit its report to the NHRC on 2 December 2003, but the same was released only in late 2005 after sustained and intense public pressure, coincidentally a day after the Right to Information Act came into force on 13 October 2005. The NHRC continued to wait for the governments of Tamil Nadu and Karnataka to act on the reports, graciously extending deadlines several times for them to respond, resulting in further delays in disbursing the compensation amounts to the victims/survivors. What is more incredulous and inexplicable is the absolute silence and inaction on the part of the NHRC when the state governments announced rewards, awards and promotions to JSTF officials for killing Veerappan in October 2004, violating the NHRC’s own guidelines regarding ‘encounter deaths’ in the course of police action.\textsuperscript{52} This is despite the fact that glaring irregularities in the ‘encounter killing’ of Veerappan were brought to the notice of the NHRC.\textsuperscript{63}

Despite numerous complaints of sexual torture against women, the NHRC did not consider it prudent to include a woman member in the Sadashiva Committee. Further, the rationale behind appointing a senior IPS officer as a panel member when the allegations were squarely made against police personnel of the JSTF is not clear. The failure of the Committee to keep away the presence of a large number of JSTF personnel present, many of whom perpetrated the torture, during the time when victim-survivors testified, also indicates an absence of
a victim's perspective. The first two sittings had a high number of women deposing about sexual torture in the presence of JSTF officials and two male panel members. The depositions were not held in camera, in clear violation of Supreme Court guidelines. Records indicate that cross-examinations were done by police officials in the presence of JSTF officials. No victim and witness protection measures were used despite victims speaking of intimidation, threats and coercion by JSTF officials to prevent their deposition before the Committee.

Out of 11 women who alleged that they had been raped repeatedly by JSTF personnel while being kept in illegal detention, the Committee found the testimony of 10 women unconvincing as they had not made a complaint before the judge when they were produced in court for remand. Testimonies of victims of sexual torture were rejected because their close family members did not also refer to the rape, violating the Supreme Court direction to dispense with corroboration in every testimony of rape as a general rule.

Since the Committee did not take note of the long-term psychological impact of the brutal torture on victim-survivors, it rejected many testimonies based on contradictions and confusion about the date, year and place of arrest, duration of detention and the route through which the victims were taken to the JSTF camp. It dismissed other testimonies of torture as it found them to be 'similar and stereotyped' rather than concluding that there was a pattern to the torture, indicating a systematic nature in the commission of the crime. Repeated testimonies about having been forcibly hung from the ceiling of the interrogation centre at M.M. Hills were rejected by the Committee, stating that the 'hanging story' had been introduced by the witnesses to 'dramatise their situation and draw sympathy for them' during the inquiry, as the Committee did not see any hook or other fixture on the ceiling of the interrogation hall during its visit to the place years later. The Committee's most categorical findings have been on the issue of encounter deaths, where, based on wound ballistics report, it disbelieved the JSTF officials' version of 'encounter deaths' and awarded compensation to most families of the deceased. However, even with such a finding, the Committee fell short of a logical corollary to this conclusion—to name the officials responsible for those false encounters, and to recommend their prosecution under the law of the land.
IMPUTING RESPONSIBILITY

State Responsibility and the Absence of Due Diligence

In accordance with its commitments under the international conventions that it has ratified, as well as the provisions and principles of the Indian Constitution, the Indian State has a responsibility to respond effectively and provide justice to the victims. A collective study of the responses of the state governments, judiciary and medical professionals to the complaints of atrocities by the JTF indicates the absence of due diligence. The legal concept of due diligence describes the minimum acceptable level of effort which a state must undertake to fulfill its responsibility to protect individuals from abuses of their rights. It includes four main components: a) to prevent abuses; b) to investigate them when they do occur; c) to prosecute the alleged perpetrator and bring the person to justice in fair proceedings; and d) to ensure adequate reparation, including compensation and redress. The Committee Against Torture observes that...

...where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors,... the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible... for consenting to or acquiescing in such impermissible acts.

