



India Torture Update

Special Focus: Madhya Pradesh



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Abdul Qadir was tortured, tonsured and paraded on the streets at Mahidpur, Ujjain, MP on 4 June 2016, <http://www.newsbits.in>

1. Madhya Pradesh: Cooked up post mortem reports in the custodial death of Saukhi Lal Kushwah in Madhya Pradesh raises questions about criminal justice system

That autopsies are critical for administration of justice is undisputed. In cases warranting death sentence, autopsy reports determine the issue of death or life. Yet, autopsy reports in India are often doctored by the medical professionals, raising serious questions about administration of justice.

On 2 August 2013, the Asian Centre for Human Rights (ACHR) submitted a complaint to the NHRC regarding the custodial death of Saukhi Lal Kushwah due to alleged torture in Satna district of Madhya Pradesh on 30 July 2013. The deceased was picked up by the police on 16 July 2013 for interrogation in connection with the whereabouts of his son Kamendra Kushwah who was allegedly involved in a kidnapping and murder case. The body of Saukhi Lal was later found near Lahiti on 30 July 2013 and the villagers alleged that he died due to police torture (electric shock) and his body was dumped there. The NHRC registered the case (Case No.

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1640/12/38/2013-AD) and issued notice to the State Government of Madhya Pradesh. Pursuant to the NHRC directives, the State Government of Madhya Pradesh submitted the medical reports including two post-mortem reports and histopathological report of the deceased.

The NHRC sought opinion of the Medical Expert on the Panel of NHRC i.e. Dr. Anil Aggarwal, Director & Professor Forensic Medicine, Maulana Azad Medical College, New Delhi on the reports submitted by Madhya Pradesh. Dr Aggarwal's report made stunning revelations that both the post mortem reports were "cooked up".

The first post mortem (PM) report was conducted by a panel of three doctors namely MM Panday, KK Suryavanshi, Amar Singh and the second PM was conducted by another three doctors namely CM Tiwari, SK Mirani, Arun Trivedi. Dr Aggarwal stated that none of these doctors was a forensic expert and therefore not competent to conduct post mortem. The first PM found (i) Mild bluish tinge on nails, (ii) Small abrasion on left parietal region (iii) no other injuries while the second PM found (i) Hands pale, (ii) Skin wrinkled over both palms, (iii) Abrasion on left parietal region as mentioned in first PM report, (iv) Spleen enlarged and (v) no other external injuries. Both the PM reports stated the cause of death as acute myocardial infarctions (or heart attack).

Dr Aggarwal stated that both the PM reports were of "extremely poor quality" and none of the six doctors was a forensic expert. He stated, "It appears that by employing more and more doctors, the police was trying to find a cause of death. What they could not get in quality, they tried to substitute by adding quantity. Like trying to give 6 rotten apples to a patient, instead of just 1 fresh apple. The situation is also similar to trying to get, say a brain surgery by employing more and more doctors none of whom is a brain surgeon. One can employ hundreds of doctors in such cases, and no one will ever discover the cause of death because none of them is a forensic expert."

Regarding the histopathological examination conducted at the Gandhi Medical College, Dr Aggarwal stated, "The file shows a report by the doctor in Gandhi Medical College, who has not written his name anywhere. So, it cannot be determined who that doctor was. But what is most shocking is that the doctor has commented on the state of occlusion of anterior left descending artery. This is simply not possible after two postmortems. In such suspicious deaths, the doctors at the first PM itself, should have dissected all the 3 coronary arteries to see blocks. If that did not occur, the team of second PM should



Innocent hanged upside down in Madhya Pradesh:
Mercilessly beaten by uncle

have done that. If none of the 6 doctors had dissected the arteries of heart during 2 postmortems. It is virtually clear that none of them did any postmortem and simply cooked up the PM report. This is not so far-fetched and inconceivable. In most such cases, where non forensic specialists are employed to conduct postmortems, they are known to indulge in this practice. But this case virtually proves it."

Preparing or providing false reports by the doctors is against the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. Clause 7.7 of the Regulations provides that "Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes etc. Such documents, among others, include the ones given at Appendix -4. Any registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which is untrue, misleading or improper, is liable to have his name deleted from the Register."¹

Autopsies play a crucial role in the investigation and prosecution of culprits in murder cases. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns after his visit to India in 2013 stated he was informed that "autopsies being performed by members of the Dom community instead of trained medical practitioners, casting doubts on the quality of the conclusion reached after the medical examination".²

Based on the report of Dr Aggarwal, the NHRC's Investigation Division stated, "the opinion of the forensic expert is a severe indictment of the doctors who conducted the post-mortem examinations. It is clear that they wrongly manipulated the PMRs. The only inference it leads to is that there was a gross human rights violation which was sought to be covered up in the PMRs".

On the basis of this report, the NHRC held that "a case of violation of the human rights of the deceased Saukhilal Kushwah has been made out" and the Commission (i) directed the Director General of Police, Government of Madhya Pradesh to take legal action against the erring police personnel of P.S. Kolgawan, Satna, and (ii) directed the Secretary, Department of Health, Government of Madhya Pradesh to take disciplinary action against the doctors who conducted post mortem examination of the deceased and were responsible for preparing concocted post mortem reports.

In a response dated 19.11.2018, the Under Secretary (Home), Government of Madhya Pradesh stated that as per the opinion of the medical team the death of the deceased was due to heart attack and no police officer/official was found guilty in the matter. The NHRC rejected this submission and held that the State Government is vicariously liable to pay monetary compensation to the next of kin of the deceased children and directed the State of Madhya Pradesh to pay compensation of Rs.3,00,000/- to the next of kin of the deceased within six weeks. The Commission also issued the Secretaries, Ministry of Health, Ministry of Home Affairs and Ministry of Law and Justice, Government of India to submit a report whether the post mortems are conducted by the forensic experts in the country and if not what measures are being taken to appoint the forensic experts for conducting the post mortems and medico-legal examination and whether any guidelines have been issued regarding proper conducting of the post-mortem examinations.

On 11.12.2018, the NHRC issued reminders for submission of reports within eight weeks positively, failing which the Commission shall be constrained to take coercive steps U/S 13 of the Protection of Human Rights Act, 1993 for their personal appearance.

2. Special focus: Custodial torture in Madhya Pradesh

Torture is regularly reported in police and judicial custody in Madhya Pradesh. In February 2017, a Union Minister and former Chief Minister of Madhya Pradesh in a controversial statement justified torture of rape accused in custody. The Minister claimed that while she was the Chief Minister of the state between December 2003 and August 2004, rapists were hung upside down, beaten till their skin came off, and salt and chilli was rubbed on their wounds till they begged for forgiveness.³ Few months later in 2017, two investigations conducted by the National Human Rights Commission (NHRC) confirmed allegations of physical and mental torture of undertrial prisoners belonging to the Students Islamic Movement of India (SIMI) at Central Jail, Bhopal. In its report, the NHRC, among others, recommended action against jail officials directly or indirectly involved in the torture.⁴ However, the jail authorities rejected the findings of the NHRC as one-sided.⁵ On 6 February 2018, the family members of the undertrial prisoners in a petition to the NHRC informed the continuing torture of the prisoners. Currently, the case is pending final adjudication by the NHRC.⁶

2.1 Torture in police custody

The National Human Rights Commission recorded 65 deaths in police custody during 2009-2010 to 2018-19 (as on 20.11.2018) in Madhya Pradesh. These included 8 in 2009-10; 5 in 2010-11; 8 in 2011-12; 3 in 2012-13; 6 in 2013-14; 3 in 2014-15; 7 in 2015-16, 10 in 2016-17; 7 in 2017-18; and 8 in 2018-19 (as on 20.11.2018).⁷ The following emblematic cases establish the patterns of torture in the state.

Torture in public is common:
Torture in public is common in Madhya Pradesh. In photo 1, Abdul Qadir had a row with some persons on 4 June 2016. Instead of arresting and taking into custody as per the law, he was was tansured, tied to Police jeep's bonnet, and was paraded on the streets with a garland of shoes and beaten all the way to the police station. Accompanying policemen cheered the crowd. Petty criminals or the poor if arrested are taken around in the form of procession to police station. Then Home Minister Babulal Gaur had given his assent to such practices. After the treatment meted out to Qadir, tension built up in Mahidpur, people pelted stones and ten persons were injured in the violence with the police.

