



## 1. Editorial: Torture and death penalty not answer to Punjab's drug menace

From 15 May-13 July 2018, at least one person died in Punjab every day due to drug overdose as recorded by the doctors in the post-mortem reports of the victims who were in the age group of 18 to 35 years.<sup>1</sup> In fact this is consistent with the findings of *The Indian Express* that in 2014 and 2015, 174 persons charged under the Narcotic Drugs and Psychotropic Substance (NDPS) Act died in prisons during 2014 and 2015 i.e. 88 in 2014 and 86 in 2015 which confirms custodial death of one drug addict and/or suspect every fourth day during 2014 and 2015.<sup>2</sup>

The toll could be much higher as the state government often refused to acknowledge drug deaths as a matter of policy. The lack of any data in the State's Health Department on drug deaths allowed liberty to Punjab's Health Minister Brahm Mohindra to claim in the Cabinet

meeting on 2 July 2018 that just two deaths took place due to drug overdose in the entire state.<sup>3</sup> On the other hand, *The Tribune* reported 23 deaths from drug overdose during the month of June 2018 alone.<sup>4</sup> According to a study by Chandigarh-based Post-Graduate Institute of Medical Education and Research (PGIMER), published in September 2017, an estimated 1.70 to 2.70 lakh people were drug addicts in Punjab which is about one per cent of the State's population. If the numbers of substance users like alcohol, tobacco, opium, charas and heroin are taken together, the percentage is as high as 14.7 per cent (29.7 lakh) of the state population.<sup>5</sup>

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The spurt in drug deaths in recent months has brought panic and anger among the public. Yet, instead of taking systemic reforms in the anti-drug war, Punjab Chief Minister (CM) Captain Amarinder Singh has sought a quick fix solution to his election promise to solve the problem. On 2 July 2018, the State Cabinet recommended death penalty for first time drug-peddlers, and on 4 July 2018, the CM ordered mandatory drug tests for all 3.25 lakh government employees, including the police, to be taken each year. Tokenism is unlikely to bring results.

Instead of finding quick fix solutions, Chief Minister of Punjab must firmly and quickly address the gaps identified by the Comptroller and Auditor General (CAG) in at least two reports recently tabled in the Punjab Assembly. First, the CAG report, tabled in the State Assembly on 22 March 2018, found that the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) was very lacklustre. There is a lack of action plans and annual plans, lack of skilled manpower and inadequate training, inadequate surveillance and other modern equipment and sniffer dogs, and above all, systemic flaws in detection, investigation and prosecution under the NDPS Act. Indeed, about 75% of the samples seized during the period 2013-17 were sent to the laboratory with a delay ranging up to 476 days. During 2013-17, 70% of the accused were acquitted by the courts due to inconsistency in the statements of the witnesses who in most of these cases were “police officers/officials who were involved in arresting the culprits” suggesting nexus between the drug peddlers/users and the police.<sup>6</sup> Second, the CAG report in 2017 stated that 35 of the 57 de-addiction centres and rehabilitation centres established by the state government were functioning illegally, that is, without obtaining license/non-renewal of licenses.<sup>7</sup> Further, at least five de-addiction centres and rehabilitation centres “were not functional due to non-availability of Psychiatrist/Medical Officer, other staff and essential equipment.” The de-addiction centres and rehabilitation centres were facing acute shortage of manpower which ranged between 25 and 100 per cent “which impaired their ability to effectively discharge their functions”.<sup>8</sup> Majority of those detoxified have not received rehabilitation in the Rehabilitation Centres thereby defeating the very objective for which Rehabilitation Centres were set up.<sup>9</sup>

Many illegal de-addiction centres operating in the State have become chambers of torture in the name of treating the drug patients. Drug addicts rescued from several illegal centres have recounted tales of brutal torture and inhuman

conditions of the centres.

Torture and custodial deaths in the State remain one of the most serious issues. According to the data collated by the ACHR from the NHRC and replies in the parliament, there were 1,221 custodial deaths in Punjab during nine years from 1<sup>st</sup> April 2008 to 28 February 2018 while the figures of 2016-2017 are not available. That is about one custodial death every second day. What is more worrisome is that amicus curiae, Reeta Kohli, informed the Punjab and Haryana High Court in July 2018 that 99 per cent of deaths in judicial custody in Punjab during 2012-2015 were due to poisoning.<sup>10</sup>

This calls for prohibition of torture including by enacting State level “Prevention of Torture Act” based on the model law drafted by the Law Commission of India in its 273rd report submitted to the Ministry of Law & Justice on 30 October 2017. Though on 28 February 2018, the Ministry of Law & Justice sent the Law Commission of India’s report to all the State Governments /UTs seeking their comments, Punjab is yet to submit its reply on the same.<sup>11</sup>

The knee-jerk reactions of the state government will not help to fix the deep-rooted problem of drug abuse in Punjab. The decision of Chief Minister Capt Amarinder Singh on 10 July 2018 to provide free treatment for poor drug addicts and his order to the police not to harass addicts or their families in any way, are welcome steps.<sup>12</sup> He must also quickly comply with the direction issued by the Punjab and Haryana High Court on 13 July 2018 to frame a policy to deal with the drug problem and to identify the drug addicts with the help of the gram panchayats.<sup>13</sup> Further, the State government should take meaningful steps in identifying the real causes, curb the supply chain in which gangs operate with a degree of impunity which points to high-level patronage, and plug the loopholes identified by the CAG.

The government of Punjab must realise that death penalty and torture are not the solution to the Punjab’s drug problem. Instead, the Punjab government should enact a State level law against torture.

## 2. Special focus: Punjab’s drug problem and torture

### 2.1 The intensity of Punjab’s drug menace

Punjab is often considered as the country’s most drug-ridden state. During the recent two months from 15 May to 13 July 2018 on an average one person has died due to drugs in Punjab, according to *The Tribune*. In a news report

dated 14 July 2018, *The Tribune* stated that records accessed by it showed that drugs was mentioned as the cause of death in the post-mortem reports of more than 60 youths at government hospitals across the state during 15 May-13 July 2018. Significantly, all these victims were in the age group of 18 to 35 years.<sup>14</sup> *The Tribune* also reported that at least 23 persons died from drug overdose in the state in the month of June 2018.<sup>15</sup> But the Health Department of Punjab doesn't maintain data on deaths caused by drugs.<sup>16</sup>

In a study released in September 2017, the Chandigarh-based Post-Graduate Institute of Medical Education and Research (PGIMER) estimated the number of people addicted to opioids in Punjab to be between 1.70 to 2.70 lakh which is about one per cent of the total population of Punjab. However, as much as 14.7 per cent (29.7 lakh) was estimated to be hooked on substances like alcohol, tobacco, opium, charas and heroin, according to the study.<sup>17</sup> In 2016, a study by the All India Institute of Medical Sciences (AIIMS) estimated that 2.32 lakh addicts in Punjab were dependent on opioids.<sup>18</sup>

Among all states and Union Territories, Punjab has the highest incidence rate for cases under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. According to the National Crime Records Bureau (NCRB) under Ministry of Home Affairs, Punjab registered 5,906 such cases in 2016, or incidence rate of 20.2 per lakh population, followed by Kerala with incidence rate of 16.6%, Himachal Pradesh (13.1%), Maharashtra (12.1%), Mizoram (9.8%) among others. In absolute numbers, Punjab registered the fourth highest number of cases in the country and accounted for 12% of the total cases registered in India.<sup>19</sup> In 2017, the Punjab Police arrested 18,977 drug peddlers and the state government treated over two lakh drug-dependent persons.<sup>20</sup> Further, from January till May this year, over 5,000 have been arrested under the NDPS Act, 1985.<sup>21</sup> Over 3,900 convicts under the NDPS Act and 5,610 undertrials booked under the same Act are currently in prison in Punjab.<sup>22</sup>

The intensity of the problem is so much so that on 4 July 2018 Chief Minister Captain Amarinder Singh ordered mandatory drug tests for all government employees, including police personnel, through every stage of their service.<sup>23</sup> Earlier, on 2 July 2018, the Punjab Cabinet headed by Chief Minister Capt Amarinder Singh also decided to send recommendation to the Centre seeking amendment to the NDPS Act to provide for death penalty for those convicted in drug smuggling cases for the first

time.<sup>24</sup> Section 31A of the NDPS Act already provides for the death penalty to second-time offenders in certain cases. If the first conviction is under Sections 19, 24, and 27A, which deal with various offences relating to drug trafficking, then Section 31A provides for the death penalty if the offender is subsequently convicted of production, manufacture, possession, transport or transshipment of specified drugs, or financing any of these activities.<sup>25</sup> Making Punjab free from drugs was one of the commitments of the Congress ahead of the Assembly election held in 2017.