In the context of the JTF atrocities, procedural failures before the TADA court as well as the absence of intervention by the higher judiciary with regard to reports of over 50 persons languishing in jails for many years without the commencement of trial are illustrations of absence of due diligence on the part of the judiciary. The failure of both the states to put in place internal mechanisms to prevent excesses by the JTF, their failed promise of earmarking Rs 5 crore each towards rehabilitation of victim-survivors of JTF atrocities, and their act of rewarding the alleged perpetrators rather than prosecuting them under law also point to the absence of due diligence.
Though the NHRC is not a State organ, it too has a mandate of providing redress for gross human rights violations through a thorough and careful investigation into the complaints of atrocities, under the Protection of Human Rights Act\textsuperscript{75} and the Paris Principles.\textsuperscript{76} The unjustified delay of several years in the NHRC’s establishment of, functioning of and releasing the report of the Sadashiva Committee clearly indicates a callous attitude of the NHRC towards gross human rights violations, which are incongruent with the mandate vested upon it. Further, one wonders how the NHRC usurped, for itself, the mandate to suggest that funds earmarked by the state governments towards rehabilitation of victims/survivors could be diverted for developmental activities in the two states.\textsuperscript{77}

Command/Superior Responsibility

The doctrine of command/superior responsibility allows military and civilian leaders to be held liable for the criminal acts of their subordinates. This responsibility is based on a failure to prevent or punish subordinates for their unlawful actions.\textsuperscript{78} The fact that any of the acts were committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.\textsuperscript{79} The doctrine encompasses two different forms of liability: a) direct or active command responsibility, when the leader takes active steps to bring about the crime; by, for example, ordering his subordinates to do something unlawful;\textsuperscript{80} b) ‘indirect’/passive command responsibility, which arises from the culpable omissions of commanders or superiors—in the case of commanders, who knew, or owing to the circumstances at the time, should have known, and in the case of civilian leaders, who knew or consciously disregarded information which clearly indicated that their subordinates were committing or were about to commit crimes.\textsuperscript{81} The jurisprudence of International Criminal Tribunal for the Former Yugoslavia (ICTY) has established that command/superior responsibility is not a form of strict liability or vicarious liability and held that a commander is liable only if ‘information was available to him which would have put him on notice of the offences’.\textsuperscript{82} The three main ingredients under this principle are as
follows: a) existence of a superior-subordinate relationship, predicated upon the power of the superior to control the acts of his subordinates; b) applicable standards of knowledge—actual or constructive and c) the duty to prevent or punish.

The principle of command/superior responsibility has its origin in international law and features in the Statutes establishing ICTY, the International Criminal Tribunal for Rwanda (ICTR) as well as the International Criminal Court (ICC). The principle has also been incorporated into domestic military manuals such as the United States Army Field Manual on the law of war, and the British Manual of Military Law. Such a provision also existed in the regulations concerning the application of the International law of war to the armed forces of the Socialist Federal Republic of Yugoslavia (SFRY), which, under the heading ‘Responsibility for the acts of subordinates’, provided as follows:

The commander is personally responsible for violations of the law of war if he knew or could have known that his subordinate units or individuals are preparing to violate the law, and he does not take measures to prevent violations of the law of war. The commander who knows that the violations of the law of war took place and did not charge those responsible for the violations is personally responsible. In case he is not authorized to charge them, and he did not report them to the authorized military commander, he would also be personally responsible.58

In addition, it has been incorporated into domestic laws of countries as well, an example being the laws of Sri Lanka. In more than one instance, the courts of Sri Lanka have held the police and prison officials responsible for custodial torture and deaths, for failure to monitor the activities of the subordinates that could have prevented the commission of the offence, by using the concept of command/superior responsibility.59 An argument has also been advanced for incorporating the concept into the military laws of Sri Lanka.59 A similar exercise could be undertaken in India. Despite common knowledge of the masterminds behind many mass crimes in India, such as the enforced disappearances in Punjab in the 1980s, anti-Sikh violence (1984), communal violence in Mumbai (1992–93) and the Gujarat carnage (2002), and despite the frequency with which they order their subordinates to commit such crimes, Indian law has failed in imputing responsibility on such persons. In the context of the history of impunity for communal violence in
India, many civil society groups have argued for an incorporation of the principle of command/superior responsibility in Indian law. A similar argument has been advanced by the author while highlighting the gaps in Indian legal jurisprudence with regard to prosecuting perpetrators for communal violence.