On 10 February 2019, Hindi news channel News18 reported custodial torture of a youth identified as Ashok Bansal at Bamhani police Outpost under Churhat police station in Sidhi district of Madhya Pradesh. The outpost In-charge, Dharmendra Singh brought the youth to the outpost in connection with a case of theft. The youth was subjected to brutal beating by the police to obtain a confession in custody. Unable to obtain the confession, the police gave Rs. 100 to the youth and was released. The victim's family members admitted him to a hospital and filed a complaint with the Superintendent of Police of Sidhi district.⁸

However, a number of people were not as lucky as Ashok Bansal to survive custodial torture. Some of the cases of custodial death due to alleged torture are given below:

Case 1: Death of Nandu Batham due to alleged torture

On 9 February 2019, Nandu Batham (23), son of Gendalal, died under suspicious circumstances in the custody of Hazira police station in Gwalior district, Madhya Pradesh. Police claimed that the deceased was taken to the police station on the charge of eve-teasing and molestation of a woman. Further, the police claimed that the Batham ran towards the roof of the police station and jumped to death from there while they were registering an FIR on the insistence of the woman.⁹ However, the deceased's family members alleged that he was tortured in custody, resulting in his death and the story of jumping from the roof was created by the policemen to save themselves. A judicial enquiry was ordered into the death.¹⁰

Case 2: Death of Raghuraj Singh Tomar due to alleged torture

On 4 February 2019, Raghuraj Singh Tomar (26), son of Angad Singh Tomar of Chinte Ka Pura in Morena district of Madhya Pradesh, was found dead under suspicious circumstances at Dimni police station in the district. Tomar was arrested for unauthorised possession of firearms from his house on the previous night. Police claimed that Tomar

committed suicide by hanging himself by using the quilt inside the washroom of the police station lock-up.¹¹ However, family members of Tomar alleged that he was tortured to death in custody and later the body was hung to make it look like a suicide. They also accused the police of obtaining their signatures on blank papers following the death. Five police personnel including the Station House Officer of Dimni police station were suspended for the custodial death.¹² On 18 February, the NHRC directed its Investigation Division to collect facts and requisite reports.¹³

Case 3: Death of Ramkishore Gond under mysterious circumstances

On 13 January 2019, Abhishek alias Ramkishore Gond (26), a resident under Vijayraghavgarh police station in Katni district of Madhya Pradesh, died under suspicious circumstances in the custody of Vijayraghgarh police station. His body was found hanging in the toilet inside the police station lock up where he was detained during the previous night. Police claimed the deceased hanged himself to death with a part of the blanket which they gave him to put on during the night. The deceased was arrested on the evening of 12 January in connection with alleged murder of his girlfriend on 1 January.¹⁴ On 21 January, the NHRC directed its Investigation Department to collect the requisite reports from the state government.¹⁵

Case 4: Death of Suryabhan due to alleged torture

On 27 November 2018, a youth identified as Suryabhan died in police custody at Dhanpuri in Shahdol district of Madhya Pradesh. Suryabhan was arrested along with two others in a gambling case and lodged at Dhanpuri police station lock-up. The family members of the deceased alleged that Suryabhan was tortured by the police during interrogation in custody due to which he sustained severe injuries in stomach, resulting in his death. Police shifted Suryabhan to Shahdol District Hospital, where he died. Two policemen were suspended including Sub-Inspector Ajay Kumar and Havildar Rameshwar Singh in the case.¹⁶

Case 5: Death of Sanjay Sharma due to alleged torture

In October 2018, Sanjay Sharma died in a police station in Khargone district of Madhya Pradesh. The police arrested him on 27 October after they found gelatine rod near his house at Dhed village. Police claimed Sharma committed suicide by consuming poison in the police station. However, the family members of the deceased alleged that Sharma was tortured to death in custody. They further claimed Sharma had no links with the gelatine rod and accused police station In-charge Sub-Inspector R.A. Yadav of demanding bribe of Rs. 300,000 to weaken the case against Sharma.¹⁷

Case 6: Death of Anuraj Rajput due to alleged torture

On 11 September 2018, 22-year-old Anuraj Rajput was arrested by police attached to Kareli police station in Narsinghpur district of Madhya Pradesh under section 151 of CrPC (arrest to prevent the commission of cognisable

offences) when he was engaged in a heated argument with a man, who had lodged a police complaint against him over theft of a buffalo. On the next day, Rajput was found dead under mysterious circumstances at the police station. Police claimed the deceased committed suicide after consuming “sulphas” while in custody. However, the family members of the victim rejected the police theory and alleged that Anuraj died due to torture in custody. Five police personnel attached to the police station were suspended in connection with the death and a judicial probe was also ordered.¹⁸

Case 7: Death of Bipin Patel under suspicious circumstances

On the night of 14 August 2018, 22-year-old Bipin Patel died in suspicious circumstances during police custody at Janeh police station in Rewa district of Madhya Pradesh. According to the police, on receipt of information of case of a theft in a house, police went to the house where they found Bipin Patel in an injured condition after he was beaten up by the members of the house. The police brought Bipin Patel to the police station and he died when he was about to be taken to hospital. It was alleged that the police attempted to suppress the case. However, the local residents protested against the police as soon as they came to know the incident in the next morning.¹⁹ Currently, the case is pending adjudication with the National Human Rights Commission.²⁰

Case 8: Death of Soheb Khan due to alleged torture

On 11 August 2018, Soheb Khan (25) died under suspicious circumstances at Bagh police station in Dhar district of Madhya Pradesh. The deceased was brought to the police station on the charge of eve-teasing in the evening of the same day. Police claimed the deceased committed suicide by hanging in the police station. Refuting the claim of the police, deceased's family members, however, alleged custodial torture for the death.²¹ Currently, the case is pending with the Madhya Pradesh State Human Rights Commission, which took cognizance on 14 August 2018.²²

Case 9: Death of Santkumar Maravi due to alleged torture

On 12 July 2018, Santkumar Maravi, son of Hari Maravi died in the custody of Dhanaura police station in Seoni district of Madhya Pradesh. Santkumar was arrested following a scuffle with his brother. Police claimed that Santkumar fled away from the police station and later the police found him dead in an agricultural field. However, the family members of the deceased alleged that they had seen injury marks on Santkumar's body and they alleged that he was tortured to death by the police in custody. The State Government had ordered a judicial inquiry into the death. The NHRC also intervened into the matter.²³

Case 10: Custodial death of Ghanshyam Gautam

On 17 June 2018, Ghanshyam Gautam, son of Narain Dutt Gautam, died in the custody of Noorabad police station in Morena district of Madhya Pradesh. On receiving a complaint about the custodial death, the NHRC directed its

investigation department to collect requisite reports from the concerned state authorities. Currently, the case is pending final adjudication by the NHRC.²⁴

Case 11: Death of Shivprasad Patel due to alleged torture

On 22 February 2018, Shivprasad Patel (45), an auto rickshaw driver, died in police custody at Panagar police station in Jabalpur district of Madhya Pradesh. Family members of the deceased alleged that Patel was picked up by two police constables after he refused to pay a weekly hafta (bribe) of Rs. 200 and died due to custodial torture. Two eyewitnesses claimed that they saw the two police constables dumping Patel's body near Devri railway crossing. The local administration had ordered a magisterial inquiry into the death and the two accused constables were suspended.²⁵

Case 12: Custodial death of Karnaal Singh

On 9 January 2018, Karnaal Singh (41), son of Gyan Singh of Niranjapur in Indore district of Madhya Pradesh, died under mysterious circumstances at Lasudia police station in the district. The deceased was arrested hours before his custodial death in connection two cases of domestic violence. Police claimed that the deceased consumed poison before he was arrested. According to the police, the deceased complained of stomach ache and dizziness as they were planning to produce him before a court, following which he was rushed to hospital where he died during treatment.²⁶ The case is currently pending adjudication with the Madhya Pradesh State Human Rights Commission.²⁷

2.2 Torture and deaths in judicial custody

Madhya Pradesh has 123 jails including 11 central jails, 39 district jails, 72 sub jails and 1 open jail.²⁸ During 2008-2018, at least a total of 1,073 prisoners died in jails of Madhya Pradesh. This included 86 deaths in 2008-09; 85 in 2009-10; 79 in 2010-11; 86 in 2011-12; 104 in 2012-13; 117 in 2013-14; 132 in 2014-15; 135 in 2015-16, 135 in 2016-17 and 114 in 2017-18.²⁹

Cases of unnatural deaths of prisoners, including due to torture and lack of proper medical treatment, continued to be reported in the State.

