



India Torture Update

Special Focus: Assam



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Assam police personnel baton charging differently-abled protesters in Guwahati on 5 October 2018

1. Focus: Impunity for fake encounter killings continues unabated in Assam

Assam with 521 encounter killings held second rank in the list of encounter deaths in India during 1 April 1998 to 31 March 2018 after Uttar Pradesh.¹ Assam, however, held the first rank in slow disposal of cases of encounter killings during 2015 to 2018. As many as 94 deaths in encounter with police were registered in Assam during 1 April 2015 to 20 November 2018 but only 8 cases had been disposed of while 86 killing cases are still pending.² As per the National Human Rights Commission (NHRC), during 1 April 2015 to 31 March 2016, 43 cases of encounter deaths were registered in Assam but only 4 cases were disposed of. Likewise, during 2016-2017, 31 cases of death in police encounter were registered but only 3 cases were disposed. The number of deaths in police encounters came down to 16 during 2017-2018 but only 1 case was disposed of. During the current financial year till 20 November 2018 only 4 deaths in police encounter were registered in the State but none of these cases has been disposed as yet.³

Impunity to counter insurgency made the security forces in Assam trigger happy. Though Assam no longer faces major threats of insurgency, the Assam Police continued to remain trigger happy. No other case exemplifies the trigger happiness of the security forces in Assam more than the cold blooded murder of a 35-year-old mentally disturbed youth, Gyanendra Rajkhowa, by the Assam Police at Habial village under Golaghat district on 5 December 2018.

The deceased Rajkhowa, a resident of Habial village in Golaghat district, was a former BSF jawan and after his retirement from the BSF, he got separated from his wife and had been mentally distressed. Because of his unstable mental state, on 5 December 2018 morning at about 10 am, Rajkhowa allegedly attacked some voters at the polling booth at Habial lower primary school during the first phase of panchayat elections and injured four persons. Thereafter,

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he fled the place and went back to his home situated about one km away from the polling booth. Later, at about 1 pm, a large police contingent led by Golaghat DSP Mr Partha Protim Saikia reached his residence at Habial village to arrest him. The police team asked him to surrender but he argued with them and waved a machete (dao) at them. Eyewitnesses said that the police team thereafter fired four to five rounds of shots without warning and killed him on the spot. The policemen thereafter dragged away the dead body of the deceased. He could have been arrested by using non-lethal measure but instead, he was murdered in cold blood.⁴

The absence of political will to establish accountability is all pervasive. The intentional non-cooperation by the Ministry of Home Affairs (MHA) to produce records relating to alleged fake encounter of Lucas Narzary alias N Langfa and David Islary alias Dayud, two alleged cadres of the National Democratic Front of Bodoland (Songbijit faction) at Simlaguri in Assam's Baksa district on 30 March 2017, is indicative of the extent of the protection received by the security forces for encounter killings. In an order dated 3rd December 2018, the Central Information Commission (CIC) while hearing an appeal against non-disclosure of information sought, expressed serious displeasure over MHA's non-compliance of CIC's direction for production of the report submitted by then Inspector General (IG) of the Central Reserve Police Force (CRPF) Rajnish Rai on the encounter killing at Simlaguri in 2017. Giving a final opportunity to the Union Home Secretary Rajiv Gauba to produce the report before it on 19 December 2018, the CIC warned that it shall announce its *ex parte* decision in case of failure to produce the report.⁵

In his report sent to CRPF headquarters in Delhi, Gujarat-cadre Indian Police Service officer Rajnish Rai, then posted in Shillong with CRPF as IG, North East Sector, had alleged that the encounter of Lucas Narzary alias N Langfa and David Islary alias Dayud was staged. The two men were actually picked up from a house in D-Kalling village and killed in cold blood at Simlaguri.⁶ Calling for a full-fledged investigation, Rai had further alleged that weapons were planted on their bodies and he had witnesses who had identified the bodies as those of the two men picked up and that these witnesses were in his "safe custody".⁷

Rajnish Rai was shunted from Shillong to Andhra Pradesh and he resigned citing personal grounds on 30.11.2018. His resignation was not accepted by the MHA and he was suspended for alleged "unauthorised handing over" of the charge of IG & Principal of CRPF's Counter Insurgency and Anti-Terrorism School in Chittor, Andhra Pradesh in December 2018.⁸

Unless the State government of Assam takes decisive measures to establish accountability, Assam shall continue to witness encounter killings with impunity.