Understanding the structure of the JSTF is a pre-requisite to any attempt to apply the concept of command/superior responsibility for the atrocities committed by it. The Sadashiva Committee states that the JSTF of Karnataka and Tamil Nadu was constituted with Walter Devaran as the Coordinator/Chief of the JSTF. General powers of control, superintendence and direction were vested with Walter Devaran. Each state created its own STF in April 1993. The Karnataka STF was commanded by Shankar Bidri. No specific area was assigned to be under the control of any particular officer; since the JSTF was considered a single unit, every officer was empowered to visit any place at any time and take any person into his custody as warranted by the situation. The movements of officers were always subject to the oral direction and control of a superior officer. Even though the Sadashiva Committee did not use the concept of command/superior responsibility, it observed that there was a lack of effective command and control (over the subordinates to prevent possible crimes by them) from above. It observed that Walter Devaran, the Coordinator/Chief of the JSTF, could not cite any special instructions he had issued to prevent excesses by the police. It also noted that Shankar Bidri, the commander of the Karnataka STF, had not issued any instructions in this regard between the years 1993 and 1995, when a majority of the atrocities were being committed.

The concept of command/superior responsibility does not find a resonance in Indian law. However, if it were to be applied to the JSTF atrocities, the Coordinator/Chief of the JSTF, Walter Devaran, could be prosecuted for the criminal acts of his subordinates as he knew, or owing to the circumstances prevailing at that time, ought to have known that crimes that were being committed, and did nothing to prevent the commission of the crimes or take efforts to punish the perpetrators. Additionally, for the atrocities perpetrated by Karnataka STF officials, Shankar Bidri could be prosecuted for culpable omissions of failing his legal duty to prevent/punish his subordinates for the crimes they committed.
In addition, the police officials in charge of M.M. Hills, Mettur and other police camps, named by victims/survivors as places where atrocities against them were committed, could also be prosecuted. Similarly the head of the investigation wing of the Karnataka STF could be prosecuted for the crimes committed by his subordinates during interrogation at the M.M. Hills camp. For the encounter killings, the police officials, who led each of the encounters whose veracity was doubted by the Sadashiva Committee, could be prosecuted under the concept of command/superior responsibility.

Other Useful Concepts for Imputing Responsibility

'Absolute Offences' is a set of offences which, unlike other penal offences in Indian law, do not require criminal intent or knowledge to be proved. Proving guilt beyond reasonable doubt is not required for attributing accountability and prescribing punishment; the fact of the breach itself constitutes the offence and the responsibility is fixed. Under this principle, if the knowledge of an offence is prevalent within a particular place, the person in charge of the place is held accountable through constructive responsibility. In India, this principle has been used to hold persons criminally liable for breach of regulatory laws such as the Factories Act, 1948 which deals with health, risk and safety. For example, Section 101 of the Factories Act prescribes that when an occupier is charged with an offence under the Act, he would be entitled to charge any other person as the actual offender, and he has to prove to the court, after establishing the commission of the offence, that he exercised due diligence to enforce the execution of the Act, that the other person had committed the offence without his knowledge, consent or connivance. This rests on the logic of accountability, and on an understanding that there is, or has to be, person(s) responsible for the conduct of the plant at all times; and that what happens within the plant is within the near exclusive knowledge of those in authority at the plant.

If such a concept were to be used for the JTF atrocities, the person(s) in charge of the places of detention where the atrocities were committed could be held liable; if such persons say that they were not at the venue of the crime or that they had no knowledge of commission of such crimes or they prove in court that they had exercised due diligence, they would have to impute the responsibility to another official. This principle
deviates from the traditional and established ingredient in criminal law—that of *mens rea*. Apart from the JSTF context, this concept could be useful in making persons accountable for mass crimes that are committed in confined places that are exclusively under the control of public officials, such as police stations, prisons and interrogation centres. The extent to which such a concept can be incorporated into criminal law related to mass crimes warrants exploration.