## 2.2 Custodial torture in police stations and prisons

The facilities in the police stations and prisons are highly inadequate to deal with the addicts' challenging physiological and psychological symptoms and illnesses. Scrutiny of First Information Reports in the most affected districts by *The Indian Express* revealed that an average of over 25 drug addicts were booked each day in 2014 and 2015. Further, about 174 charged under the Narcotic Drugs and Psychotropic Substance (NDPS) Act died in prisons during 2014 and 2015 i.e. 88 in 2014 and 86 in 2015. It implies custodial death of one drug addict and/or suspect every fourth day during 2014 and 2015.<sup>26</sup>

### Death of Abdul Gafar due to alleged custodial torture

On 14 July 2018, a prisoner identified as Abdul Gafar (60) died due to alleged torture at Patiala Central Jail under Patiala district of Punjab. The deceased, a resident of Malerkotla town of Sangrur district, was convicted and had already served 11 months out of total 13 months sentence in a cheque bounce case. The jail officials claimed that on 14 July 2018, Gafar had committed suicide inside the jail premises by using his crepe bandage to hang himself. However, the family members alleged that the deceased was tortured to death by the jail officials after an altercation over denial of permission to offer Friday Namaz on 14 July. Gafar's nephew Mohammad Ashfaq stated that two days before his death, Gafar had called his family from the jail and told that he was being threatened.<sup>27</sup>

### Death of Balbir Ram due to custodial torture<sup>28</sup>

On 14 April 2017, a jail inmate identified as Balbir Ram (26) died in Jalandhar civil hospital allegedly due to custodial torture as alleged by the family members of the deceased. He was arrested by the police allegedly with some drugs on 10 April 2017 from his home town, Phagwara, and sent to Kapurthala Modern Jail the same day. The jail officials had claimed that Ram was admitted to



Kapurthala civil hospital after complaints of chest pain but doctor referred him to Jalandhar civil hospital where he died on 14 April.

On 15 April 2017, family members of the deceased held a protest, placing the deceased's body at the main entry gate of Phagwara Superintendent of Police's office. They alleged that Ram was tortured in custody. Roshan Lal, nephew of the deceased said he was detained with his uncle Balbir Ram by the police on 9 April from home. Police left Roshan Lal but booked his uncle Balbir Ram in a drug case and showed recovery of 110gm intoxicant powder. He further alleged, "Balbir was tortured badly in police custody to confess to the crime which he did not even commit".

### 2.3 De-addiction centres: torture chambers

The de-addiction centres, particularly the private ones run illegally by unscrupulous people for making money out of people's sufferings, have turned into torture chambers for all practical purposes.

#### i. Dysfunctional government-run de-addiction and rehabilitation centres

The Comptroller and Auditor General (CAG) of India has found serious shortcomings in the working of drug de-addiction centres (DDC), model drug de-addiction centres (MDDC) and rehabilitation centres (RC) set up by the Government of Punjab to fight the drug menace. The CAG had carried out a compliance audit of these de-addiction and rehabilitation centres for a three-year period from 2013 to 2016 to assess their efficiency and effectiveness and its report was tabled in the Punjab assembly on 29 March 2017 which revealed shocking tale of shortcoming in the functioning of the centres. In order to identify and provide treatment and aftercare to substance users, the Government of Punjab in January 2011 framed the Punjab Substance Use Disorder Treatment and Counseling and Rehabilitation Centres Rules, 2011 under which so far 57 de-addiction centres/rehabilitation centres have been set up by the government including four Model Drug De-addiction Centres (MDDC), 31 Drug De-addiction Centres (DDC) and 22 Rehabilitation Centres (RC), one in each district, to provide comprehensive rehabilitation to each and every affected person. The CAG found that 35 Centres (3 MDDCs, 18 DDCs and 14 RCs), that is 61%, were functioning without obtaining license/non-renewal of license as of August 2016 in contravention of Rule 7 of the Punjab Substance Use Disorder Treatment and Counseling and Rehabilitation Centre Rules, 2011 which states that no

Centre shall be allowed to operate without obtaining license from the Licensing Authority.<sup>29</sup>

The CAG also found that five DDCs/RCs which were established between May 2014 and December 2015 at a cost of Rs 6.93 crore "were not functional due to non-availability of Psychiatrist/Medical Officer, other staff and essential equipment." These DDCs/RCs were DDC, Malerkotla; DDC, Anandpur Sahib; DDC, Narot Jaimal Singh; DDC, Talwandi Sabo; and RC, Jalandhar.<sup>30</sup> Further, the functional MDDCs and DDCs were not being used optimally to treat the patients. Test-check of records in the selected districts showed that against 1,75,108 drug addiction patients registered in OPD, only 11,186 patients were taken to Indoor Patients Department (IPD) which ranged between 01 and 19 per cent in the eight MDDCs/DDCs during 2013-16 while the percentage of unutilised bed capacity in these Centres ranged between 17 and 60 per cent during the same period. Percentage of IPD to OPD and unutilized bed capacity in some MDDCs were as follows: (i) Amritsar (19 and 34 per cent); (ii) Jalandhar (10 and 60 per cent); (iii) Bathinda (5 and 26 per cent); (iv) Faridkot (10 and 40 per cent); DDCs (v) Talwandi Sabo (5 and 58 per cent); (vi) Gurdaspur (10 and 42 per cent); (vii) Batala (1 and 27 per cent); and (viii) Phagwara (5 and 17 per cent), respectively.<sup>31</sup>

A report in *The Tribune* dated 5 May 2018 stated, "The Congress inherited 37 de-addiction centres built at a cost of Rs 27 crore, of which 32 are functional today. There were also 22 rehabilitation centres built at a cost of Rs 62 crore, of which 20 are functional. While de-addiction centres treat the patients medically, rehabilitation centres aim to engage them in social or productive activities."<sup>32</sup>

Further, majority of those detoxified have not received rehabilitation in the Rehabilitation Centres. The CAG said that examination of records showed that in four (out of six) test-checked districts, 984 out of 2,658 registered drug addicts were detoxified in the MDDCs/DDCs between July 2015 (i.e. from the date of functioning of RC) and March 2016. However, only 23 to 28 per cent of these patients were admitted to RCs for rehabilitation. "Thus, the objective of setting up of RCs for providing comprehensive rehabilitation to each and every person could not be fully achieved as envisaged in the guidelines", the CAG stated.<sup>33</sup>

The de-addiction centres and rehabilitation centres have been facing acute shortage of manpower. The CAG said its "audit noticed shortage of staff ranging between 25 and

100 per cent in different cadres as on 31 March 2016 in seven (out of 15) test-checked MDDCs/DDCs/RCs which impaired their ability to effectively discharge their functions".<sup>34</sup>

## ii. Torture in illegally run private rehabilitation centres

The de-addiction and rehabilitation centres have been reduced to torture chambers. A survey conducted by the Department of Community Medicine of Dayanand Medical College (DMC), Ludhiana, in 2014 found that dozens of new private centres had come up in the state which neither had proper infrastructure nor trained staff and that most of these centres have become a place for mental and physical torture in the name of de-addiction. Many of these private centres have turned into money minting business. Some de-addiction centres put up the signboards of 'free drug addiction help' to lure the people, but charged between Rs 15,000 to Rs 20,000 per month.<sup>35</sup>

An internal report of the Health Department (accessed by The Tribune) prepared in 2017 on private drug de-addiction and rehabilitation centres stated that forced confinements, torture, lack of amenities such as toilets, inhuman conditions, and patients commonly suffering from scabies were the highlight of the functioning of the private centres. There were 16 private drug de-addiction centres and 69 private rehabilitation centres which continued to treat more patients than their bed strength. Some centres had patients three times the capacity.<sup>36</sup>

On 13 July 2018, a Health Department team conducted a raid and rescued 30 addicts from an illegal de-addiction centre on the Sohia road in Sangrur. The addicts were rescued from a locked house adjoining to the Ekta Foundation De-addiction Centre. The centre was running without a license. Some addicts alleged that they were being kept without proper facilities.<sup>37</sup>