2. The State of Torture in Assam

Custodial torture and custodial deaths are regularly reported from Assam. The National Human Rights Commission (NHRC) recorded 71 deaths in police custody during 2008-2018 in Assam. These included 7 in 2008-09; 6 in 2009-10; 5 in 2010-11; 4 in 2011-12; 9 in 2012-13; 13 in 2013-14; 7 in 2014-15; 9 in 2015-16 and 11 in 2017-18.⁹ The figure for 2016-17 was however not available.

2.1 Torture in police custody in Assam

Torture in police custody is rampant in Assam and regularly reported. The following emblematic cases establish the patterns of torture in the state.

Case 1: Three Indian Army officers & four soldiers sentenced to life for murder of five AASU leaders in a fake encounter in Assam in 1994

On 13 October 2018, the Summary General Court Martial of the Indian Army held at the 2nd Infantry Mountain Division at Dinjan in Dibrugarh district of Assam sentenced seven convicted army personnel i.e. Major General A K Lal, Colonels Thomas Mathew and R S Sibiren, and junior commissioned officers (JCOs) and non-commissioned officers (NCOs) Dilip Singh, Jagdeo Singh, Albindar Singh and Shivendar Singh to life imprisonment for torture and extra-judicial killing of five leaders of the All Assam Students Union (AASU) in a fake encounter on 22 February 1994.¹⁰ Following the killing of Rameshwar Singh, general manager of the Assam Frontier Tea Limited at the Talap Tea Estate by the cadres of the outlawed United Liberation Front of Asom (ULFA), troops of the 18th Punjab Regiment based at Dhola in Tinsukia, Assam picked up nine innocent youths from their houses in Tinsukia district's Talap area on the mid-night of 17 February 1994 ostensibly to extract information about the ULFA in the wake of the killing of Rameshwar Sharma.¹¹ A habeas corpus petition was filed before the Gauhati High Court on 22 February 1994 which directed the army to produce the nine youths immediately before the nearest magistrate.¹² However, the Army had brutally tortured five out of nine youths i.e. Prabin Sonowal, Pradip Dutta, Debajit Biswas, Akhil Sonowal and Bhaben Moran with their tongues sliced, eyes gouged out and kneecaps smashed, and bodies bearing evidence of electric shocks as per the post mortem reports.¹³ As the five youths could not be produced before any magistrate following brutal torture, the army personnel therefore shot them dead in order to hide the torture, released the remaining four youths in different locations of the district and handed over the dead bodies to the Dholla Police Station alleging to be the dead bodies of the members of the ULFA killed in an encounter along with certain arms and ammunitions recovered from these youths.¹⁴

The Assam Police, the Army Court of Enquiry and two Magisterial inquiries of the State government found the version of the accused Army personnel to be true and a finding was recorded that 'the counter insurgency operation

was done in exercise of the official duty'.¹⁵ It was the inquiry by the Central Bureau of Investigation (CBI) under the direction of the Gauhati High Court that brought out the truth¹⁶ and led to filing of the chargesheet against 7 (seven) Army personnel in the Court of Special Judicial Magistrate, Kamrup under Section 302/201 read with Section 109 of the Indian Penal Code, 1860 (IPC) in 2002.¹⁷ The competent Authority in the Army sought immunity under the Armed Forces Special Powers Act, 1958 (AFSPA) which was denied by the Special Judicial Magistrate on 10.11.2003 and the Gauhati High Court on 28.3.2005 and an appeal was filed before the Supreme Court against the order of the High Court. On 1 May 2012, the Supreme Court in its judgment directed the competent authority in the Army to "take a decision within a period of eight weeks as to whether the trial would be by the criminal court or by a court-martial and communicate the same to the Chief Judicial Magistrate concerned immediately thereafter".¹⁸ The Army decided to try them under military law through a court martial.¹⁹ The court-martial process began on 16 July 2018 and concluded on 27 July 2018. The quantum of punishment was pronounced on 13 October 2018.²⁰

Troops of the 18th Punjab Regiment based at Dhola in Tinsukia, Assam shot dead five Prabin Sonowal, Pradip Dutta, Debajit Biswas, Akhil Sonowal and Bhaben Moran because the deceased were not in a position to be produced before the Magistrate because of brutal torture. The post mortem report noted that the deceased were brutally tortured with their tongues sliced, eyes gouged out and kneecaps smashed, and bodies bearing evidence of electric shocks.