The concept of 'culpable inaction' provides an alternative solution to pinning responsibility on errant officials for dereliction of duty/ negligence/failure to perform their duties, particularly in situations where applying the command/superior responsibility principle proves difficult. Through a series of judgments, the high courts and the Supreme Court have:

(a) limited sovereign immunity as a defence by the State against negligence by its officials, reiterating the State's responsibility for the negligent acts of public officials;  
(b) pinned accountability on public officials not only for situations of custodial death/violence directly caused by them, but also for killing/injury by third parties as a result of public officials' failure to protect persons within their custody;  
(c) held public officials accountable for negligence and dereliction of duty by being 'mere spectators' in situations of mob attacks—in other words, for 'positive inaction'/**wilful inaction**, and reiterated the State's duty to protect persons and properties of civilians;  
(d) established the relationship between foreseeability (including when State officials have been forewarned), complicity of the State and positive inaction;  
(e) reiterated the State's obligation to protect the right and the liberty of every person from violations by State and non-State actors.  

* * *

The atrocities committed by the JSTF constitute violations of standards of international as well as Indian law. The perpetrators of JSTF atrocities have escaped with impunity so far and the Indian State has failed in discharging its constitutionally mandated duty to protect its citizens from arbitrary acts of its officials. Democratic institutions such as the NHRC have been complicit in contributing to the climate of impunity,
by being silent on initiating prosecution against the errant officials, and completely lacking in human rights, victims' and gender perspectives. Justice and rule of law cannot be brushed under the carpet in the name of delay in time or political expediency; as such an act would undermine the faith of the victim-survivors, in particular, and lay persons at large in the legal system. At the same time, such impunity would often be the breeding ground for more atrocities by the public officials, possibly on a larger scale than that witnessed. Lack of political will to prosecute the errant officials is going to be a big stumbling block in bringing the perpetrators to book, as indicated by past experience with efforts at making public officials accountable to the law.  

The Indian Penal Code (IPC) too recognizes that public officials may be accused of committing offences while acting or purporting to act in the discharge of the official duty. The Prevention of Corruption Act, 1988 caters particularly to bribery, corruption and criminal misconduct by public servants, with a prescription of punishments for the same. The SC/ST Act contains provisions on offences by public servants, including neglect of duties. Past experience has shown that errant police officials have been prosecuted against and at times, courts have suggested prosecution 'where it is not already underway,' or that it shall be open to the State authorities to proceed against the erring officers both departmentally and criminally. Hence, prosecution of JSTF officials who committed the atrocities is not impossible under Indian law, though it must be mentioned here that the requirement of prior sanction from the government for prosecution of public officials, embedded in Indian criminal law, is a potent obstacle to justice and accountability. Compensation ought not to be seen by concerned authorities as the end to the road for justice. It has been awarded to some victim-survivors or their families; however, many testimonies were not heard by the Sadashiva Committee due to a paucity of time, and hence it has not been awarded to them. A comprehensive inquiry that would provide a basis for prosecution of the errant officials as well is urgently warranted, more so as the awarding of compensation is by itself an admission of the culpability of JSTF officials in perpetrating atrocities against the victim-survivors. In keeping with international standards, it would be desirable if comprehensive reparations were to be provided to all victims-survivors and their families, including compensation, restitution, rehabilitation, a public apology and a guarantee of non-repetition by the concerned
officials. Restitution seems a relevant principle to consider, particularly for the victims-survivors from Nellur whose houses were burnt/destroyed, but also for others who lost their livelihood and properties, such as agricultural lands.