On 18 January 2018, the Ropar Deputy Commissioner conducted raid at a private rehab centre "Jiwanjot Foundation and Rehabilitation Centre" at Nangal road in Ropar after receiving complaints of torture from the family members of the patients admitted there. The relatives of the patients alleged that the patients were wrongfully confined, kept in unhygienic conditions and physically and mentally tortured. It was found that the centre was running illegally without renewing its license. The centre was shut down and all the 20 patients were shifted to other de-addiction centres. A case under section 32 of NDPS Act and sections 420 (cheating) and 342 (Punishment for wrongful confinement) IPC was registered against the

accused Jasvir Singh and Parminder Singh who were running the centre since 2014.<sup>38</sup>

On 7 December 2015, the police rescued 32 drug addicts from an illegal drug de-addiction centre being run in a residential accommodation on the Nurpur road in Machhiwara in Ludhiana district. Seven of the 32 addicts had multiple injuries as they were allegedly tortured by the centre's staff. The centre was running without license and there was no qualified doctor. A huge cache of medicines and sharp-edged weapons were also found at the centre. The police said the centre used to charge Rs 15,000 as admission fee from the family of a drug addict and Rs 10,000 per month for treatment. The centre was running for the past six months without the knowledge of the health department. Rescued addicts said the staff forced them to sit alongside the walls and asked them to touch their nose and forehead against it for 18 hours. If the inmates failed to follow orders, they used to beat them up. The staff also forced them to remove clothes and dance in front of other inmates and they were also hit on their private parts.<sup>39</sup>

On 20 May, 2014, unable to bear daily torture at the hands of the staff, 45 patients escaped by breaking the boundary wall and the main gate of the Ujala Foundation drug de-addiction and rehabilitation centre at Chrik village in Moga district. They reached the Dr Mathura Dass civil hospital in Moga in a critical condition. Several youths were badly injured and they alleged that staff of the centre used to beat them up every day.<sup>40</sup>

## 3. Custodial torture in Punjab

The data of the NHRC and replies in the parliament show that 1,221 custodial deaths took place during 1<sup>st</sup> April 2008 to 28 February 2018 while data for the year 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017 is not available.

**Table 1: Deaths in police custody and judicial custody in Punjab, 2008-2018 (up to February)**

<i>Year</i>	<i>Police custodial deaths</i>	<i>Judicial custodial deaths</i>
01/04/2008 to 31/03/2009 <sup>41</sup>	4	70
01/04/2009 to 31/03/2010 <sup>42</sup>	3	107
01/04/2010 to 31/03/2011 <sup>43</sup>	6	90
01/04/2011 to 31/03/2012 <sup>44</sup>	6	115

01/04/2012 to 31/03/2013 <sup>45</sup>	3	117
01/04/2013 to 31/03/2014 <sup>46</sup>	3	171
01/04/2014 to 31/03/2015 <sup>47</sup>	1	214
01/04/2015 to 31/03/2016 <sup>48</sup>	3	180
01/04/2016 to 31/03/2017 <sup>49</sup>	6	Not Available
01.04.2017 to 28.02.2018 <sup>50</sup>	10	118
<b>Total</b>	<b>45</b>	<b>1,182</b>

On 14 March 2018, Minister of State for Home Affairs Shri Hansraj Gangaram Ahir informed the Rajya Sabha (Upper House of Parliament) that the National Human Rights Commission of India (NHRC) registered a total of 1,674 cases of custodial deaths in the country including 1,530 deaths in judicial custody and 144 deaths in police custody from 1 April 2017 to 28 February 2018.<sup>51</sup> And, Punjab with 128 custodial death cases registered the fourth highest number of custodial death cases in the country, just behind Uttar Pradesh, Maharashtra and West Bengal.

More surprisingly 99% prison deaths allegedly took place due to poisoning in Punjab. On 3 July 2018, the Punjab and Haryana High Court directed Punjab and Haryana governments to file a report on the compliance of directions issued by the Supreme Court on unnatural deaths in jails during 2012 and 2015. The direction came after the amicus curiae, Reeta Kohli, told the Bench of Chief Justice Krishna Murari and Justice Arun Palli that 90 per cent of jail deaths in Haryana were due to hanging and 99 per cent in Punjab because of poisoning. The amicus curiae questioned the easy access to poison in Punjab jails and the authorities' failure to prevent deaths by hanging in Haryana jails.<sup>52</sup> At least 714 prisoners died in Punjab during 2012-2015 which is only second to UP's 1,358 prison deaths, according to the NCRB.<sup>53</sup>

### A. Emblematic cases of torture in police custody

#### Case 1: Torture of granthi (priest) Jagtar Singh<sup>54</sup>

On 9 June 2018, some pages of the Guru Granth Sahib, Holy Scriptures of the Sikhs, were allegedly found torn at Gurdwara Singh Shaheedan at Dangoli village near Rupnagar in Ropar district of Punjab. The police was informed and a case under Section 295-A (Deliberate and malicious acts, intended to outrage religious feelings of any

class by insulting its religion or religious beliefs) of the Indian Penal Code was registered against unidentified persons at the Rupnagar Sadar police station.

On 10 June 2018, the Punjab Police arrested Jagtar Singh, the granthi (priest) at the Gurdwara Singh Shaheedan and later claimed he has admitted to have desecrated the Holy Scriptures with his Siri Sahib (religious sword). Senior Superintendent of Police, Ropar, Raj Bachan Singh Sandhu stated that Jagtar committed the crime out of sheer frustration as he was finding hard to perform religious duties while working as a truck driver as the pilgrims had declined in number, which also resulted in decline in monetary offerings in the gurdwara.

But, the villagers of Dangoli and family members of Jagtar Singh alleged that the police had tortured the victim in custody to extract a confession. The family alleged that the police had forced Jagtar Singh to make a confession to save their own skin. Citing the integrity of Jagtar Singh, the villagers told the police that he had been rendering free service as a priest in the gurdwara for the past 15 years and there was not a single instance of misconduct against him. The sarpanch (village head), along with other villagers and Jagtar's family members, held a meeting in the gurdwara on 11 June 2018 and urged the police to identify and nab the real culprits behind the desecration.

#### Case 2: Custodial torture of British national, Jagtar Singh Johal @ Jaggi<sup>55</sup>

In a joint appeal to the Government of India in June 2018 the United Nations Special Rapporteurs (UNSR) on torture, the UNSR on freedom of religion or belief, and the vice-chair of the UN Working Group on arbitrary detention called on India to respond to the serious allegations of torture of a British national Jagtar Singh Johal @ Jaggi. The appeal was issued following a request by human rights organisations Redress and Ensaaf. The UN experts also asked India to provide information about the measures taken to prevent any further torture or ill-treatment, the legal basis for arrest and detention of Mr Johal, and the results of any medical examinations carried out. On 21 November 2017, torture of Mr Johal was raised in the House of Commons and making an intervention the UK's foreign minister Rory Stewart said, *"It is completely unconstitutional, it is offensive to the British government and we will work very closely to investigate and, of course, we will take extreme action if a British citizen is being tortured."*<sup>56</sup>

Jagtar Singh Johal, a British national, was holidaying in



Jalandhar in Punjab when a sack was allegedly thrown over his head and was forced into a van by plain-clothes officers on 4 November 2017, according to the Sikh Federation UK.<sup>57</sup>

In June 2018, the family of Mr Johal made public a two-page handwritten note, purportedly written by him about how he was subjected to custodial torture. In the handwritten account, Mr Johal claimed: “The torture took place intermittently, numerous times each day. Electric shocks were administered by placing the crocodile clips on my ear lobes, nipples and private parts. Multiple shocks were given each day.

“My legs were pulled apart four to five times each time I was questioned and this took place numerous times each day. Each time the act of pulling my legs would take place, the pain would increase. At some stages I was left unable to walk and had to be carried out of the interrogation room,” he alleged. The 31-year-old also alleged that his captors threatened to shoot him and suggested he would be covered in petrol and set alight if he did not confess.