Case 2: Kokrajhar CJM Court issued arrest warrant against Assam IGP Anurag Tankha in a custodial death case

On 28 September 2018, the Kokrajhar Chief Judicial Magistrate's Court issued an arrest warrant against Inspector General of Police Anurag Tankha in connection with the custodial death of a suspected extremist 19 years ago. Mr. Tankha was the additional superintendent of police of Kokrajhar district in 1999 when Ananta Roy alias Hiranya Deka, a suspected member of the United Liberation Front of Asom (ULFA) died in custody. The police officer and his two personal security officers had allegedly thrashed the victim at Kokrajhar police station lock-up.²¹ Police officer Binoy Ch Modok then filed a case (255/1999) against Tankha and his two PSOs at the Kokrajhar police station under Sections 302 and 114 of the IPC.²²

In its order, the Kokrajhar CJM Court said the death of the alleged ULFA man at the police station lock-up was a "very serious case of inhuman custodial torture". The CJM said that from the materials on record, "one can easily understand the inhuman circumstances under which the alleged ULFA man died... in police custody".²³

The order read: "All the three accused, namely Tankha, presently serving as IGP (Vigilance and Anti-Corruption

Cell), Prabin Borah and Ram Nagina Raut are police officials. Considering the seriousness of the offence, the investigation into the case was handed over to CID, Assam. The CID conducted the investigation and ultimately filed the final report finding the case to be true but failed to obtain prosecution sanction against the three accused."²⁴

Case 3: Three policemen sentenced to seven years imprisonment in a custodial death case in Nalbari

On 12 September 2018, a District and Session court in Lower Assam's Nalbari sentenced three policemen to seven years imprisonment in connection with the custodial death of a grocery store owner in 2002. The three accused in the case viz. Sub Inspector Iman Ali, Constable Hemanta Kalita and Homeguard Mohammad Ali were sentenced to undergo seven years imprisonment each for killing grocery store owner Akan Sharma in Ghograpar police station in Nalbari district on 13 January 2002. The court also slapped a fine of Rs 10,000 on all three convicts.²⁵

The deceased Akan Sharma, a resident of Borajol village under Ghograpar police station in Nalbari district, was arrested on 12 January 2002 in a case of oil theft and he was found dead in the police station on the next day. Akan's wife Labanya Debi filed a case (no-43/08) in Nalbari District and Session Judge Court following the incident.²⁶

Case 4: Assam Police asked to pay Rs 2 lakh to torture victim

On 21 August 2018, the Gauhati High Court directed the city police commissioner to pay a compensation of Rs 2 lakh to a man for his illegal detention and torture at Panbazar police station in Guwahati in 2011. A bench of Justice Ujjal Bhuyan also directed the director-general of police to reinvestigate the matter and take necessary action.²⁷

The victim, Ajit Medhi, was allegedly picked up by the Police in connection with a fraudulent case and illegally confined at Panbazar police station during 21-23 August 2011 and allegedly tortured him for two days. He was not formally arrested and was let off on August 23. Alleging illegal detention and torture, the petitioner filed an FIR at Chandmari police station which was registered as case no. 466/2011. As there was not much headway in the case, he lodged a complaint with the CJM, which was registered as case no. 2589/2011. He also filed complaints against the errant policemen before the Assam Police Accountability Commission and the Assam Human Rights Commission. Medhi said since the matter was protracting before the CJM court and the two commissions, he finally moved the High Court by filing a writ petition.²⁸

Case 5: Custodial death of Chandan Bharali

On 8 August 2018, the District Magistrate of Kamrup Metropolitan District in Assam directed the Circle Officer, Chandrapur Revenue Circle, Pallab Jyoti Nath to conduct an inquiry to find out the circumstances leading to alleged custodial death of one Chandan Bharali (23) and submit the

findings within 15 days for onward submission to National Human Rights Commission/Assam Human Rights Commission.²⁹ Chandan Bharali was found hanging from a tree near Panikhaiti police outpost on 8 August 2018 after he was picked up by the police from Fancy Bazar area in Guwahati, Assam, the previous night. Police said he went missing from the outpost around 11 pm on 7 August but the deceased's family members alleged that he was tortured to death in police custody and later his body was hanged from a tree so as to make it look like a suicide.³⁰