Indian criminal law is grossly inadequate to deal with crimes committed in a systematic manner against a large number of people, particularly through action or inaction of State agents in discharging their constitutionally mandated duties, such as the JTF atrocities. A basic premise of criminal law—the assumption that the State as the custodian of society’s interests is bound to render accountable the perpetrator of a crime, is overturned in contexts of violations/complacency with violations by public officials, because such acts transform the ‘protector’ into the ‘perpetrator’. The present criminal law creates an absurd situation where State agencies are forced to investigate and prosecute themselves for crimes that they are complicit in and are motivated to shield the wrong-doers and further their own interests rather than that of the victim-survivors and/or society at large. Hence, while suggesting prosecution of the errant officials, the author anticipates that the process of pinning accountability will be an arduous and a challenging one. Present criminal law largely addresses crimes committed against individuals and not those committed against numerous persons, based on an implicit or express policy of a State or organization. Though the experiences of victim-survivors may be fitted into particular provisions and definitions of offences under the IPC, the reality of their experiences, particularly the systematic manner in which the crimes were committed against a large number of people, is not reflected in the provisions of the IPC. There is an urgent need to import into Indian law the international legal concept of ‘crimes against humanity’, under whose umbrella, crimes such as torture, illegal detention, enforced disappearances, sexual violence, extrajudicial killings and such other crimes, many of which have been committed by the JTF, could be listed.

Drawing from international standards as well as Sri Lankan law, discussed more elaborately in the section on ‘command/superior responsibility’ above, the principle of ‘command/superior responsibility’ is important to incorporate into Indian law as the doctrine plays a fundamental role in regulating the behaviour of, and attributing responsibility to, superiors/civilian leaders and their subordinates with respect to possible contexts of mass crimes. This is particularly because
the crimes of criminal conspiracy and abetment that exist in the IPC have proven to be inadequate in making public officials accountable for the crimes they commit, including those in positions of power and authority. In addition, it needs to be explored if the concepts of 'culpable inaction' and 'absolute offence' which already exist in other branches of Indian law and jurisprudence can be expressly incorporated into criminal law to facilitate pinning down accountability for horrific crimes. Such an effort could pave the way to ending impunity for mass crimes and promoting a culture of rule of law, justice and accountability.

NOTES

1. Admitted by Walter Devaran, then DGF of Tamil Nadu and co-ordinator of the STF, before the Sadashiva Committee; see the Report of Inquiry into Allegations of Rape, Torture and Other Excesses by the Joint Special Task Forces of Karnataka and Tamil Nadu against tribals and others, in the course of anti-Veerappan operations, 2 December 2005 (referred to hereinafter as the Sadashiva Committee report), Chapter VII, para 3.

2. Terrorist and Disruptive Activities (Prevention) Act, enacted in 1987, amended in 1993 and allowed to lapse in May 1995, though cases initiated under it, while it was in force, continued to hold legal validity.


4. Testimony of Lakshmi, MW-83 before the Sadashiva Committee on 28 February 2000, Munuswamy from Nellore before the People's Tribunal on Torture held at Bangalore, 12-13 August 2008.

5. Testimony of Ms Jnanasundari, MW-143 before the Sadashiva Committee on 21 March 2002.

6. Testimony of Mr Kariya Thambadi, MW-22 before the Sadashiva Committee, that he and others were beaten up even when they wanted to go out to ease themselves.


8. Testimony of Ms Nagai, ibid.
9. Testimonies before the Sadashiva Committee including that of Mr Muruswamy, MW-123 on 8 February 2002, Ms Seva, MW-114 on 6 February 2002, Ms Parumal, MW-130 on 19 March 2002, Mr Aruldas, MW-176 on 29 April 2002.

10. Testimony of Ms Lakshmi, MW-83.
11. Testimony of Ms Ellammal, MW-105 and Ms Kaliyammal, MW-110 before the Sadashiva Committee.
12. Testimony of Ms Selvi, MW-129 and Ms Muryanam, MW-122 on 8 February 2002 before the Sadashiva Committee.
13. Testimony of Mr T.J. Kelaish on 29 May 2008 before the People's Tribunal on Torture held in Goripalayam, Madurai.
14. Testimony of Ms Thangammal, MW-82 before the Sadashiva Committee on 28 February 2000.