Mr Johal is one of the 15 accused who police claimed were involved in the targeted killings of pastor Sultan Masih and Hindu leader Amit Sharma in Ludhiana in 2017. On 15 May 2018, the National Investigation Agency filed a common charge-sheet against 15 accused in a special NIA court in Mohali, against Hardeep Singh alias Shera alias Pahalwan, Ramandeep Singh alias Canadian alias Bagga, Dharminder Singh alias Guguni, Anil Kumar alias Kala, Jagtar Singh Johal alias Jaggi, Amaninder Singh, Manpreet Singh alias Mani, Ravipal, Pahad Singh, Parvez alias Farru, Malook Tomar, Harmeet Singh alias PhD, Gurjant Singh, Gursharanbir Singh and Gurjinder Singh Shastri.<sup>58</sup>

## **B. Emblematic cases of torture in judicial custody**

### **Case 1: Central Govt and State of Punjab pay compensation to 40 persons who were detained and tortured during Operation Bluestar in 1984<sup>59</sup>**

On 2 July 2018, the Government of India agreed to abide by the court order to pay, jointly with the State government of Punjab, compensation to 40 persons who were illegally detained and tortured in judicial custody in a Jodhpur jail after being picked up from Golden Temple during Operation Bluestar in 1984.

Operation Bluestar was carried out in the first week of June 1984 to tackle separatist militants who had fortified the shrine complex. As many as 375 persons were arrested and they were released between March 1989 and July 1991. Of

them, 224 appealed for compensation alleging “wrongful detention and torture”. But the lower court dismissed their case in 2011. 40 of the detainees went in appeal against the lower court order before the Amritsar sessions court which directed the State of Punjab and the Union of India to pay Rs 4 lakh each as compensation with 6% interest (from date of filing of the appeal to payment of compensation) in April 2017. The total compensation, including interest, added up to Rs 4.5 crore which the court asked the state of Punjab and the Government of India to jointly pay.

The state government of Punjab has already paid its share to the 40 detainees. On 2 July 2018, the Union government also told the Punjab and Haryana high court that it has sanctioned Rs 2.16 crore to compensate 40 petitioners who were illegally detained and tortured in 1984.

### **Case 2: Alleged torture of Kuldeep<sup>60</sup>**

The wife of one of the accused in the Haryana Civil Services (Judicial) paper leak scam Ms Sweety alleged that her husband Kuldeep was mercilessly beaten in the Burail Jail in Chandigarh. Sweety submitted an application to the court stating that when she met her husband on 2 July 2018 he had received injuries on his left shoulder, ankle, thighs, knees and other parts of the body due to torture by the police/Special Investigation Team. She also alleged that the police took his signatures on blank papers.

## **C. Emblematic cases of torture of Dalits**

### **Case 1: Torture of a differently-abled Dalit man<sup>61</sup>**

On 26 May 2018, police picked up Darshan, a Dalit and differently-abled, from his home in Telupura village under Firozepur district of Punjab following a complaint filed by BJP Backward Classes cell block vice-president Kashmir Singh Chauhan to the effect that someone had stolen submersible water pump from his factory. After arrest, he was taken to Khuian Sarwar police station where he was allegedly meted out third-degree torture during interrogation, apparently to extract a confession.

Darshan sustained injuries and had bruises on his body due to alleged torture by the police and he was admitted at the Sub-Divisional Civil Hospital, Abohar, for treatment.

The victim’s family members claimed that Darshan was innocent and the police tortured him in order to extract a confession while in custody.

### **Case 2: Illegal detention of a 17-year-old differently-abled Dalit boy after merciless torture by members of**

## **dominant caste<sup>62</sup>**

In June 2018, a 17-year-old differently-abled Dalit boy was illegally detained at Muktsar Sadar Police station in Punjab. The victim's relative Dharmavir said the boy had lost his sheep and while searching for it he tried to drink water from the tap of the assailant's family. He was caught and brutally beaten up and given electric shocks by the accused belonging to dominant caste. After beating the victim, the assailants handed him over to at Muktsar Sadar Police station, where he was illegally detained for three days despite family members and other villagers requesting the police station in-charge to release him immediately. The victim was released from backdoor only after the media and social activists stormed the police station. No action has been taken against the accused upper caste persons who tortured the disabled Dalit boy.

## **4. Torture in India**

### **A. Emblematic cases of torture**

#### **Maharashtra: Youth tortured to death in police custody<sup>63</sup>**

At the midnight of 12 July 2018, the police picked up a minor boy identified as Sachin Ravindra Jaiswar, 17 years, for questioning in a mobile theft case registered at Dharavi police station in Mumbai on 12 July. Sachin's brother Sunil Jaiswar, told the media that "Police came to our house at 1 am on July 13. They took my brother away in a police van. When I went to the police station around 9 am, they told me Sachin had been called for questioning and would be sent back home in a few hours. However, even well past midnight, my brother had not returned. Police officers informed me they would send Sachin home on July 14, at 8 am. When I went there the following morning, they told me he would come home at night. However, it was 1 am on July 15 that I was able to bring him home. My brother had sustained physical injuries to his head, hands, legs and back after having been thrashed with a baton and being assaulted bare-handed by five policemen."

Sachin Ravindra Jaiswar died hours after he was released from police custody. He was barely able to walk and was unconscious at the time of release from police custody and the family members took him to a private clinic right after leaving the police station. Since his condition worsened, he was rushed to Lokmanya Tilak Hospital, Sion, where he died late on the night of 14 July.

The family also claimed that after his release from police custody, he vomited blood and doctors told the family

members that he was bleeding from his lungs.<sup>64</sup>

After news of his death spread, a mob of 300 gathered outside the hospital, demanding immediate arrest of the guilty cops and filing of a murder case against them. Angry protesters even beat up two policemen and nine guards of the Maharashtra Security Force, besides vandalising five vehicles, including four police vans.<sup>65</sup>

#### **Karnataka : 45-year-old man dies in police custody due to torture**

On 13 July 2018, a 45-year-old man identified as Murthy alias Thammaiah died due to alleged custodial torture at the Mandya West police station in Mandya, Kanartaka. The deceased was picked up by the police along with two others on 9 July for interrogation in connection with motorcycle theft cases. The family members of the deceased alleged that he was not produced before the court and tortured to extract a confession. Another accused in the case, who was granted bail by the court on 10 July, also alleged that they were tortured while in police custody.

The police claimed that Murthy committed suicide at an under-construction bathroom in the backyard of the police station around 5.30 am on 13 July. Mandya Superintendent of Police G Radhika stated that Murthy had cut a piece of blanket given to him and had hid it in his pocket and later used it to hang himself in the bathroom.

However, alleging that he was tortured and starved, Murthy's relatives and several Dalit organizations protested outside the police station and also near the Mandya Institute of Medical Sciences mortuary. According to them, three persons were picked up by the Police on 9 June but only one of them, Nagaraju, was produced before a court. All were allegedly subjected to torture. While Nagaraju secured bail, the other two were "illegally confined" at the Police Station and tortured.<sup>66</sup> The protestors accused the police of killing 45-year-old Murthy and demanded Rs 25 lakh compensation to the victim's family and action against the police officials responsible for the death. Deputy Commissioner N Manjushri announced that a member of the victim's family will be given a job on compassionate grounds and the state government will bear educational expenses of Murthy's children.<sup>67</sup>

Four policemen namely Sub-Inspector Anand Kumar, Station House Officer Madesh, Constable Mallikarjuna Jhalaki and Sentry Varadaraju were suspended over the custodial death and a probe by the Crime Investigation Department (CID) has been ordered.<sup>68</sup>



### **Rajasthan : Minor Dalit girl subjected to custodial torture<sup>69</sup>**

On 15 July 2018, a minor Dalit girl of 14 years was tortured at the Bhadsoda police station under Chittorgarh district of Rajasthan. A student of class VIII of a government school, the victim was arrested by the police for interrogation in connection with a theft case on 15 July 2018. The police claimed that the Dalit girl had received a pair of gold earrings from a minor boy, who was suspect in a theft case.

The victim's father alleged that during the interrogation the Station House Officer (SHO), a lady officer and a constable of Bhadsoda police station beat her mercilessly and kept in a dark room to extract confession from her. The victim sustained several bruises on her body and fracture on her left wrist. She was taken to the Community Health Centre at Sanwaliaji but the doctors allegedly refused to admit her. Later, the victim was admitted at the Chittorgarh Government Hospital.