Cases of deaths in judicial custody

As per information submitted to the National Human Rights Commission, out of the 11 central jails in the state, Central Jail Bhopal reported the highest number of deaths of prisoners, followed by Central Jail, Gwalior, Central Jail, Jabalpur and Central Jail, Indore from January 2018 to February 2019.³⁰

I. Central Jail, Bhopal

The deaths reported to NHRC from Central Jail Bhopal included Santosh Dhobi, son of Shrilal on 2 February 2019; Babual, son of Ramdas on 1 February 2019; Chhotelal Vishwakarma, son of Harlal Vishwakarma on 5 August 2018; Ramdeen, son of Chandan Pawar, on 12 December 2018; Santosh Singh Rajput, son of Deepnarayan Singh Rajput on

20 December 2018; Salim Khan, son of Samad Khan on 21 November 2018; Kallu Khan, son of Ashraf Ali on 8 September 2018; Shaddo @ Shahid, son of Abdul Habeeb Khan on 29 September 2018; Javed @ Khubri, son of Salim on 16 September 2018; Phool Chand, son of Chude Lal on 13 September 2018; Ramdayal Prajapati, son of Ramcharan Prajapati on 2 September 2018; Kamal @ Bunt, son of Nihalsingh at 23 July 2018; Gulab Pal, son of Ratan Pal on 23 July 2018; Santosh, son of Rameshwar Gaur on 23 July 2018; Bhanwarlal, son of Deviram on 5 August 2018; Khemchand, son of Vanshkar on 24 June 2018; Hanmat, son of Ramsewak on 25 June 2018; Devi Singh, son of Hariya on 18 July 2018; Heeraman, son of Govind Sindhe on 9 July 2018; Lala @ Jaikaran, son of Saligram on 6 July 2018; Rafatulla, son of Amirulla on 6 June 2018; Bhagirath Singh Gurjar, son of Ganpat Singh Gurjar on 27 May 2018; Jitendra Kumar, son of Gabbu Singh Goyal on 26 April 2018; Anita Bhoi, wife of Majoj Bhoi on 12 April 2018; Girdhari Ahiwar, son of Imrat Singh on 28 March 2018; Kishore Bisautiya, son of Laxminarayan on 25 February 2018; Babulal, son of Kamta Raikwar on 11 March 2018; Indu Bai, son of Dashrath Basod on 27 February 2018; Jhallu, son of Nirpat Singh on 20 January 2018; Shivilal, son of Kalya Yadav on 7 February 2018; Ramsuresh @ Langda, son of Brajmohan Mishra on 31 January 2018; Ramesh Kushwaha, son of Kishan Kushwaha on 24 January 2018; Sayyed Khalid Ajj, son of Ajijurrehman on 10 January 2018; and Prahlad Agarwal at Central Jail Bhopal on 4 January 2018.³¹

II. Central Jail, Gwalior

The deaths reported to NHRC from Central Jail Gwalior included Evaram, son of Chandrabhan on 19 February 2019; Krishna Balram @ Tillu, son of Tulsiram Patwan on 5 February 2019; Rajveer, son of Kayam Singh on 27 January 2019; Asharam, son of Devilal Lodhi on 13 January 2019; Neeraj, son of Ram Ratan Jatav on 12 January 2019; Aovran Singh, son of Vilas on 4 January 2019; Rajendra, son of Sukhu on 31 December 2018; Nadri Khan, son of Munshi Khan on 25 December 2018; Banwari, son of Dallu on 20 December 2018; Ramdulare, son of Ramsahay on 16 December 2018; Rambabu, son of Kashiram on 16 November 2018; Shyamlal, son of Kaliyan Singh on 28 October 2018; Umeeda, son of Kamarji on 31 August 2018; Kamalkishor @ Banti, son of Devilal on 22 June 2018; Shera @ Rajesh, son of Hakim on 19 May 2018; Prabhaskar @ Pappu, son of Ramole at Central Jail Gwalior on 29 March 2018; Babulal, son of Gokul at Central Jail Gwalior on 22 March 2018; Baalkishan @ Chanduva, son of Hirwa Ahirwar on 1 April 2018; and Kallu @ Khera, son of Ramcharan on 5 January 2018.³²

III. Central Jail, Jabalpur

The deaths reported to NHRC from Central Jail Jabalpur included Sheikh Aarif, son of Sheikh Munna on 31 January 2019; Sandeep Thakur, son of Ramsingh on 20 January

2019; Devendra Singh, son of Batan Singh Lodhi on 25 December 2018; Tejlal @ Kariya, son of Bhuvanlal Kartikeya on 26 November 2018; Bhupendra, son of Kedarnath on 11 November 2018; Rajendra @ Raju, son of Motilal Kesharwani on 21 October 2018; Rajkumar, son of Tilak Singh on 17 October 2018; Samal Singh, son of Kari Tekam on 22 September 2018; Munnalal, son of Premilal Kachhwah on 20 August 2018; Sanjay, son of Ramnaresh Choudhari on 3 August 2018; Leeladhar @ Amar, son of Premlal Kushwaha on 15 June 2018; Nimesh, son of Ishwari on 4 June 2018; Dilip @ Bablu, son of Chotelal on 1 May 2018; and Adam Singh, son of Badan on 5 February 2018.³³

IV. Central Jail, Indore

The deaths reported to NHRC from Central Jail, Indore included Bisan, son of Nahla, on 28 December 2018; Jagdish, son of Bherulal, on 29 November 2018; Leelabai, wife of Cheniram on 9 November 2018; Lali @ Lalu-Chaturbhuj on 10 November 2018; Dariyav, son of Raliya on 12 November 2018; Chaganlal, son of Onkaar, on 5 September 2018; Basantlal, son of Banshilal on 12 May 2018; Rahul @ Bhanu, son of Babulal, on 17 April 2018; Harishchand @ Hallu, son of Tulsiram on 7 April 2018; Burakhya, son of Gatliya on 22 March 2018; Subhash, son of Khelsingh on 10 March 2018; Ratu @ Ratansingh, son of Navalaya on 16 February 2018; and Rama @ Ramlal, son of Bhagwansingh at Central Jail Indore on 7 February 2018.³⁴

V. Central Jail, Ujjain

The deaths reported from Central Jail, Ujjain included Bapu Singh, son of Gopal Singh on 21 January 2019; Bhagwan Singh, son of Jujhar Singh on 19 August 2018; Babulal, son of Heeralal on 11 November 2018; Kishandas, son of Narayandas on 28 September 2018; Abrar Ahmad, son of Ajaj Ahmad on 28 July 2018; Rajesh, son of Jogendra Sablok on 10 July 2018; Ramesh, son of Rulsingh on 4 June 2018; Kalu @ Chandrashekhar, son of Ramdayal on 5 April 2018; Ramesh, son of Vel Ji Meida on 30 March 2018; and Sukhram, son of Babulal at Central Jail Ujjain on 4 January 2018.³⁵

Though the causes of the deaths in the above cases could not be ascertained from the NHRC case proceedings that many had died due to medical negligence, among others, cannot be ruled out.

In some cases, the families accused the jail authorities of denial of proper medical care, resulting in the deaths.

On 1 December 2018, an undertrial prisoner named Teru (40), s/o Haw Singh, a resident of Jharadabar village

in Jhabua district of Madhya Pradesh, died at Jaora Sub Jail in Ratlam district allegedly for want of adequate medical treatment. Teru was arrested and sent to judicial custody on 13 October 2018 under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). Jail officials claimed that the deceased was suffering from tuberculosis and he was under treatment from DOTs Center at the Civil Hospital. On 30 November 2018, when his health deteriorated he was rushed to the Ratlam district hospital for treatment. The next day (1 December), he was sent back to the jail following which he was admitted to the Civil Hospital, where he died during treatment.³⁶

On 19 September 2018, an undertrial prisoner identified as Suraj Raghuvanshi died at Guna District Jail in Madhya Pradesh. The deceased, a resident of Dhangora village under Ashoknagar district, was arrested by the police and sent to judicial custody a few months earlier in connection with a case of theft. The jail authorities claimed that the deceased, who was a patient of HIV/AIDS for a long time and had been receiving medical treatment died from the disease. However, family members of the deceased alleged that he deceased died due to lack of proper medical treatment because of negligence of the jail authorities.³⁷

3. Torture in India during February 2019

Across India, cases of torture in police and judicial custody, and juvenile institutions continue to be reported on regular basis.

3.1 Emblematic cases of torture in police custody

Case 1: Custodial torture of three persons including two minors in Thanjavur, Tamil Nadu

On 24 February 2019, 24-year-old Vijayakanth, mason by profession, was allegedly illegally detained and tortured in police custody for three days in Thanjavur district, Tamil Nadu. In a petition filed with the Tamil Nadu State Human Rights Commission, the victim's wife stated that Vijayakanth, a resident of Kuruvadipatti in Thanjavur, had gone for fishing on 24 February along with his brother Dhanush (13), cousin Ayappan (13) and two other relatives identified as Sarathkumar (8) and Sanjay (10) when two unidentified police personnel approached them and beaten up Vijayakanth before forcibly taking him to the police quarters behind the university police station. Vijayakanth was allegedly chained in the police quarters. Later in the day, the police also picked up minors, Dhanush

Torture in Madhya Pradesh
There are regular reports of torture in Madhya Pradesh. The National Human Rights Commission had registered custodial deaths of 1,138 persons during 2008-2009 to 2018-2019 with 65 deaths in police custody and 1,073 deaths in judicial custody. Out of the 11 central jails in the State, Central Jail Bhopal reported the highest number of deaths of prisoners, followed by Central Jail, Gwalior, Central Jail, Jabalpur and Central Jail, Indore. While most deaths in police custody take place as a result of torture within the 24 hours of the persons being taken into custody, deaths in prisons also takes place due to the lack of proper medical treatment. There is little accountability.

and Ayappan and took them to the police quarters where they were subjected to torture. The petition alleged that Danush was pricked with a needle and Ayappan was branded with a hot iron rod by the police who also made castiest remarks on the minors.³⁸

Case 2: Death of Ramvraksh Mallik due to alleged torture at Laheriasarai police station, Bihar