15. Ibid.
17. Testimony of Ms Seva, MW-114 on 6 February 2002 before the Sadashiva Committee.
18. Testimony of Ms Lakshmi, MW-83, see n. 4.
19. Testimony of Ms Ellammal, MW-1, see n. 7.
20. Testimony of Ms Lakshmi, MW-4 on 28 January 2000 before the Sadashiva Committee.
21. Testimony of Ms Nallanam, MW-121 on 7 February 2002 before the Sadashiva Committee.
22. Ibid., and Ms Ghina, Fonnu, MW-120 on 7 February 2002 before the Sadashiva Committee.
23. For example, Mr Chinnappanm deposed before the People's Tribunal on Torture held in Goripalayam, Madurai on 29 May 2008 that he and other men had been stripped at a camp at Memur and forced to indulge in acts of homosexuality; Mr Pranam, MW-21, stated before the Sadashiva Committee that he was administered electric shocks on his penis for the whole day due to which he became impotent (see chapter IV, para 135 of the report).
24. For example, Ms Madi, MW-84, testified before the Sadashiva Committee on 28 February 2000 that she secretly went to the Memur police camp and saw her husband naked and chained, and when she went back to the camp 15 days later, she could not find him and did not know his whereabouts since then as the police did not inform her.
25. Testimony of Ms Madi, MW-84 on 28 February 2000, Ms Ammadi, MW-126 and Ms Dodda Thayammal, MW-147 before the Sadashiva Committee on 28 February 2000.
26. Testimonies of Ms Perumatha, MW-124, Ms Mangamma, MW-150, Ms Muniyamma, MW-122, before the Sadashiva Committee on 8 February 2002; of Mr Palaniswamy before the People’s Tribunal on Torture held at Bangalore on 12 and 13 August 2008.


28. Article 2 states: ‘For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’


30. The European Court of Human Rights, in applying the prohibition against torture contained in the European Convention on Human Rights in cases involving terrorists, stated: ‘The Court is well-aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct.’ (Čečak v. United Kingdom, 15 November 1996) Similarly, the Committee Against Torture, reviewing Israel’s use of torture as a method of interrogation against suspected Palestinian terrorists, precluded Israel from raising before the Committee exceptional circumstances as a justification for torture. (United Nations Committee Against Torture, ‘Concluding Observations of the Committee Against Torture’ [1997], A/52/44, paras. 253–260 [15 November 2001])


32. Testimony of Ms Muniyamma, MW-122 before the Sadashiva Committee on 8 February 2002.

33. Testimony of Ms Mani, MW-91 before the Sadashiva Committee, as well as before the People’s Tribunal on Torture held in Gauripalayam, Maduran on 29 May 2008.

34. Testimony of Ms Nallamma, MW-121 before the Sadashiva Committee, on 7 February 2002.
35. Testimony of Ms Lakshmi, MW-83 before the Sadashiva Committee, on 28 February 2000.

36. Testimony of Mr T.P. Kelath (44/39) before the People’s Tribunal on Torture held at Goripalayam, Madurai on 29 May 2008.

37. For example, see testimony of Ms Mari, MW-91 before the Sadashiva Committee and the People’s Tribunal on Torture held at Goripalayam, Madurai on 29 May 2008. Ms Anuradha, MW-136 before the Sadashiva Committee and the People’s Tribunal on Torture held at Goripalayam, Madurai on 29 May 2008, Ms Dodda Thayammal, MW-147 before the Sadashiva Committee and the People’s Tribunal on Torture held at Goripalayam, Madurai on 29 May 2008, testimony of Ms Mari, MW-86 before the Sadashiva Committee on 28 February 2000, and testimony of Ms Gowri, MW-15 before the Sadashiva Committee on 29 January 2000.

38. International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly in December 2006 and signed by India in February 2007 soon after the Convention was opened for signatures.


40. Ibid., Article 2 and below n. 41.

41. For example, only 24 out of 250 victims were heard at the first sitting of the Committee at Gobichettipalayam in Tamil Nadu on 27–29 January 2000.

42. Article 7(1) of the ICC Statute.


47. *Habeas corpus* petition filed by People's Union for Civil Liberties (PUCL), Tamil Nadu, for-producing detenus whose names were listed, for suitable compensation to the detenus and to direct disciplinary action against the police personnel. HCP No. 874/1993, dismissed on 11 March 1994 by the Madras High Court, cited in the Sadashiva Committee report, Chapter IV, para 4.

