

IHRP Intern: James Rendell

Host Organization: South Asia Human Rights Documentation Center (SAHRDC)

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RE: Final Report

Dear IHRP,

This past summer I was given the opportunity to work with the South Asia Human Rights Documentation Center (SAHRDC), a small NGO in Delhi, India, thanks to the support of the IHRP. SAHRDC is run by the dedicated human rights activist Ravi Nair and his team of lawyers, researchers, and interns. The organization's stated goal is to investigate, document, and disseminate information about human rights, media freedom, prison reform, political imprisonment, torture, and other cruel, inhuman, or degrading treatment. In practice, SAHRDC runs workshops on human rights for judicial officials and NGOs, publishes regular Human Rights Features in the Mumbai journal Economics and Politics Weekly, disseminates action alerts across its network to bring attention to human rights violations, and publishes books and manuals on Indian law and human rights.

My time with SAHRDC was split between one major ongoing research project and a series of smaller projects which responded to topical events. The major research project was an account of the use of draconian criminal legislation in India. Since well before the American experience with terrorism on September 11th, 2001 and the global shift towards enhanced domestic security, Indian governments have frequently passed legislation compromising fundamental rights in the name of national security. My task was to continue the work of two previous interns on researching and writing a book covering history and impact of three pieces of legislation which significantly altered Indian criminal law for the purpose of combating terrorism: the Terrorism and Anti-Disruptionist Activities Act 1985 – 1995 (TADA), the Prevention of Terrorism Act 2002 – 2004 (POTA), and the Unlawful Activities Prevention Act (UAPA) 1963 - amended and significantly strengthened in 2008.

This project entailed first analyzing the legislation within the context of Indian domestic law, the Constitution of India, comparable legislation in other common law jurisdictions, and international treaties. The aim was to highlight the specific changes to criminal procedure and police, executive, and judicial powers these pieces of legislation brought about, and to demonstrate how these changes were at variance with both domestic and international standards. Second, my task was to conduct interviews and draw on the work of NGOs, government agencies, and scholars to provide an account of the impact of this legislation.

The comparative legal analysis aspect of my research project was extremely valuable as it allowed me to commit significant time both to sharpening my legal research skills, especially in comparative law, a particular academic interest of mine, and to broadening my understanding of the crucial role procedural fairness and carefully constructed checks and balances play in establishing and maintaining justice. I particularly enjoyed my work comparing the Supreme Court of Canada's use of the *Oakes* test to check the

constitutional validity of legislation with the Indian Supreme Court's much more deferential approach. Being able to compare how different Supreme Courts approach the guarantees enshrined in their respective constitutions gave me a much greater appreciation for the innovation the Canadian Supreme Court has shown and the benefits of its approach to deciding constitutional questions.

My assessment of the impact of the legislation was also an interesting opportunity to research some of the consequences, in the Indian context, of changes to criminal procedure and the balance of power within government. This was conducted through research into NGO, government, and scholarly sources, interviews with several lawyers who had frequently acted as defence council in cases involving charges under the draconian legislation, and attendance at the National Consultation on Torture. Unsurprisingly, my findings were grim. All the material pointed to the fact that crippling procedural safeguards designed to protect people from the unlawful exercise of force and arbitrary detention, facilitate fair trials, and distinguish the innocent from the guilty had done far more to exacerbate abuse and injustice than to ensure security. For example, over 70,000 individuals were officially arrested under TADA, yet only 1% of them were successfully convicted of any crime. Conversely, most convictions for terrorist acts while TADA was in existence occurred under legislation which had existed prior to TADA's enactment. While the Indian context is not the Canadian one, this aspect of my research sensitized me to the precarious balance in our own country between maintaining national security and protecting our civil and human rights.

While researching draconian legislation was my primary task I was also periodically diverted to short-term projects responding to the needs of the SAHRDC. These shorter assignments were very enjoyable as they allowed me broad insight into many of the leading issues currently being pursued by human rights NGOs in India. I researched and wrote on the Canadian, U.S. and Indian experiences with government restrictions on cyber speech, the issue of government control of foreign funding for NGOs in India, war crimes in Sri Lanka and the possibility of prosecution via the ICC, and parliamentary oversight of intelligence agencies in various liberal democracies. I was gratified to have the latter two used as part of the SAHRDC's monthly Human Rights Feature, which is a major part of the organization's efforts to coordinate action on these issues between the NGOs, activists, and legal practitioners.

In conclusion, I would be remiss if I overlooked mentioning how fascinating and challenging it was to live in Delhi for three months. It is an incredible city, teeming with life, covered with history, and creatively managing enormous challenges in public health, security, transportation, and other areas. I also had the very good fortune to stay with a wonderful family who hosted me and several other students from around the world, and who all provided constant guidance and companionship during my time there. That said, daily existence could still be difficult. Basic tasks such as navigating public transit or getting a form signed could quickly become bewildering, and norms around such things as familiarity, personal space, and obeying traffic signs were vastly different from what I am accustomed to in Canada. Simply commuting to and from work every day forced me to be flexible in my attitudes and expectations, but I found it extremely rewarding as I

became fluent in the flow of daily life in the city. I owe the IHRP a debt of gratitude for making this opportunity possible for me, and I look forwards to continuing to work on human rights issues in Canada and abroad.