On 25 February 2019, Ramvraksh Mallik (45), son of Banarasi Mallik, died due to alleged torture at Laheriasarai police station in Darbhanga district, Bihar. The deceased was arrested along with other seven persons from a shop the previous day. Police claimed that on 25 February the deceased suddenly collapsed while he was being taken to the court following which he was rushed to the Darbhanga Medical College and Hospital (DMCH) where he was declared dead. However, the family members of the deceased alleged that the deceased was tortured to death by the police in custody. They also claimed that police had demanded bribe for his release.³⁹

Case 3: Custodial death of Mohammad Shakil under mysterious circumstances at Saria police station, Jharkhand

On 21 February 2019, Mohammad Shakil (40), a truck driver, died under mysterious circumstances at Saria police station in Giridih district of Jharkhand. The deceased, a resident of Delhi, was handed over to the police by the local residents of Bogadih village in the district on 20 February who suspected him to be a thief. He was detained at Saria police station. On the next morning, Shakil was found dead in the police lock-up. Police claimed the deceased committed suicide by hanging from the fan with a towel inside the lock-up. He was rushed to a primary health centre, where the doctors declared him brought dead.⁴⁰

Case 4: Torture of two youth by police in Koraput district, Odisha

On the night of 20 February 2019, Sampad Rout (21) and Biswas Pradhan (22) were allegedly tortured by two police personnel identified as HK Seth and Anil Panda attached to Jeypore Town police station at Gandhinagar square in Koraput district of Odisha. At about 11.30 pm, the two victims were going towards Gandhinagar Square to withdraw money from ATM kiosk when they were stopped and beaten up by the policemen. The accused police personnel were patrolling in the locality allegedly in an inebriated condition. The victims were tortured without any reason. The victims were rescued by their relatives, who admitted them to the hospital.⁴¹

Case 5: Torture of a mentally challenged man by police in Nayagarh, Odisha

On 19 February 2019, a mentally challenged man (name unknown) was subjected to alleged torture and ill-treatment by police personnel attached to Sarankul police station in Nayagarh district of Odisha. The victim, a resident of Biligorada village in the district, was picked up by three

constables from his house after he reportedly beat up his father. While taking him to the police station, the constables allegedly kicked and dragged the victim and tied his limbs and tapped his mouth. While transporting the victim in an auto-rickshaw, the constables allegedly sat over his body including in the head, legs and back in the entire stretch of around 10 km from Biligorada to the police station.⁴²

Case 6: Death of a farmer due to alleged police torture in Guntur, Andhra Pradesh

On 18 February 2019, a farmer identified as Pittala Koteswara Rao alias Kotaiah (35) died due to alleged torture by police at Kondaveedu under Guntur district of Andhra Pradesh. The deceased was allegedly tortured for refusing to allow his farmland to be used for landing of the helicopter of state's chief minister. Police claimed the farmer committed suicide by consuming pesticides hours before the arrival of the chief minister due to personal reasons.⁴³ However, the family members and others refuted the police claim and alleged that the deceased died due to police torture.⁴⁴

Case 7: Death of Heishnam Saratkumar due to alleged torture at Keibul Lamjao police station, Manipur

On 17 February 2019, Heishnam Saratkumar (48), son of Heishnam Mani Singh of Khordak Mayai Leikai in Bishnupur district of Manipur, was found dead in suspicious circumstances at Keibul Lamjao police station in the district. The deceased was arrested on charges of killing a wild boar inside Keibul Lamjao National Park on 14 February 2019. Police claimed that Saratkumar committed suicide with a torn bed-sheet inside the lockup of the police station. However, the family members of the deceased and local residents alleged that the deceased was tortured to death in police custody and later the body was hung to make it look like a suicide.⁴⁵

Case 8: 35-year-old man commits suicide unable to bear police torture in Mancheril, Telangana

On 14 February 2019, Elguri Mallesh (35) committed suicide unable to bear police torture at Kashnapalli village of Nennal mandal in Mancheril district of Telangana. Mallesh was accused in a case of a forest-related crime and injuring a youth in his village in October 2018. The deceased allegedly took the extreme step by consuming pesticide after the police tortured him in the name of investigations by the police.⁴⁶

Case 9: Illegal detention and torture of two Dalit brothers at Govindgarh police station, Rajasthan

On 13 February 2019, two Dalit brothers identified Deepak (23) and Dashrath were taken to Govindgarh police station in Jaipur district, Rajasthan in an alleged trump up case of damaging the statues in a temple. The two were kept in illegal detention for four days at the police station and tortured to obtain confessions in the false case. Deepak was beaten with wooden sticks and had sustained severe injuries on his buttocks. The victims' other family members including their mother were also beaten up by plainclothes police personnel who came to take them into custody. The custodial

torture of the Dalit brothers was exposed by Human Rights Law Network (HRLN) who conducted a fact-finding investigation into the case. The police initiated action following the fact-finding report and a committee was set up to look into the matter. A team of three government doctors also conducted a medical examination of the two youths. Deepak, who sustained serious injuries, was referred to a hospital on 25 February.⁴⁷

Case 10: Death of 14-year-old boy due to alleged torture at a remand home in Bihar

On 11 February 2019, 14-year-old Avinash Kumar, an inmate of Gai Ghat remand home died during treatment at Nalanda Medical College and Hospital (NMCH) in Patna, Bihar. The deceased had been lodged in the remand home two years ago for his alleged involvement in a rape case. The family members of the deceased alleged that Avinash Kumar was beaten up by the remand home caretaker and other inmates, resulting in his death.⁴⁸

Case 11: Death of Ramkelawan due to alleged torture at Mihinpurwa police post, Uttar Pradesh

On 9 February 2019, Ramkelawan (42), son of Dalla died under mysterious circumstances at Mihinpurwa police post under Motipur police station in Bahraich district of Uttar Pradesh. The deceased was picked up by the police from his house for selling alleged illegal liquor on the night of 9 February. The deceased's wife alleged that the police beat her husband to death for not paying bribe. The police rushed him to hospital but was declared brought dead by the doctors. Following protest, two police personnel including In-charge of Mihinpurwa were suspended.⁴⁹

Case 12: Death of Virender Kumar due to alleged torture at Raj Park police station, Delhi

On 9 February 2019, Virender Kumar (55), a resident of Mangolpuri area in Delhi, died due to alleged torture at Raj Park police station in Outer Delhi. The deceased had taken his son to the police station in connection with a case filed by a girl. Kumar was in illegal police custody from 9 am till 2.30 pm during he was subjected to torture and he was released in an unconscious state. He died at his home after release from custody.⁵⁰ On 11 February, the NHRC took suo motu cognizance of media reports of this custodial death case and issued notice to the Commissioner of Delhi Police calling for a report within four weeks along with details of the action taken against the guilty police personnel.⁵¹

Case 13: Death of Dinesh due to alleged torture at Ratangarh police station, Rajasthan

On 6 February 2019, Dinesh (26) allegedly committed suicide at Ratangarh police station in Churu district of Rajasthan. The deceased was taken to the police station for interrogation in a case of theft. Police claimed that the deceased committed suicide by hanging himself in the toilet of the police station. However, the deceased's family members alleging foul play protested against the custodial death. Four police personnel identified as Head Constable Dashrath Singh, Constables Lekh Ram, Virendra Kumar and Birbal Ram were suspended following the custodial death.⁵²

Case 14: Custodial death of Surjit Singh under mysterious circumstances at Division No.7 police station, Punjab

On 1 February 2019, Surjit Singh (55), a resident of GK Estate, Mundian Kalan in Ludhiana district of Punjab, died under mysterious circumstances at the Division No. 7 police station in the district. The deceased came to the police station along with his family in connection with a dispute of his son's would be in-laws. Police claimed that the deceased had suffered a cardiac arrest and died. Surjit was rushed to the hospital where doctors declared him brought dead.⁵³

Prisons: sudden deterioration of the health of the prisoners and death?

The claim of sudden deterioration of health situation leading to death is often made by the police and prison officials in India. On 18 February 2019, Nikhil Singh Rajawat alias Bhawani, a convict, died at Kota central jail in Rajasthan after jail officials claimed that the health of the deceased suddenly deteriorated, after which he was rushed to the hospital, where he was declared dead. The deceased's father, Doulat Singh alleged that his son was tortured to death by the jail officials for failing to pay bribe of Rs. 100,000 demanded by the police and that his son had some stitches marks on the head which were as a result of torture. This pattern remains quite common.

3.2 Torturous prison conditions and deaths in judicial custody

Deaths of prisoners as a result of torture, ill treatment, lack of medical facilities, etc in the jails are a regular phenomenon.