48. Testimonies of Ms Thangammal, MW-82 on 28 February 2000; Ms Muniyamma, MW-122 on 8 February 2002; Ms Nallamma, MW-121 on 7 February 2002, Mr Muniswamy, MW-123 on 8 February 2002 and Mr Arudhas, MW-176 on 29 April 2002 before the Sadashiva Committee.

49. See for example the testimony of Ms Seva, MW-114, who testified before the Sadashiva Committee on 6 February 2002, that she had informed the TADA judge that the police had electrocuted her.

50. Testimony of Mr Muniswamy, MW-123 before the Sadashiva Committee on 8 February 2002, states that he was an in-patient at a hospital for several months while he was in jail.

51. Testimony of Mr T.P. Kelathi, Ms Bonaniamma, Mr Maruthi, Mr M. Ponnu, and Mr Chinamamb, before the People's Tribunal on Torture held at Gopallayam, Madurai on 29 May 2008.

52. Mentioned in Chapter VII, para 23 of the Sadashiva Committee report.


55. These include a complaint by Ms Govindamma on behalf of her husband, Punnusamy, who was imprisoned and tortured without any specific charge against him (Case No. 222/10/97-98); a complaint by SCCO Trust, Madurai (Case No. 534/22/97-98); letter dated 20 November 1997 from Justice V.R. Krishna Iyer, former judge of the Supreme Court; complaint by Tamil Nadu Tribal People Association (Case No. 795/22/57-98); letter from Justice D.M. Chandrasekharan, retired Chief Justice of the Karnataka High Court (Case No. 79/10/99-00); a complaint by S. Ramadass signed by three MPs and three MLAs (Case No. 249/10/97-98) and a communication from Henri Tiphagne.

56. The panel was headed by Justice A. Sadashiva as the chairman and C.V. Narasimhan, IFS (retd).

58. During the course of its second sitting, it declared that it was not ready to hear complaints filed by the civil society campaign before the State Human Rights Commission of Tamil Nadu, complaints that arose solely out of the alleged excesses on the part of the Tamil Nadu STF and police officials within the state; instances of encounter deaths, violations of human rights involving torture, illegal detention etc. but where the police had registered a criminal case against the victim—as these were technically cases pending before the courts.

59. See Chapter V, para 4 of the Sadashiva Committee report.

60. For more details, see ‘Protecting the Killees: A Policy of Impunity in Punjab, India,’ report of Human Rights Watch, 19(14(c)), October 2007 and Human Rights Watch, ‘A Step Forward in the Punjab Cremation Case’, HRW/84/08, 30 May 2008.


62. NHRC’s Guidelines regarding Encounter Deaths in the Course of Police Action circulated to the government officials on 2 December 2003 by the NHRC Chairperson Justice A.S. Manu stated: ‘No out of term promotion or gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the concerned officer is established beyond doubt.’

63. Letter of Henri Tiphagne to the NHRC dated 21 October 2004, highlighting evidence of irregularities, including contradictions in STF Chief V.K. Saini’s accounts, STF’s preference for the use of lethal force rather than arrest, dubious description of the encounter, denying access to corroborative evidence, hasty and biased examination of corporeal evidence and conflicting accounts within the STF.

64. Fletcher and Sitaran, The Limits of Justice’, p. 37.

65. See State of Punjab v. Gurmeet Singh and Others, AIR 1996 SC 1393 where the court stated that Section 327(2) of the Code of Criminal Procedure requires that trials for rape and other such heinous abuses ought to be conducted in camera.

66. For example, the testimony of Ms Thangamani, MW-82, before the Sadashiva Committee on 28 February 2000, clearly states: ‘About three days ago, four to five persons belonging to Tamil Nadu police force came to Thanda and threatened me not to make any statement before the Panel in respect of all what has happened earlier. They further told us that we would not be allowed to live in Thanda if we say anything against them.’

67. Chapter IV, para 44 of the Sadashiva Committee report.
68. See, for example, the Committee's rejection of testimonies of Ms Rathini (MW-3) at Chapter IV, para 29; Ms Manjula (MW-5) at para 32; Ms Selvi (MW-129) at para 40; Ms Lakshmi (MW-4) at para 30 and Ms Valliamma (MW-118) at para 39 of Chapter IV of the Sadasiva Committee report, see also n. 1.