### **B. Judiciary's action against torture**

#### **Kerala : CBI court sentences two police officers to death for custodial killing of Udayakumar<sup>70</sup>**

On 25 July 2018, a special court of the Central Bureau of Investigation (CBI) awarded death penalty to two officers of the Kerala Police identified as K Jithakumar and SV Sreekumar for torturing to death Udayakumar, 27, at the Fort police station in in Thiruvananthapuram in Kerala in 2005. The CBI Special Judge J Nasser handed down the capital punishment to senior civil police officers K. Jithukumar and S. V. Sreekumar and also imposed a fine of Rs 2 lakh on each of them. The court also awarded three-year imprisonment to retired Superintendents of Police T.K. Haridas and E.K. Sabu and Deputy SP Ajith Kumar for having attempted to cover up the crime by destroying evidence and falsifying police station records.

Udayakumar, 27, and his friend Suresh were picked up by officers of the Fort Police station in Thiruvananthapuram on 27 September 2005 from the Sreekandeshwaram Park in the city on charges of theft. Cash amounting to Rs 4500, found in the possession of Udayakumar, was seen as grounds for the duo to be taken into custody. Two constables then tortured Udayakumar to force a confession out of him, beating him mercilessly with cane sticks on his legs and later rolling a heavy iron pipe down his thighs.<sup>71</sup>

The deceased's 67-year-old single-mother, Prabhavathi Amma, fought a protracted legal battle. On 24 July 2018,

the CBI court judge J Nasser pronounced all the six police officers guilty (one of them died in course of trial) in connection with Udayakumar's custodial death.

#### **Karnataka : High Court asks Police not to torture accused persons and ensure proper medical treatment in custody<sup>72</sup>**

On 12 June 2018, the High Court of Karnataka asked the Karnataka police to ensure that the accused arrested in connection with the murder of journalist Gauri Lankesh are not ill-treated and ensure their health through proper medical facility. Four accused persons namely Sujeeth Kumar, Manohar Edave, Amol Kale, and Amit Degwekar alleged in a petition submitted before the High Court that they were severely beaten, were forced to take painkillers, and were illegally taken to a private hospital instead of a government hospital and denied meeting with their lawyers. Justice K.N. Phaneendra, before whom the petition came up for hearing, issued notices to the State and the State police chief, and two police inspectors Kumaraswamy and Murthy attached to Cottonpet police station.

On 18 June 2018, Justice Phaneendra described the allegations of torture as "serious in nature" and directed two magistrate courts in Bengaluru to submit a report, within 10 days, on allegations of custodial torture of four accused in the Gauri Lankesh murder case and non-compliance of judicial procedures. In an affidavit, advocate N P Amrutesh alleged that Amol Kale, one of the accused in the case, was beaten, slapped and punched on his cheek by police officers while in custody. He claimed that the magistrates failed to comply with procedures mandated by the Supreme Court regarding persons in police custody. The counsel for the accused also alleged that the judge of the first additional chief metropolitan magistrate (ACMM) court did not order a medical examination even after being informed on 14 June 2018 about the torture meted out to one of the accused by the police.<sup>73</sup> Showing the injuries, Amol Kale told the court, "Wednesday [13 June] night I was tortured by the police. They punched me below the left eye and banged my head against a wall. They assaulted me on my legs and left palm".<sup>74</sup> The counsel further told the High Court that similar complaints regarding custodial torture of the other accused were also made on 31 May 2018 before the magistrate of the third additional chief metropolitan magistrate (ACMM) which was neglected.<sup>75</sup>

### **C. ACHR's action against torture**

#### **Custodial death of Somla Naik: NHRC asks Telangana**

### **government to submit proof of payment of Rs 5 Lakh compensation to the NOK of the deceased**

In its latest proceedings held on 19 July 2018, the NHRC decided to send reminder to the Chief Secretary, Telangana Government to submit the required compliance along with proof of payment of compensation of Rs 5 Lakhs to the next of kin of a deceased prisoner, Somla Naik, who had died due to torture at the Central Jail in Warangal in then Andhra Pradesh on 18 April 2013. The NHRC has asked the Chief Secretary, Telangana to submit the compliance report within six weeks.

Somla Naik, a resident of Gundlasingaram village in Hanamkonda mandal, was arrested by the Excise Police on 16 April 2013 on charges of selling illicit distilled liquor. He was remanded to judicial custody on the same day and released on 17 April 2013. He died after release. Family members of Somla Naik alleged that he was tortured to death by the prison authorities.

The NHRC had intervened into the matter pursuant to a complaint filed by ACHR on 23 April 2013. The Commission vide its proceedings dated 12.9.2017 found that the torture meted out to the prisoner amounted to a gross violation of his human rights. Accordingly, the Commission issued show cause notice to the Chief Secretary, Government of Telangana u/s 18 (a) (i) of Protection of Human Rights Act, 1993 to show cause as to why a monetary compensation of Rs. 5 lakhs should not be recommended to be paid to the next of kin of the deceased. In response to the notice, a letter dated 7.5.2018 by Principal Secretary to Government (Political) Telangana was received which was addressed to the Principal Secretary, Home Department requesting him to submit the compliance along with proof of payment before the Commission. But the NHRC has not till date received the compliance report.

### **Mizoram : Torture of Chakma villagers by Mizoram Armed Police (MAP) personnel at Tuichawngchhuah village, Lunglei district**

In its latest proceedings on 18 June 2018, the NHRC issued notice under section 18(a)(i) of the Protection of Human Rights Act, 1993 to the Government of Mizoram, through its Chief Secretary, to show cause as to why compensation should not be paid to Mrs. Shanti Devi Chakma, Mr. Anil Chandra Chakma and Mrs. Gupa Devi whose torture by the two constables of the Mizoram Armed Police (MAP) posted at Tuichawngchhuah village in Lunglei district has been confirmed by the Mizoram

government. Ironically, these armed police personnel have been posted there for the protection of the minority Chakma villagers after some Mizo student activists burnt down the government school of the village.

The NHRC intervened into the matter following a complaint from the ACHR on 10 May 2016. Further, on 22 May 2017, the ACHR informed the Commission that it documented the following cases of torture since the first complaint :

1. On 4 October 2016, Mr Lalhunnthara, MAP personnel, tortured a woman villager identified as Mrs Santi Devi Chakma, w/o late Kala Seda Chakma. The victim was beaten up with firewood several times targeting her thighs and legs.
2. On 8 October 2016, Mr. Lalhunnthara and Mr. Maenga, both MAP personnel, got drunk and Mr Lalhunnthara tortured one minor student of Class II namely Master Sanjom Chakma, S/o Arhilebo Chakma of Tuichawngchhuah.
3. On 9 November 2016, Mr Vanlalruata and Mr Lalhunnthara, both MAP personnel were drunk and tortured Mr Anil Chandra Chakma, and Mrs Gupa Devi Chakma with firewood. They were hit at backside, thighs and legs.

Taking cognizance of these torture incidents, on 27 June 2017, the NHRC ordered the State government to get an enquiry conducted through an independent agency like Crime Branch-Criminal Investigation Department (CB-CID). On 23 September 2017 the ACHR brought to the immediate notice of the NHRC the intimidation of the torture victims, their relatives, villagers and Tuichawng Village Council authority by the Superintendent of Police (CID), Aizawl, and other Crime Branch officials with the aim to shield the culprits or to force them to withdraw the NHRC Case No. 7/16/3/2016 filed by the Asian Centre for Human Rights. The NHRC received a report from the OSD-cum-Under Secretary, Home Department, Government of Mizoram along with the report dated 22.09.2017 submitted by the Senior Superintendent of Police, C.I.D. (Crime), Mizoram. It is concluded in the report as follows: "1. There was no incident of torture of Shanti Devi Chakma of Tuichawngchhuah by MAP personnel but she was beaten twice by one constable M. Lalhunnthara by a stick. Mr. M. Lalhunnthara regretted and apologized for her forgiveness. 2. Mr. M. Lalhunnthara and Mr. Lalengzuala (Maenga) neither tortured nor assaulted Sanjay Chakma (written as Master Sanjom Chakma in the

complaint) S/o Arhilebo Chakma, 3. There was no torture of Mr. Anil Chandra Chakma and Mrs. Gupa Devi by MAP personnel but both of them were beaten by two constables namely Mr. M. Lalhunthara and Mr. Vanlalruata. However, the case was compromised and settled amicably among them and an amount of Rs. 200 and Rs.300 were given to Anil Chandra Chakma and Gupa Devi respectively by Mr. M. Lalhunthara as a token of forgiveness. Besides, as stated by Anil Chandra Chakma, it appears the main reason of such kind of untoward incident is misunderstanding arising due to language/communication barrier.”