On 22 February 2019, under-trial prisoner, Gyani Singh (30) lodged at Central Jail, Modinagar in Palamu district, Jharkhand died under suspicious circumstances. The deceased, a resident of Kui village in the district, was in judicial custody since July 2018. Jail officials claimed the health of the undertrial suddenly deteriorated around midnight, after which he was shifted to hospital, where he died. However, the deceased's mother alleged that her son was murdered by the jail officials inside the jail and demanded proper investigation into the death.⁵⁴

On 22 February 2019, undertrial prisoner, Sundararajan lodged at Central Jail Salem in Tamil Nadu, attempted to commit suicide by slitting his throat and wrist with a piece of blade at the District Court Complex, Salem alleging harassment by the jail officials. The undertrial was taken there

to be produced before the court for a hearing. The prisoner alleged that he took the extreme step unable to bear the harassment by prison staff. He also said they were not providing him proper food and he was being ill-treated. Sundararajan also alleged that the jail officials used to harass his family members whenever they visited the prison to meet him.⁵⁵

On 21 February 2019, Leelaram Gour (30), a tribal, died due to alleged torture in custody at Sub-Jail Gariaband district in Chhattisgarh. The deceased, a resident of Rasela village in the district, was arrested and sent to judicial custody on 10 February in connection with a forest case. Jail officials claimed that on 18 February at around 2 pm the health of the deceased suddenly deteriorated, following which he was admitted at the district hospital. Later, he was referred to another hospital as there was no improvement in his health, where he died during treatment. However, the family members of the deceased alleged that he was tortured in judicial custody, resulting in his death. They also claimed that Leelaram was implicated in a false case by the forest department and he was absolutely fine at the time of arrest.⁵⁶

On 18 February 2019, Nikhil Singh Rajawat alias Bhawani (25), a convict, died under suspicious circumstances at Kota central jail in Rajasthan. The deceased, a resident of Kunadi in Kota district, was serving life imprisonment since 4 July 2016 in connection with an attempt to murder case. Jail officials claimed that the health of the deceased suddenly deteriorated, after which he was rushed to the hospital, where he was declared dead. However, the deceased's father, Doulat Singh alleged that his son was tortured to death by the jail officials for failing to pay bribe of Rs. 100,000 demanded by the police. Doulat Singh further alleged that his son had some stitches marks on the head.⁵⁷

On 18 February 2019, Munna Yadav (25), an undertrial prisoner died at Bhagalpur central jail in Bihar allegedly due to lack of proper medical treatment. The jail officials claimed that the deceased, a murder accused, who was suffering from blood cancer and receiving treatment from Mayanganj Hospital, Bhagalpur, died during treatment. However, the family members of the deceased accused the jail administration of being negligent in providing treatment.⁵⁸

On 16 February 2019, Krishan (27), an undertrial prisoner died at the district jail, Muzaffarnagar, Bihar. The jail officials claimed that the deceased died following an illness. Krishan was arrested in connection with a murder case.⁵⁹

On 14 February 2019, undertrial prisoner Dhiren Behera (52) died under suspicious circumstances in Kendrapara sub-jail in Odisha. The deceased, a resident of Patalipanka village in Kendrapara district was in jail since 2017. The jail authorities claimed that Behera was rushed to the hospital after he complained of chest pain and died during treatment. However, Behera's wife alleged that he was beaten up either by jail personnel or prisoners as the body bore injury marks on

the neck, legs and face. She also accused the police and jail officials of trying to hush-up the matter.⁶⁰

On 11 February 2019, Tengan N Marak (34), an undertrial prisoner, died six days after he was arrested while in judicial custody at Tura district jail in Meghalaya. The deceased, a resident of Baburambil under Dalu police station, was arrested by police in connection with an arson case on 4 February. Police claimed that the deceased complained of sickness on 5 February while in jail and was later admitted in hospital for treatment where he died during treatment.⁶¹

On 9 February 2019, an undertrial prisoner identified as Ompal Singh died at District Jail Muzaffarnagar, Bihar. The jail officials claimed that the deceased prisoner died due to illness. He was rushed to the district hospital in a serious condition but he was declared dead. The deceased was arrested in a murder case in 2015. An inquiry was ordered into the death.⁶²

On 3 February 2019, an undertrial prisoner identified as Ahmed alias Amarnath (32) was found dead under mysterious circumstances at the District Prison, Udupi in Karnataka. Police claimed the deceased, a resident of Kidiyur village, committed suicide by hanging from the hook of a fan at Conference Hall. Ahmed was in the prison since 31 October 2018 in connection with a case registered with the Women's Police Station.⁶³

3.3 Torture and sexual violence of women by police

Despite numerous Supreme Court judgments and enactment of the Criminal Law Amendment Act 2013, women continue to face torture and sexual violence at the hands of the law enforcement personnel.

On 16 February 2019, a mentally-ill minor girl, daughter of a sanitation worker, was raped by constable Amit Yadav at Mansachapur police outpost under Jahata Bazaar police station in Kushinagar district of Uttar Pradesh. The accused constable dragged the victim inside the police outpost when she had gone to fetch water from a handpump located near the outpost around 6 pm and raped her. A case was registered against the accused constable after the victim's family protested outside the police outpost.⁶⁴

On 14 February 2019, 40-year-old woman identified as Gangamma was allegedly tortured at Talaghattapura police station in Bengaluru, Karnataka. The woman was picked up by two plainclothes police personnel after her employer, where she work as domestic maid, filed a complaint accusing her of theft. In her complaint to the Karnataka State Human Rights Commission, the victim stated that she was picked up by the police from her house on the pretext of offering her a job but instead she was taken to the police station, where she was tortured for four hours. She alleged that there was no female police personnel and she was taken to a room where her hands were tied to a rod and beaten on chin, back and

lower body. She fell unconscious due to the torture. The victim also accused the police of forcing her to sign an undertaking that the wounds were old ones.⁶⁵

On 10 February 2019, Banamali Kuanra, Assistant Sub-Inspector (ASI) of Sohela police station in Bargarh district, Odisha was suspended and arrested on the charge of rape of a 15-year-old girl. On 8 February, the minor girl was allegedly abducted by one Kaibalya Nag when she had gone for tuition classes. The abductor took her to the rented house of ASI Banamali Kuanra at Sohela and sexually assaulted her. Later, he locked her in the house and left from there, following which ASI Kuanra brought the minor girl to his official quarters on Sohela police station premises and allegedly raped her. On 9 February, the accused ASI brought the victim to his rented house and later dropped her at a bus stand.⁶⁶

On 9 February 2019, a constable identified as Madhukar Avhad (48) was arrested for allegedly raping a 32 year-old married woman at a lodge in Mumbai, Maharashtra. The woman was allegedly caught stealing chocolates from a departmental store on 6 February. The woman told the police that the accused, attached with the MIDC police station in Andheri, threatened to take action against her if she disclosed the matter to anyone. The incident came to light when the woman's husband found that her objectionable pictures were shared on her WhatsApp account. She narrated her ordeal to her husband, who then approached the police.⁶⁷

3.4 Judiciary's action against torture in Febury 2019

The judiciary regularly adjudicates cases of illegal, unjustified and unwarranted arrests, extracting confession from innocent persons for offences which they have never committed, by way of custodial violence.

The emblematic cases are given below.

I. Bombay HC directs Maharashtra Government to submit status report on installing CCTV cameras in police stations

On 18 February 2019, the Bombay High Court directed the state government of Maharashtra to submit status report in implementing its previous orders to install CCTV cameras at all police stations to prevent custodial deaths and torture. The order was passed by a division bench of Justice Bhushan Dharmadhikari and Justice Anuja Prabhudessai asking the Secretary of the State's Home Department to file an affidavit in the next hearing. The High Court was hearing a petition on the death of Agnello Valdaris (25) in railway police custody in 2014 filed by his father Leo Valdaris. On 15 April 2014, Agnello and three others, including a minor, were picked up for allegedly stealing a gold chain. They were sexually assaulted and tortured in custody. Agnello died three days later. Police claimed he was run over by a train while trying to escape.⁶⁸

The petitioner's lawyers informed the court that there was little progress in installing CCTVs. The Bench said "This

court can always pass appropriate orders and also protect the accused being taken to police station. However, before passing any orders, we direct the secretary to place on record appropriate affidavit explaining the progress made and steps taken for compliance....". In August 2014, the High Court had directed that rotating CCTV cameras be installed at all police stations in the state. The cameras were to be installed such that corridors and lock-ups are covered 24x7. In 2016, the State Government stated before the court that it would install CCTV cameras at 25 police stations in Mumbai as a pilot project. However, the high court found that even this pilot project was not fully implemented. The court also directed the State Government to explain its stand on adding murder charges against police officers booked for the custodial death of Agnello.⁶⁹

II. Supreme Court reserved judgement on PIL seeking enactment of anti-torture law

On 14 February 2019, the Supreme Court reserved its judgment on public interest litigation (PIL) seeking legislation to prevent custodial torture in pursuance of India's obligation to the international treaty, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While reserving the judgment, a three-judge bench of Chief Justice Ranjan Gogoi and Justices Dinesh Maheswari and Sanjiv Khanna observed that fulfilment of international commitments cannot be a subject of the petition. A day earlier, the apex Court had accorded a day-long hearing on the PIL after petitioner and former Union Law Minister Ashwini Kumar had submitted that he has not been heard. Earlier in January 2019, the Supreme Court directed Chief Secretaries of all States and Union Territories to submit their feedback/comments on the Centre's "Prevention of Torture Bill, 2017" within three weeks.⁷⁰