70. Ms Sena's (MW-114) and Mr Muriswamy's (MW-123) testimonies were found 'not safe to act upon' due to contradictions about the date on which they had been taken into illegal custody by the JSF officials (para 79); Ms Madamma's (MW-14) and Mr Chikka Madas (MW-20) testimonies were rejected because of contradictions about the month/year of arrest (para 115 and 131 respectively). Chapter IV of the Sadasiva Committee report, see also n. 1.

71. Paras 68 and 82 of Chaptee IV of the Sadasiva Committee report, see also n. 1.

72. Para 83 of the Sadasiva Committee report, see n. 1.


74. Para 18, General Comment No. 2 of Committee Against Torture, CAT/C/GC/2, dated 24 January 2008.

75. Section 12(a)(i) and (ii) of Protection of Human Rights Act, 1953.


80. Allison Marston Danier and Jenny S. Martinez, 'Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Development of International Criminal Law', California Law Review, 93 (75), 2005, p. 120.

81. Article 28 of the ICC Statute.

83. Referenced in *Prosector v. Debale et al. (Celtiici case)*, judgment, Case No. IT-96-21-T, TChIlgir, 16 November 1998, para 343.
88. Observations in Para 57, Chapter II of the Sadashiva Committee report, see n. 1.
89. Observations in Para 55, Chapter II of the Sadashiva Committee report, see n. 1.
90. Ibid.
91. Para 33, Chapter VII of the Sadashiva Committee report, see n. 1.
92. Ibid.
93. Ibid.


101. See J.K. Traders' case, see n. 99, where the court observed that the police had been 'a mere spectator' when the mob attacked the property and that the state had been complicit in the violence, as police protection was not provided when the proprietor anticipated an attack on his properties.


103. Despite the naming of 31 police officials by Justice Srikrishna Commission as having been prima facie guilty of atrocities and recommending their prosecution, none of the officials have been prosecuted till date. They have been rewarded with promotions and increments. For more details, see Bombay Pogrom: Srikrishna Report Dumped", Combat Law, June–July 2007; in the case of Hashimpura violence, where the Provincial Armed Constabulary—a form of police—took 42 Muslim youths to a canal in U.P., shot them dead and threw their bodies into the water, the crimes committed in May 1987 were still being tried in 2008 in the Tis Hazari court in Delhi. For more information, see Iqbal A. Ansari, 'Hashimpura Massacre Trial After 19 Years: Failure of All Organs of the State', PUCR Bulletin, October 2006, available at http://www.pucr.org/Topics/Human-rights/2006/hashimpura.html (accessed on 2 November 2008).

104. See, for example, Chapter IX of the Indian Penal Code, dealing with 'Offences by or Relating to Public Servants', which states the following acts as offences—public servant disobeying the law (Section 165); framing an incorrect document (Section 167), unlawfully engaged in trade (Section 168) and unauthorisedly buying or bidding for properties (Section 169), and illustrations under Section 330 (the act of causing hurt to extort a confession).


109. Section 132 of the CrPC deals with law enforcement agencies and the armed forces of India for whom a sanction is required before commencing any criminal prosecution and it also gives them immunity under certain circumstances; Section 197 of CrPC makes it mandatory to obtain sanction of the government for prosecution of public servants and judges, where such a person is accused of any offence alleged to have been committed during the discharge of his official duty. The sanction is to be issued by the authority that has powers to remove the public servant from office—the Central Government in cases of members of armed forces or officers of the Central Government; and the state government in all other cases. For the difficulty caused by this requirement in making public officials accountable for heinous crimes, see Uma, *Kandhamal*, pp. 131–3.

110. Ibid., p. 132.

111. Chapter VA, Section 120A of the Indian Penal Code, 1860 which defines criminal conspiracy as follows:

When two or more persons agree to do, or cause to be done,

(1) An illegal act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

*Explanation*: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Criminal Abetment, as defined in Section 107 of the Indian Penal Code, includes three classes of acts—(1) instigation; (2) conspiracy with an act or illegal omission taking place as a result of the conspiracy; and (3) intentional aiding, by an act or illegal omission, the doing of that thing.
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