After perusing the report submitted by State of Mizoram, the NHRC held that torture of the Chakma villagers namely Shanti Devi Chakma, Anil Chandra Chakma and Gupa Devi by the constables named Mr. M. Lalhunthara and Mr. Vanlalruata has been established by the CID investigation report. The Commission also held that compensation of Rs 200 and Rs.300 for torture of the victims given to Mr. Anil Chandra Chakma and Mrs. Gupa Devi “in the opinion of the Commission a clear case of violation of human rights of these three persons is made out and the token money paid is totally insufficient to be paid in these kind of cases as compensation.” The Commission issued notice u/s 18(a)(i) of the Protection of Human Rights Act, 1993, to the Government of Mizoram, through its Chief Secretary, to show cause as to why the Commission should not recommend monetary relief to Mrs. Shanti Devi Chakma, Mr. Anil Chandra Chakma and Mrs. Gupa Devi Chakma.

#### **D. Prison conditions in India**

On 13 July 2018, the Supreme Court took note of lack of facilities in jails, which it said, was leading to delayed trials and prolonged incarceration of under-trial prisoners in the country and sought assistance of the Attorney General of India in issuing directions to all States/UTs to deal with the situation. A bench headed by Chief Justice Dipak Misra, on its own, initiated the judicial proceedings after taking note of reports on deficiencies at the Faridabad jail in Haryana and expanded the scope of the case to the entire country. The court also appointed advocate Gaurav Aggarwal as amicus curiae to help Attorney General K K Venugopal to deal with the matter.<sup>76</sup>

In compliance with the order passed by the Supreme Court in Writ Petition (Civil) No. 406/2013, the Hyderabad High Court on 17 July 2018 directed the Legal Services Authorities of Andhra Pradesh and Telangana to study the conditions of the prisoners languishing in the jails of the

two states and submit a report, including the number of prisoners lodged in each prison by 31 July 2018.<sup>77</sup> On 13 May 2018, the Supreme Court had termed overcrowding in prisons as a “violation of human rights” and asked all the 24 High Courts to consider the issue independently with the assistance of the State Legal Services Authority/High Court Legal Services Committee. (For details regarding Writ Petition (Civil) No. 406/2013, see Torture Update: India, June 2018)

The situation in Indian jails have become such that without the order of the court, the prisoners are being refused medical treatment in certain cases even if the condition of the prisoners are critical. Hearing such a case in the first week of July 2018, Special Judge SM Bhosle asked all jail officials to immediately take prisoners to hospital as and when situation arises and directed them not to wait for court orders. The judge also observed that on several occasions despite doctors noting that a prisoner needed to be brought for a follow-up medical examination, prison officials insisted on court orders. The judge also highlighted a case in which an undertrial prisoner was not taken to hospital for surgery on the ground that there weren't enough police personnel to escort the undertrial prisoner (UTP) to hospital. Thereafter, the date of the surgery of this particular UTP had to be rescheduled.<sup>78</sup>

Prisoners continued to die due to alleged torture and ill-treatment. On 14 July 2018, an under-trial prisoner identified as Deepak Gujar alias Kalu (30) died due to alleged torture at Kota Central jail in Rajasthan. He was arrested in connection with a case under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The jail officials claimed that on 14 July 2018 morning, Deepak complained of chest pain and was rushed to Maha Rao Bhim Singh (MBS) hospital in Kota where he died. But the family members alleged that the deceased died due to torture by the jail officials in judicial custody and protested in the hospital.<sup>79</sup>

#### **5. UN Action Against Torture**

The 6th session (23 July- 10 August 2018) of the UN Committee against Torture opened in Geneva on 23 July 2018. At the time of writing this report, the CAT has concluded consideration of the period reports of Mauritania, Russia, Chile, and Seychelles.

##### **A. Committee against Torture examines report of Mauritania<sup>80</sup>**

On 25 July 2018, the Committee against Torture



concluded its consideration of the second periodic report of Mauritania on the efforts made by the State party to implement the provisions of the Convention against Torture. The Committee Experts commended Mauritania for having adopted the laws on the fight against torture (law no. 2015-033), established the National Mechanism for the Prevention of Torture, criminalized slavery, and ensured the provision of legal aid. However, they raised concern about lengthy pre-trial detention, especially in relation to anti-terrorism legislation, poor maintenance of prison and detention registers, lack of a guarantee for access to a lawyer throughout the legal process, the existence of secret detention facilities, absence of systematic separation of prisoners according to sex and age, and the use of excessive force against prisoners and of solitary confinement. Other issues of concern included the expulsion of foreigners, lack of a disaggregated database on prosecutions and sentences arising from acts of torture and ill-treatment, prison overcrowding and poor hygienic conditions in prisons, the application of Sharia-mandated (hadd and qisas) penalties, such as amputation and whipping, the payment of the so-called blood money (diyah) to the families of victims, training programmes for police officers and judicial personnel, availability of reparations for victims, and amnesty for past crimes.

### **B. Committee against Torture examines Russia's report<sup>81</sup>**

On 26 July 2018, the Committee against Torture concluded consideration of the sixth periodic report of the Russian Federation on the efforts made by the State party to implement the provisions of the UN Convention against Torture (UNCAT). The Committee Experts expressed concern that the Russian definition of torture was not in full compliance with the UNCAT, adding that there was reliable information that torture was practiced widely in the country, and indicating the need for criminalization of torture. They further inquired about safety inside the country's justice system, complaints of torture, fundamental legal safeguards, access to legal counsel from the very outset of the arrest, access to a medical doctor, registration of detainees, video surveillance, administrative detention, violence against women in detention, organization of prison medical services, the high rate of death in custody, and non-refoulement. Other issues of concern raised by the CAT included the activities of the Russian military police in Syria and Ukraine, the Ombudsperson of the Russian Federation, functioning of the Public Oversight Committees which monitored

detention places, plans to establish a national mechanism for the prevention of torture, reprisals against human rights defenders, excessive use of force, discrimination and violence against minorities, serious human rights violations in the North Caucasus region, Russian jurisdiction in Transnistria, and compensation for victims of torture.

### **C. Committee against Torture examines report of Chile<sup>82</sup>**

On 31 July 2018, the Committee against Torture concluded consideration of the sixth periodic report of Chile on the efforts made by the State party to implement the provisions of the Convention against Torture. The Committee Experts while recognizing that overcoming the consequences of systematic human rights violations during the dictatorship in Chile between 1973 and 1990 took years, noted that such a heritage should not represent a justification or an obstacle for preventing and combatting human rights abuses. They positively noted the adoption of the first National Human Rights Plan 2018-2022, and the modifications of Chile's Penal Code. The Experts further inquired about the statute of limitation for the crimes of torture, the inadmissibility of pardons and amnesties, institutional dependence of the police, fundamental legal safeguards, the national human rights institution and the national mechanism for the prevention of torture, reform of the Code of Military Justice, pre-trial detention and alternatives to detention, medical care in prisons, social reintegration of prisoners, and women and minors in detention. Other issues raised included the protection of refugees and migrants, human trafficking and sexual exploitation, violence against children, prohibition of corporal punishment, police violence against the Mapuche community and peaceful demonstrators, the use of terrorist charges against Mapuche leaders, statistics on compensation and rehabilitation for victims of torture and ill-treatment, especially for the victims of the dictatorship between 1973 and 1990, confidentiality of medical examination of inmates, early identification of signs of torture, and the ongoing investigation of the Condor Plan cases of torture. In her concluding remarks, Lorena Recabarren, Human Rights Undersecretary at the Ministry of Justice and Human Rights of Chile, assured that the Government would take seriously everything that the Committee against Torture would communicate to the authorities and that Chile would never tolerate torture or cruel, inhumane and degrading treatment, and it would go beyond the standards set out in the Convention.

#### **D. UN human rights experts ask Egypt to release poet/songwriter**

On 26 July 2018, a group of UN Special Rapporteurs<sup>83</sup> urged Egyptian authorities to release poet Galal El Behairy, who has been detained since February 2018 for writing a song critical of government policies. Mr. El Behairy wrote the lyrics to the song 'Balaha', performed by Ramy Essam, and released on 26 February 2018. The music video was posted on social media, drawing over 3.7 million views. On 3 March, Mr. El Behairy was arrested by National Security Police and he remained disappeared for a week before appearing to face charges of terrorist affiliation, disseminating false news, abusing social-media networks, blasphemy, contempt of religion, and insulting the military. At the time of his appearance, he showed signs of having been subjected to torture and beating. "We are alarmed at the arrest and alleged ill-treatment of Mr. El Behairy which appears to be related solely to the peaceful exercise of his right to freedom of artistic expression and creativity," the UN experts in a joint statement.