The PIL was filed by Ashwini Kumar in 2016 seeking direction to the Government of India to frame a law to prevent custodial torture and inhuman treatment as India is a signatory to the UNCAT. The Supreme Court disposed off the PIL in November 2017 after the Centre gave the assurance that it was "seriously considering" the Law Commission of India's report on the issue.⁷¹ But in January 2019, the Court agreed to examine afresh Kumar's petition as no progress was made on the issue.⁷²

III. Telangana HC orders release of a person illegally detained under Preventive Detention Act

On 12 February 2019, Telangana High Court ordered release of S Vinay Kumar (36), working in an IT company, who was illegally detained under the Preventive Detention Act at Central Prison, Cherlapally in Telangana. The division bench, comprising Chief Justice TBN Radhakrishnan and Justice A Rajasheker Reddy found the police guilty of registering a false case under the Preventive Detention Act against the victim while hearing a habeas corpus petition filed

by the victim's brother. The High Court also said that the victim could agitate against the guilty police before a competent court. As per the petition, the victim was illegally detained on 8 October 2018 by Circle Inspector Nageshwara Rao and Sub-Inspector Ramakrishna of Madhapur police station by implicating him in a false case and sent him to judicial custody at Central Prison, Cherlapally where he was tortured. Doctors had confirmed that S Vinay Kumar was hit by the policemen and he sustained severe injuries. The victim was illegally detained under the preventive detention law without furnishing any of the required documents. As a result of the torture, Vinay Kumar suffered severe pain and was not in a position to sleep, sit or stand.⁷³

IV. Madras HC issues notice to district administration of Kanyakumari over custodial death

On 5 February 2019, the Madurai Bench of the Madras High Court issued notice to the authorities of Kanyakumari district, Tamil Nadu to respond to a petition by a woman, whose husband allegedly died in police custody. In her petition, the woman identified as S Premi Ninjia from Muttom in the district stated that her husband, Sahaya Raj Thobiyas, a fisherman was detained by the police at Manavalurichi police station for questioning in a criminal case on 3 November 2018. On the same day, she received a phone call from a police officer stating that her husband was admitted in Asaripallam government medical college hospital. When the woman reached the hospital, she was informed that her husband had died. According to the petition, she was informed by the police that her husband died during questioning. The woman approached the high court seeking transfer of the case to the Central Bureau of Investigation from the police due to dodgy investigation by police as well as lack of action by the district collector on her representations. Allowing the petition, the high court issued notice to the Superintendent of Police and Collector of Kanyakumari district over the custodial death.⁷⁴

V. Gujarat HC directs registration of FIRs against police for custodial torture

On 1 February 2019, the Gujarat High Court directed the Judicial Magistrate at Talaja in Bhavnagar district to register first information reports (FIRs) against police personnel accused of custodial torture of 54 persons including women of Bambhor village who were agitating against limestone mining. The High Court passed the order after going through medical reports and statements given to the magistrate by the victims. In their petition, the victims alleged that the police arrested around 90 people for taking out a peaceful march against limestone mining by a private firm at Bambhor village on 2 January 2019. Around 50 to 70 male police personnel from Datha Police Station beat them at the behest of senior police officials. The victims sustained injuries including fracture in the hands, legs and spinal cord. The police did not take the injured victims, including women, to hospital and

kept them in custody till they were produced in the court on 3 January. In the magistrate's court, the 54 victims complained of custodial torture by policemen, allegedly in the presence of Superintendent of Police P L Mal. The victims were granted bail on 10 January on the condition that they will not go near the mining site. According to the victims, they recorded their statements about custodial torture before the magistrate at Talaja and forwarded it to the sessions court as per the procedure, but no action was taken for three weeks, which compelled them to move the high court.⁷⁵

3.5 Interventions by the NHRC/SHRCs during February 2019

The National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRCs) are mandated to address human rights violations and continue to intervene in cases of torture. As per latest data available, the National Human Rights Commission registered a total of 8,823 fresh cases while it disposed off a total of 10,541 cases (Fresh + Old) during January 2019. A total of 20,421 cases (Fresh + Old) were under consideration of the commission as on 14 February 2019. Of the total cases, nine relates to death in police custody and 201 relates to deaths in judicial custody.⁷⁶

In January 2019, the NHRC has awarded a total of Rs 1,22,15,000 in 62 cases of human rights violations, including 18 cases of deaths in judicial custody, two cases of deaths in police custody; two cases of police torture, five cases of failure in taking lawful action, two cases of abuse of power, one case of illegal arrest, among others.⁷⁷

Some of the emblematic cases of interventions during February 2019 are given below.

Case 1: NHRC issues notice to the Union Ministries of Home and Human Resource Development over reported ill-treatment of Kashmiri people and students in different parts of the country post Pulwama terror attack

On 21 February 2019, the NHRC took suo motu cognizance of media reports regarding attack on Kashmiri people, including students studying in various institutes at different places in the country in the aftermath of terrorist attack in Pulwama on a CRPF convoy. The Commission observed that the media reports on the incidents raise serious issue of violation of human rights. Therefore, the NHRC issued notices to the Union Home Secretary and the Secretary, Union Ministry of Human Resource Development calling for reports in two weeks. Notices have also been issued to the Chief Secretaries of the Governments of Uttar Pradesh, Uttarakhand and West Bengal as well as the Commissioner of Police, Delhi calling for their reports on the incidents reported in the news papers within four weeks time.⁷⁸

Case 2: NHRC condemns killing of a Pakistani prisoner by fellow inmates in Jaipur Central Jail

The NHRC took suo motu cognizance of media reports that a Pakistani national, serving life sentence in the Jaipur

Central Jail, Rajasthan, was killed on 20 February 2019 in a brawl with four inmates allegedly over the volume of a television programme. The NHRC described the incident as inhuman and has called for stringent action against the miscreants to ensure that Right to Life of the prisoners are not violated while they are in judicial custody. Accordingly, the Commission issued notices to the Chief Secretary and the Director General (Prisons), Rajasthan calling for reports within four weeks. The Commission also held that the authorities are expected to take immediate precautionary measures in the jails, where Pakistani nationals are lodged in the wake of prevailing atmosphere. It also directed its Registry to send a copy of the proceeding in this matter to the Chief Secretaries of all the States and UTs across the country for strict compliance and taking necessary action in their respective States.⁷⁹

Case 3: NHRC awards compensation in tortured to death of Neelam Ahirwar, Madhya Pradesh

On 30 September 2017, a Dalit identified as Neelam Ahirwar (40) was tortured to death for lodging a police complaint against the accused upper caste persons under Mahukhan village of Guna district of Madhya Pradesh. The deceased had filed a police complaint on 25 September 2017 against four upper caste people namely, Deenbandhu Sharma, Mithun Sharma, Dharmendra Sharma and Anurag Sharma, all residents of Mahukhan village of Guna district, for hurling caste slurs and profanities at him, as also for intimidating him on 18 September 2017. Based on his complaint, a case was registered against the four accused under IPC Sections 323, 294, 506 and 34, and sections of SC/ST Act. On 30 September 2017, several upper caste men including the four accused persons arrived at the house of the deceased and beat up the deceased with rods leading to his death. The Asian Centre for Human Rights filed a complaint to the NHRC on 4 October 2017 seeking urgent interventions of the NHRC into the matter. As per the Commission's direction, a report dated 28.12.2017 was submitted by the Superintendent of Police District-Guna, Madhya Pradesh stating that a case was registered against the accused persons under sections 302/294/452/147/148/149 IPC r/w section 3(2)(v) and v(a) SC & ST (POA) Act. On 12 November 2018, the Commission had directed the Collector and District Magistrate, Guna to submit a report

All Eyes on the Supreme Court
On 14 February 2019, the Supreme Court reserved its judgment on public interest litigation seeking legislation to prevent custodial torture and ensure ratification of the United Nations Convention Against Torture (UNCAT). The government of India has been dilly-delaying and making all efforts to not to ratify the UNCAT. The PIL filed by former Law Minister Ashwini Mukar was disposed off in November 2017 after the Central government gave the assurance that it was "seriously considering" the Law Commission of India's report that recommended enactment of Prevention of Torture Bill, 2017 as a standalone law. In January 2019, the Supreme Court directed Chief Secretaries of all States and Union Territories to submit their feedback/comments on the Centre's "Prevention of Torture Bill, 2017" within three weeks.

regarding payment of monetary relief under provisions of SC/ST (PoA) Act and Rules. Pursuant to directions of the Commission, a communication dated 22 September 2018 was received from the Collector & District Magistrate, Guna along with a report dated 24 August 2018 submitted by SDPO, District Guna in which it was stated that the required monetary compensation has been paid to the next of kin of the deceased. Since the requisite monetary compensation has been paid by the authorities, the Commission has on 27.01.2019 held that there is no need of further intervention by the Commission, and accordingly disposed off the case.⁸⁰

Case 4: NHRC summons Chief Secretary of Arunachal Pradesh in custodial death of Pintu Chakma

On 15 February 2019, the National Human Rights Commission issued conditional summons to Chief Secretary of Arunachal Pradesh and other concerned officers to appear before it on 10 April 2019 for the failure to submit compliance reports in the custodial death of Pintu Chakma. In

its order, the NHRC stated that despite sufficient time and opportunity having been given, the requisite reports have not been received. The NHRC had recommended Rs. 200,000 compensation to the next of kin of the deceased.⁸¹

Pintu Chakma (26), husband of Ananda Sabha Chakma of Dumpani village under Diyun Circle in Changlang district, was arrested along with four others by police from Dumpathar village in connection with Case FIR No. 18/2004 u/s 27(1) NDPS Act registered at Diyun police station in April 2014. The four other accused were released on bail within few days, but Pintu Chakma was denied bail. He remained in police custody for seven days at the lock-up of Diyun police station. In May 2014, he was sent to judicial custody but still lodged at the lock-up of the police station until his death under mysterious circumstances on 16 October 2014.⁸²

Case 5: Meghalaya SHRC directs Director General of Police to investigate torture of a musician

On 12 February 2019, the Meghalaya Human Rights Commission (MHRC) directed the State police to probe into the alleged case of human rights violation of Manavon Massar, a musician who was tortured by former East Khasi Hills Superintendent of Police (Traffic), Bashan J Laloo in Shillong in East Khasi Hills district. In its order, the MHRC directed

the Director General of Police, Meghalaya, to start an enquiry into the allegation made by the complainant Manavon Massar by an officer not below the rank of Deputy Inspector General of Police (DIGP) and submit the detailed report within 30 days.⁸³ The victim alleged that he was brutally beaten up by Bashan J Laloo for violation of traffic rules on 19 December 2018. He had sustained injuries including a fractured finger and bruised leg. According to the victim, he was taken to Laitumkhrah police station where he was again allegedly tortured.⁸⁴

Case 6: TNSHRC directs State Government to pay compensation to custodial torture victim

On 11 February 2019, the State Human Rights Commission (SHRC) of Tamil Nadu recommended the state government to pay a compensation of Rs 50,000 to M Velan, five years after he was allegedly harassed by the then Inspector of Ambattur police station in Chennai. In his petition to SHRC, M Velan, a driver by profession and a resident of Om Shakthi Nagar, Ambattur submitted that George Millar, then Inspector of Police, Ambattur Police Station registered a criminal case against him and lodged him in jail in an alleged land grabbing case filed by one Santha, an advocate. He also stated that George Millar had pulled him by his shirt to the station on the pretext of calling for an enquiry over the land grabbing case in the wee hours of 5 November 2013. Based on the oral and documentary evidence presented, the SHRC stated that the harassment by the police violated the human rights of M Velan. The SHRC also recommended disciplinary action against the accused official.⁸⁵

Case 7: JKSHRC investigation confirms death of Mohammad Ramzan due to torture during illegal detention

In February 2019, Jammu & Kashmir State Human Rights Commission ruled that 20-year-old Mohammad Ramzan Lone, son of Abdul Gaffar, died due to custodial torture by police at police post Khadi during his illegal confinement. This was revealed following an investigation conducted by the SHRC. On 16 May 2014, two children aged six and five years respectively, sneaked into Lone's home in Aramdaka Mangit village of Banihal and ate a pot of ghee. Later, Lone found the children lying unconscious inside his home. The children were soon rushed to the hospital after their families were informed by Lone. However, police summoned Lone and his father for questioning after receiving a complaint. At the police post, Lone was beaten and kicked in the stomach by constable Waheed Ahmad as a result of which, his head collided against the wall and for some time he lost his consciousness. Subsequently, sub-inspector Mohammad Younis directed his staff to take Lone to a separate room until his condition improved, where he was kept for six days despite his health condition not well. The SHRC investigation further revealed that Lone was beaten ruthlessly and after his health apparently deteriorated, he was

denied any medical help. Although, Lone was later released, his condition deteriorated and died during treatment. However, police instead of registering an FIR into Lone's death initiated inquest proceedings under 174 CrPC (mysterious death) into the incident.⁸⁶

4. International Action against Torture in January 2019

4.1. 37th Session of SPT held

The UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) held its 37th Session in Geneva, Switzerland from 18 February to 22 February 2019. The SPT session information is confidential, but the SPT publishes annual reports on its activities. Its sessions generally provide its 25 members independent group of experts a chance to report on and discuss upcoming and recent activities related to specific States, regions, and thematic priorities.⁸⁷

4.2. UN SPT conclude maiden visit to Switzerland

On 7 February 2019, the SPT completed its first visit to Switzerland, which took place from 28 January. During the 11-day visit, seven-member SPT delegation assessed the treatment of persons deprived of their liberty and the safeguards put in place to protect them from torture and ill-treatment in the country, which ratified the Optional Protocol in 2009. The delegation met representatives of the federal and cantonal authorities, the Attorney General's office, the judiciary and civil society. The delegation, along with members of the National Commission for the Prevention of Torture (CNPT) visited police stations, prisons, detention centers for migrants, and psychiatric service in the cantons of Bern, Zurich, Geneva and Vaud. The delegation noted satisfaction with the cooperation by the Swiss authorities during the visit. The delegation urged Switzerland to increase the resources allocated to the CNPT in order to strengthen its essential work to protect the rights of persons deprived of their liberty. At the end of the visit, the delegation presented its preliminary and confidential comments to the federal authorities and the CNPT. The SPT will send the Swiss government a confidential report containing its observations and recommendations.⁸⁸

4.3 Interventions by UN Experts

I. UN urges Egypt & Iran to halt death penalty executions

On 22 February 2019, UN High Commissioner for Human Rights (OHCHR) expressed concern over execution of 15 people in Egypt in February 2019. Of these, nine people were executed on 20 February. OHCHR urged Egypt to halt all executions and to conduct investigations into all allegations

that people are subjected to the death penalty based on confessions obtained under torture. According to the OHCHR, in all cases the defendants have told the court they were subjected to torture to make them confess to the crimes of which they were accused. During the trial, detailed accounts of the torture allegedly used to obtain confessions were apparently ignored by the court without due consideration.⁸⁹

A day earlier (21 February 2019), a group of four UN experts urged Iran to immediately halt execution of child offender Mohamad Kalhori. Kalhori was sentenced to death for killing his teacher when he was 15 years old. The experts stressed that the execution will be unlawful and arbitrary as Iran has committed itself to prohibiting the use of the death penalty for all those who committed a crime while under the age of 18 by its ratification of both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. As such, this execution is unlawful and arbitrary.⁹⁰

II. UN experts calls for investigation into torture of Papuan boy using snake

On 21 February 2019, UN experts condemned the use of a live snake by Indonesian police to torture a handcuffed indigenous Papuan boy who was arrested in connection with a case of alleged theft. The experts urged Indonesia to conduct a prompt and impartial investigation into the case. They stated that the case reflected a widespread pattern of violence, alleged arbitrary arrests and detention as well as methods amounting to torture used by the Indonesian police and military in Papua.⁹¹

III. UN experts alarmed at renewed persecution of LGBT community in Chechnya

On 13 February 2019, a group of nine independent UN experts urged Russia to urgently act to protect the rights of people of Chechnya, who are suspected of being lesbian, gay or bisexual following a spate of killings involving torture, and other rights abuses. The experts expressed alarm at the renewed persecution of the LGBT community, including women, and called for an investigation. More than 40 people suspected to be LGBT were arrested since December 2018 including two deaths, as a result of torture. The experts noted that the abuse inflicted on victims allegedly become more cruel and violent compared with reports from 2017. In addition, the Chechen authorities were also preventing the victims to flee the region, which is part of the Russian Federation through methods such as destroying or

**Torture - A global practice
Torture remains prevalent across
the world and the UN
mechanisms continue to make
effective interventions. The UN
Sub Committee on Prevention of
Torture undertook its first visit to
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experts urged Egypt & Iran to
halt death penalty executions,
investigation into torture of
Papuan boy using snake and
renewed persecution of LGBT
community in Chechnya.
The EU continues to be vigilant
against torture. The Council of
Europe Committee for the
Prevention of Torture and
Inhuman or Degrading
Treatment or Punishment
released its report on Greece and
Montenegro.**

confiscating identification documents, threatening them or those close to them with criminal proceedings, or forcing them to provide blank signatures on forms.⁹²

IV. UN experts urge Brazil to abide by its international torture obligations

On 5 February 2019, three United Nations human rights experts urged Brazil to comply with its international legal obligations to curtail torture. The UN experts expressed deep concern over the veto on January 2019 by the Governor of São Paulo of law No. 1257, which would have established a State Committee for Preventing and Combating Torture. Brazil, which ratified the OPCAT in 2007, has an international obligation to establish a system of National Prevention Mechanisms for reducing torture and human rights abuses. In 2015, Brazil

introduced a federal law creating a National System to Prevent and Combat Torture, which relies significantly on the establishment of a network of preventive mechanisms at the State level. The experts noted that States of Rio de Janeiro, Pernambuco, Roraima and the Federal District have all approved similar legislation. The vetoed legislation reverses that positive trend made.⁹³