#### **E. UN experts urge India to release rights defender Dr. G.N. Saibaba on health grounds**

On 28 June 2018, UN human rights experts<sup>84</sup> urged India to release human rights defender Dr. G.N. Saibaba, a wheelchair user with severe disabilities whose health is deteriorating and who is reportedly being held in solitary confinement. "We would like to remind India that any denial of reasonable accommodation for people with disabilities in detention is not only discriminatory but may well amount to ill-treatment or even torture. In particular, solitary confinement should be prohibited when the conditions of prisoners with disabilities would be made worse by this measure," the UN Special Rapporteurs said in a joint statement released in Geneva. "Dr. Saibaba is a long-standing defender of the rights of various minorities in India against corporate interests. He was arrested in 2014 and sentenced to life imprisonment in 2017. He is reportedly now being held in solitary confinement in a highly insanitary cell in Nagpur jail, in darkness and with inadequate and inaccessible facilities," the statement said.

#### **6. EU's action to eradicate torture**

The fight against torture is one of the long-standing policy priorities of the European Union (EU).

On 26 June 2018, on the occasion of the International Day in Support of Victims of Torture, the EU's High Representative, Federica Mogherini issued a statement in

support of the victims of torture. The EU reiterated its call for a broad ratification and effective implementation of the UN Convention against Torture and its Optional Protocol and welcomed its recent ratification by Afghanistan, Australia, Madagascar, Sri Lanka and Palestine.<sup>85</sup>

The European Union and China held their 36<sup>th</sup> annual Human Rights Dialogue in Beijing on 9-10 July 2018 in which "The European Union emphasised the deteriorating situation of civil and political rights in China, which has been accompanied by the detention and conviction of a significant number of Chinese human rights defenders. This year's Human Rights Dialogue was held on the third anniversary of the arrest and detention of more than 300 human rights lawyers and defenders beginning on 9 July 2015", according to a statement from the EU on 10 July 2018. In the EU-China Human Rights Dialogue, the EU specifically raised the case of Liu Xia, widow of 2010 Nobel Peace Prize Laureate Liu Xiaobo, Gui Minhai and Wang Quanzhang, who has been detained without having been charged for more than three years and denied contacts with his family and lawyer. The EU also sought the release of the (1) Human rights defenders Yu Wensheng, Wu Gan, Jiang Tianyong, Zhou Shifeng, Xia Lin and Gao Zhisheng; (2) Uighurs detained in violation of their fundamental human rights, including Ilham Tohti, Eli Mamut, Hailaite Niyazi, Memetjan Abdulla, Abduhelil Zunun and Abdukerim Abduweli; (3) Individuals imprisoned in connection with their exercise of the universally recognised right to freedom of peaceful assembly and association, including Guo Feixiong, Tang Jingling, and Huang Qi; (4) Individuals persecuted for their religious beliefs, including Zhang Shaojie, Hu Shigen, Li Yaping, and Sun Qian; (5) Individuals imprisoned in connection with their exercise of the universally recognised right to freedom of expression, including Su Changlan, Zhen Jianghua, Lu Gengsong, Zhang Haitao, Lu Yuyu, Huang Zerong, and Lee Ming Che and (6) Tibetan activists, writers and religious figures who face criminal charges or have been imprisoned for exercising their right to freedom of expression, including Tashi Wangchuk, and Tashi Dorje.

On 26 July 2018, the Office of the High Commissioner for Human Rights (OHCHR) announced that at their respective plenary meetings of June and July 2018, the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) decided to strengthen

cooperation to fight torture. Within their respective legal frameworks, both torture prevention bodies decided to improve the flow of information between them, to consult each other in future ahead of visits as well as on the potential benefits to be gained by the SPT carrying out visits in Europe. They will also consider, as appropriate, joint participation in follow-up activities. The SPT also decided to place particular emphasis on the work of national preventive mechanisms (NPMs) of the Council of Europe member States and to pay special attention to the potential for complementary and strengthening activities in those countries where there have been serious failures of co-operation with the CPT.<sup>86</sup>

## 7. Lessons for India from neighbourhood : Bangladesh's anti-torture law

The Government of Bangladesh ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1998 but it has refused to ratify the Optional Protocol to the UNCAT. It has enacted the Torture and Custodial Death (Prevention) Act, 2013 “with a view to giving effect to the provisions of the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984”<sup>87</sup>. The Act was passed in November 2013 following demands by rights groups and concerned politicians to outlaw torture and custodial death and address widespread impunity enjoyed by law enforcers. The Act, however, originated from a private member's bill tabled by a lawmaker from ruling Awami League, Saber Hossain Chowdhury who was brutally tortured in custody when he was in opposition.<sup>88</sup>

Article 35 of the Bangladesh Constitution prohibits torture but it is for the first time “torture” has been defined in the Torture and Custodial Death (Prevention) Act 2013.<sup>89</sup> Section 2(6) of the Act defines “Torture” as follows

“(6) “Torture” means any physical or psychological torture that hurts;

Besides the following acts will considered as torture -

- (A) Extorting any information or confession from the person or any other person;
- (B) Punishing any suspected person or any offender
- (C) Intimidating any person or any other person through him
- (D) Any work done on a discriminatory basis, in each case, act done with someone's provocation, with

someone's consent or by dint of the power of any government officer or government power.”

The Act also defines “custodial death” in section 2(7) to mean “death of any person in the custody of any government official, beside this, “custody” will also mean illegal detention order or a death during an arrest by law enforcing agency, custodial deaths will also include death during interrogation, regardless of whether the person is a witness of the case or not.”

Section 2(4) of the Torture and Custodial Death (Prevention) Act, 2013 defines “Law Enforcement Agencies” as “(4) “Law enforcement agencies” means the law enforcement agencies of the country including the Police, Rapid Action Battalion, Border Guard Bangladesh, Customs, Immigration, Crime Investigation Department (CID), Special Branch, Detective Branch, Ansar VDP and Coast Guard”.

Section 3 states that if there is any conflict with any other law in force, the provisions of this Act will get precedence. No exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency, or order from a higher official or government authority may be invoked to justify an act of torture.<sup>90</sup>

## Investigation of the allegation of torture

Section 4 provides that notwithstanding anything contained in the Code of Criminal Procedure 1898, if a person brought before a court complains that she/he has been tortured, the court will (a) immediately record the statement of the person, (b) order that a physical examination of the person be conducted by a registered doctor, and (c) if the complainant is female then the court will make arrangements to get her examined by a female doctor. Within 24 hours of court's order, the doctor will prepare a report with detailed description of the injuries and signs of torture found on the body of the person and the approximate time of torture. A copy of the report will be given to the court as well as to the complainant or any person nominated by him/her. If the doctor prescribes that the person needs treatment, the judicial officer will direct that person be admitted into a hospital.

Section 6 of the Act also allows a third party who is a witness of torture to file complaint before the court and if the court feels necessary the court may visit the place of the incident. The court shall ensure protection of the witness.

Section 10(1) states that all offences under this Act shall be



cognizable, non-compoundable and non-bailable and bail matters will be decided by the court after proper scrutiny of the case.

Section 5(5) provides that the court shall direct a police officer whose rank is not less than that of the accused person to investigate a complaint of torture brought before it. But if the victim/aggrieved person feels that it would not be possible for the police to conduct a proper investigation, he/she may submit an application to the court and the court can order a judicial investigation<sup>91</sup>. The investigation must be completed within 90 working days<sup>92</sup> and in case of delay the investigation officer shall explain the reason before the court by being present in person. After hearing the victim/aggrieved person/persons, the court, shall settle the matter of time extension within 30 days. While submitting the report the investigating officer or judicial investigating officer, as the case may be, shall have to inform the court that the complainant has been provided a copy of the report<sup>93</sup> and the complainant can oppose the report within 30 days of submission of the report.<sup>94</sup>

### **Trial of the offence of torture**

The trial of any offence committed under this Act shall be held only at the court of sessions judge<sup>95</sup>. The trial must be completed within 180 days of filing the case<sup>96</sup>. If the trial is delayed beyond this period, the trial must be completed within the next 30 days<sup>97</sup>. In relation to appeals, those convicted under this Act may appeal against conviction to the High Court Division subject to the deposit of fine and compensation within 14 days of the judgement.<sup>98</sup> The aggrieved person can also seek appeal and review in the higher courts.