4.4 EU's action against torture

I. CPT urges Greece to improve the situation for psychiatric patients and to treat immigration detainees humanely

On 19 February 2019, the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on a visit to Greece carried out in April 2018. During its visit, the CPT examined the situation of civil and forensic patients in psychiatric establishments and of foreign nationals deprived of their liberty under aliens' legislation. The report highlighted the systemic overcrowding in three of the five psychiatric establishments visited (Evangelismos, Gennimatas and Sotiria), with patients at Evangelismos being accommodated in the corridors. In all five hospitals visited, the CPT found lack of staff and over-reliance on pharmacotherapy, and the fact that patients were offered few activities. The CPT also received some isolated allegations of ill-treatment (punches, tight restraints, and verbal abuse) by staff at the private "Athina Vrillisa" Psychiatric Clinic. Further, at Korydallos Prison Psychiatric Hospital, it found that the use of the basement protection cells for the seclusion of patients without

supervision and for extended periods could easily be considered inhuman and degrading. Moreover, safeguards surrounding involuntary placement procedures were found to be insufficient in law and practice. The CPT called for improvement of the situation of psychiatric patients.⁹⁴

The CPT also criticised the poor treatment of immigration detainees and stressed the need for a coordinated European approach to address the high number of foreign nationals arriving in Greece. It urged Greek authorities to treat the detainees humanely and with dignity.⁹⁵

II. CPT publishes report on periodic visit to Montenegro

On 7 February 2019, the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment published a report on a periodic visit to Montenegro. In the course of the visit undertaken in 2017 the CPT delegation reviewed the treatment of persons deprived of their liberty by the police and the conditions of detention of inmates in the country's prison facilities as well as examined the treatment of psychiatric patients. The report noted that despite some overall improvement in the treatment of persons detained by the police in Montenegro, ill-treatment still appears widely spread. The alleged ill-treatment consisted of punches, slaps, kicks, baton blows, strikes with non-standard objects and the infliction of electro-shocks from hand-held electrical discharge devices either at the time of apprehension or in the course of police interviews. In prisons too, the CPT received a significant number of allegations of physical ill-treatment consisting of slaps, punches and kicks and to the prolonged fixation of inmates for several days with metal hand- and ankle-cuffs and chains to a bed. In psychiatric hospitals visited, it found chronic overcrowding and prolonged prescription of benzodiazepines to patients. The CPT recommended the authorities, among others, to tackle the issue of ill-treatment through stricter recruitment, better training and improved oversight and to put an end to the current practice of fixating prisoners.⁹⁶

5. Uganda's anti-torture law shows India's failure to criminalise torture

The Uganda Constitution of 1995 provides that no person shall be subjected to torture or other cruel, inhuman and degrading treatment. On 3 November 1986, Uganda ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁹⁷ In 2012, Uganda enacted the Prevention and Prohibition of Torture Act giving effect to an important recommendation of UPR review in 2011. Uganda is also a party to all other major international human rights instruments, which outlaws torture and other forms of ill-treatment in any circumstances to all human beings.⁹⁸

The 2012 Prevention and Prohibition of Torture Act, which is in line with Articles 24 & 44 of the 1995

Constitution, provides for freedom from torture, cruel, inhuman and degrading treatment or punishment.⁹⁹

The Preamble of the Act states "An Act to give effect, in accordance with Articles 24 and 44(a) of the Constitution, to the respect of human dignity and protection from inhuman treatment by prohibiting and preventing any form of torture or cruel, inhuman or degrading treatment or punishment; to provide for the crime of torture; to give effect to the obligations of Uganda as a State Party to the United Nation's Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other related matters."

Important provisions of the Torture Act¹⁰⁰

Definition of torture

Section 2 of the Act defines "torture" as any act or omission that is intentionally inflicted on a person and that causes severe pain or suffering, whether physical or mental, with the purpose of obtaining information, punishment, intimidation or coercion of the victim by any person or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private whether a public official or other person acting in an official or private capacity.

Physical torture includes

- a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;
- b) food deprivation or forcible feeding with spoiled food, animal or human excreta;
- c) electric shocks;
- d) cigarette burning, burning by electrically heated rods, hot oil, acid
- e) the submersion of the victim's head in water
- f) being tied or forced to assume a fixed and stressful body position;
- g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;
- h) mutilation, such as amputation of body parts
- i) dental torture or the forced extraction of the teeth;
- j) harmful exposure to the elements such as sunlight and extreme cold; or
- k) the use of plastic bags and other materials placed over the victim's head with the intention to asphyxiate.

Mental or psychological torture includes

- a) Blindfolding;
- b) threatening the victim or his or her family with bodily harm;
- c) execution or other wrongful acts
- d) confining a victim incommunicado
- e) confining the victim in a solitary cell;
- f) prolonged interrogation of the victim so as to deny him or her normal length of sleep or rest

- g) maltreating a member of the victim's family;
- h) witnessing the torture sessions by the victim's family or relatives;

Aggravated Torture

A person is liable to life imprisonment for aggravated torture;

- a) When the offender uses or threatens to use or used a deadly weapon
- b) When the offender uses sex as a means of torture
- c) When the victim was a person with a disability
- d) When the victim was pregnant/becomes pregnant
- e) When the offender causes death
- f) If the victim was subjected to medical experiments
- g) If the victim acquires HIV/AIDS
- h) If the victim was under the age of 18 years
- i) If the victim is incapacitated
- j) If the act of torture is recurring, or
- k) If the offender commits any act that the court considers aggravating

Pharmacological torture includes

- a) administration of drugs to induce confession or reduce mental competence;
- b) the use of drugs to induce extreme pain or certain symptoms of diseases and
- c) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment

Inadmissibility of evidence obtained by torture

Any information, obtained from someone by torture shall not be used as evidence against that person.

Section 14 provides as under:

1. Any information, confession or admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceeding.
2. Notwithstanding subsection (1), such information, confession or admission may be admitted against a person accused of torture as evidence that the information, confession or admission was obtained by torture.

Criminalisation of torture

Section 4(1) provides that a person who performs any act of torture as defined in Section 3 commits an offence and is liable on conviction to imprisonment for fifteen years or to a fine or both. Under Section 4(2) a person shall not be punished for disobeying an order to undertake actions amounting to torture, cruel or inhuman treatment.

Section 5 provides life imprisonment to offender and any other person jointly connected with the commission of an act

India Vs Uganda
India's fall from high moral ground is all pervasive and its lack of action to combat torture exposes the same. On 3 November 1986, Uganda ratified the UNCAT. The Constitution of Uganda adopted in 1995 reflected the spirit - it prohibited torture under Articles 24 & 44. In 2011, the Universal Periodic Review of the UN Human Rights Council recommended Uganda to enact a domestic law against torture. In 2012, Uganda enacted the Prevention and Prohibition of Torture Act. India on the other did nothing to criminalise torture at national level or ratify the UNCAT despite making promises to do during the UPR in 2008, 2012 and 2017. India's promises are indeed embarrassing.

of torture on conviction to life imprisonment for aggravating torture.

Section 7 provides that if cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 2, is a criminal offence and shall be liable on conviction to imprisonment not exceeding seven years or a fine or both.

Section 8 provides imprisonment up to seven years and/or fine if convicted of procuring, aiding or abetting, financing, soliciting, inciting or recommending torture.

Section 9(2) also provides up to seven years or fine or both to a person who is or becomes an accessory after the fact to the offence of torture on conviction."

While under Section 15 there is prohibition on the use of information obtained by torture and is liable on conviction to imprisonment up to two years or a fine or both.

The Act provides no amnesty to a person accused for offence of torture.

Non-refoulement

Torture is extraditable offence under the Act. However, there shall be no transfer of persons to a country or place where likelihood of torture exists. Section 22(2) provides that "a person shall not be extradited or deported from Uganda to another state if there are substantial grounds to believe that that person is likely to be in danger of being subjected to torture."

Remedies to victims

Under Section 6 compensation, rehabilitation, restitution or any payment ordered by court can be made to a survivor/victim of torture. The court may order the payment of compensation to the victim, for his or her suffering. This include restoring the victim and his or her family to their original state, which may be in the form of return of any property, money for the suffering, and services such as health care. Also paying money for physical or mental suffering, loss of employment, or damage of property, and costs for special assistance, medical and mental care, or legal services to the victim.

Witness protection

The Government shall protect whoever reports, witnesses, makes a complaint about torture.

Although human rights laws and mechanisms exist in Uganda, practical enforcement remained a challenge. Various reports over the years indicate allegations of widespread torture, committed with impunity by both state and non-state actors. In 2015, torture was reported by Uganda Human Rights Commission (UHRC) as the highest of all human rights violations in the country comprising 37.95% of all reported violations. The Uganda Police Force, which is charged with protecting people and their property, unfortunately continues to be ranked number one among alleged perpetrators of torture.¹⁰¹ The UHRC received over 1,000 cases of police torture between 2012 and 2016. It is alleged the actual data on the numbers of those tortured in custody is much higher.¹⁰²

Despite the challenges and visible gap between the legislation and its implementation, there is no doubt that Uganda has seen significant progressive trends and remain one of only 10 African nations to pass domestic anti-torture legislation.¹⁰³

The enactment of the anti-torture legislation by Uganda shows the same can be replicated by other countries including India.

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