### **Protection of Complainant/victim**

Section 11 of the Act provides for mechanism for the protection of the complainant/victim, under which he/she can file a petition to the sessions court to seek protection from the accused. On receipt of the petition, the court after giving 7 days notice to the accused/respondents, shall issue an order on the petition within 14 days. If necessary, the court may order detention of the accused for at least seven days. The court also may take special measures to transfer the court and may prohibit the accused from entering a particular area.

### **Punishment under the Act**

The punishment for torture under this Act is either rigorous imprisonment for a period not less than five years, or fine of minimum fifty thousand Taka, or both and the

convict shall pay additional twenty five thousand Taka to the victim/aggrieved person/persons [clause (1) of section 15] if the torture results in death, then the punishment is up to imprisonment for life, or fine of not less than one lakh (100,000) Taka or both and the torturer shall pay additional two lakh (200,000) Taka to the victim/aggrieved person/persons [clause (2) of section 15]. Those who attempt to commit or assist or provoke torture, or conspire in committing torture, may face punishment of two years rigorous imprisonment, or a fine of a minimum of twenty thousand Taka, or both [clause (3) of section 15]. In all the cases, the fine must be submitted to the trial court within 14 days from day of conviction, else no appeal can be filed under this Act [clause (4) of section 15]. Section 16 states that an appeal against the order of the trial court can be filed before the High Court.

Despite adoption of the Torture and Custodial Death (Prevention) Act, 2013, human rights organizations and UN Human Rights Committee found torture to be “widespread” in Bangladesh. According to prominent human rights organization, the Odhikar, since the anti-torture law came into force, at least 59 persons have been tortured to death by the law enforcement agencies from 2014 to May 2018, including 45 tortured to death by police, five by Rapid Action Battalion (RAB), two each by Army and Detective Branch of Police, four by Border Guards Bangladesh and one by Railway Police.<sup>99</sup> In addition, at least 125 persons have been subjected to various forms of torture by the law enforcement agencies from 2014 to May 2018.<sup>100</sup> Further, a total of 913 persons have been extrajudicially killed, many of them tortured, during 2014-May 2018, as per the data maintained by the Odhikar.<sup>101</sup> A total of 261 prisoners (both convicted and undertrial) died in judicial custody from 2014 to May 2018, many of whom may have been subjected to torture.<sup>102</sup>

Torture continues in Bangladesh unabated. The Odhikar in its report “Half-yearly Human Rights Monitoring Report, January - June 2018” stated, “*The government is suppressing political opponents by using members of law enforcement agencies; and as a result such agencies are enjoying impunity. From January to June 2018, allegations of arrest, harassment, extortion and torture and killing of the opposition political party leaders-activists and ordinary people were found against the members of law enforcement agencies. It has been proved that incidents of death of detained persons occur in custody due to torture and ill-treatment in police remand. The Torture and Custodial Death (Prevention) Act, 2013 was passed after*

*relentless demands from human rights defenders. However, a vast majority of the torture victims and family members are not able to file any cases under this Act due to fear of reprisals; and those cases that have been filed are yet to see light in the court.*<sup>103</sup>

On 6 February 2018, police arrested a former President of Ward unit Chhatra Dal, Md Nader in a case filed under the Explosive Act with Bongshal Police Station in Dhaka in December 2017. There were allegations that police broke his arms while he was tortured in custody. On 7 February 2018, police produced Nader before the Court with bandaged arm and sought for a 7-day remand. Md Nader alleged in the court that police beat him and broke his arms.<sup>104</sup>

On 6 March 2018, police arrested the Vice-President of Dhaka City (North) unit Chhatra Dal, Zakir Hossain, in front of the National Press Club while he was returning from a rally demanding the release of BNP Chairperson Khaleda Zia and on 12 March, he died at Dhaka Medical College Hospital due to brutal torture during remand in DB Police custody. Zakir's family members alleged that he died due to brutal torture in remand. Zakir's sister Sultana Razia said that her brother had been in good health before he was arrested.<sup>105</sup>

On 6 May 2018, a team of Dhaka Metropolitan Detective Branch of Police (West) led by Inspector Mahbub, brought Ashraf Ali (45), a driver, to Dhaka Medical College Hospital, who was in their custody. Doctors at the hospital declared him dead. Police claimed that he was arrested in an investigation into an incident of a missing expatriate person. There were marks of injury on different parts of deceased's body. The Head of Forensic Department of Dhaka Medical College Hospital, Sohel Mahmud said that marks of injury were found on deceased's legs. Ashraf's wife Nasima Akhter told Odhikar that her husband died due to torture in DB Police custody.<sup>106</sup>

The UN Human Rights Committee in its concluding observations (CCPR/C/BGD/CO/1), adopted on 22 March 2017, on the initial report of Bangladesh on the International Covenant on Civil and Political Rights expressed concerns that "in the light of information that torture and ill-treatment by law enforcement or military personnel is widespread in the State party during interrogations to extract confessions". The Committee noted that "such practices [of torture] continue despite the existence of the Torture and Custodial Death (Prevention) Act, 2013, and is concerned about reports that law

enforcement officials are requesting to repeal this law and are seeking safeguards from prosecution on torture charges." The Committee urged Bangladesh to "put an end to the practice of torture and ill-treatment", "enforce the Torture and Custodial Death (Prevention) Act, 2013, and ensure that no immunity provisions in other laws supersede the protections in this act" and further urged Bangladesh to establish an independent complaint mechanism to investigate all reported allegations of torture and ensure that alleged perpetrators of those crimes were prosecuted.

The Human Rights Committee also expressed concern at the poor conditions of detention in the State party's prisons, particularly with respect to overcrowding, unsanitary conditions and extortion of inmates and their relatives by prison guards to enjoy basic rights. The Committee also raised concerns about the high number of deaths in prisons over the past five years, all of which were attributed by the State party to natural causes or suicide, while reports indicated that "at least some of these deaths can be attributed to poor prison conditions, negligence by the authorities or lack of access to treatment, and some are cases of death as a result of injuries sustained by torture while in police custody".

Bangladesh has not submitted any State party's report under the UNCAT which has been due since 4 November 1999.

The judiciary in Bangladesh has played a positive role in the fight against torture and to address impunity enjoyed by the security forces. On 24 May 2016, a four-judge Appellate Division bench of Supreme Court chaired by Chief Justice S K Sinha dismissed a government appeal against a High Court judgement dated 7 April 2003 asking the government to amend the two Sections (sections 54 and 167) of the Criminal Procedure Code (CrPC) that allow police to arrest someone on suspicion without warrant and detain him for a period of 15 days with a magisterial approval. The SC also upheld the 15-point guideline issued by the High Court to regulate the arrests and detention under those two sections of CrPC. The SC also directed that if the medical evidence reveals that the person detained has been tortured or died due to torture, the magistrate shall take cognizance of the offence suo-moto under section 190(1)(c) of the CrPC without awaiting the filing of a case under sections 4 and 5 of the Torture and Custodial Death (Prevention) Act 2013 and proceed in accordance with law.<sup>107</sup>

There have been demands from the police to amend several

provisions in the Torture and Custodial Death (Prevention) Act 2013. In February 2015, the Police Headquarters sent a proposal to the Ministry of Home Affairs to amend the definition of torture, investigation process and punishment provisions stipulated in the Act and to repeal Section 12 of the Act which stipulated that no circumstance such as war situation, threat of war, political instability, state of emergency, or orders of senior official or the government authorities will be acceptable as an excuse for torture. If this section is dropped, it would provide impunity to the law enforcers to use torture.<sup>108</sup> As late as January 2017, the Police asked Prime Minister Sheikh Hasina to repeal the Torture and Custodial Death (Prevention) Act 2013 to 'protect peace, stability and security of the country' and to motivate the police force.<sup>109</sup> Human rights groups have been opposing any amendment to water down the law against torture. The NHRC of Bangladesh in its report during the thirtieth session (7-18 May 2018) of the Universal Periodic Review recommended enforcing the Torture Act and refrain from any regressive amendment to it.<sup>110</sup>

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84. Catalina Devandas, Special Rapporteur on the rights of persons with disabilities; Michel Forst, Special Rapporteur on the situation of human rights defenders; Dainius P?ras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
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