Chandan Bharali, hailing from Chaygaon in Kamrup district, was arrested by police personnel of Panikhaiti police outpost in Guwahati on 7 August 2018 in connection with an alleged blackmailing case. He was produced in the court of Kamrup chief judicial magistrate, Guwahati which remanded him in three days' police custody for interrogation. His body was found hanging from a tree about 150 metres from the outpost the next morning.³¹

Following the alleged custodial death, assistant sub-inspector Tarak Deka and Constable Biswajit Sarma of Panikhaiti police outpost were suspended after a preliminary inquiry revealed lapses on their part. The in-charge of the police outpost, sub-inspector Barsing Terong, one constable and five home guards were transferred to the police reserve.³²

Case 6: Goalpara SP Amitava Sinha sentenced to two years in prison in custodial torture case

On 21 June 2018, the district and sessions court in Guwahati sentenced the police superintendent of Goalpara district, Amitava Sinha to two years imprisonment and imposed a fine of Rs 50,000 after finding him guilty of an alleged custodial torture of a murder accused five years back. The court found Sinha guilty under Section 330 of IPC for voluntarily causing hurt to extort confession from a murder accused, Gurmeet Singh. Singh had alleged in his petition before the court that he was subjected to torture and was beaten with hockey stick that caused fracture in his upper arm and the police poured petrol in his rectum while he was in police custody from 17 to 18 June 2013.³³

Sinha allegedly tortured accused Singh at Basistha police station when he was posted as Additional SP (Crime) in Guwahati. Singh was arrested in Jammu and Kashmir in June 2013 in case number 771/2012 registered at Basistha police station in connection with the murder of a businessman, Ajit Singh, at Basistha Chariali area of the city on 29 Nov. 2012.³⁴

Case 7: Alleged torture of Josuha Ngupok at Shantipur Police outpost in Tinsukia district

On 6 June 2018, a 25-year-old youth from Arunachal Pradesh was beaten up by some unidentified persons from Assam side at the Assam-Arunachal border at Shantipur in Tinsukia district of Assam following a quarrel. They reportedly took him to the Shantipur police outpost of the Assam police. But instead of helping the victim, the Assam Police personnel allegedly tortured him again without any reason.

The victim identified as Josuha Ngupok of Kangkong village under Lower Dibang Valley district of Arunachal Pradesh and studying at the Himalayan University, Itanagar (Arunachal Pradesh) sustained serious injuries due to torture by the Assam Police and was admitted to a hospital in Dibrugarh, where the doctors reportedly diagnosed him with loss of cervical lordosis due to severe torture.³⁵

Case 8: Tortured to death of Hasan Ali in custody of Dhula PS in Darrang district

On 10 January 2018, one Hasan Ali died in the custody of Assam police. The deceased, a resident of Number 2 Adakata village under Dhula Police Station in Assam's in Darrang district died at Mangaldoi Civil Hospital.³⁶

On 9 January 2018 evening, police raided the house of Ali suspecting that he was in possession of an illegal weapon but did not get any. Later, they picked him up and detained him at Dhula PS.³⁷ Ali's wife Jamiran Nessa alleged that her husband was dragged out of the home and at least four policemen pinned him down in the courtyard and kicked him indiscriminately. She said the cops covered his face with a cloth and poured cold water on his face. He vomited and fainted after a while and when his condition worsened police took him to hospital, where he died.³⁸

Darrang Deputy Commissioner A Barman ordered the suspension of the officer in-charge of Dhula police station.³⁹ On 11 January, a local court in Darrang district sent the officer-in-charge of Dhula police station, Ranjit Hazarika, to judicial custody.⁴⁰

On 17 January 2018, Assam government issued a notification to constitute a one-man committee, headed by Additional Chief Secretary M.G.V.K. Bhanu, to conduct a probe into custodial death of Hasan Ali and subsequent protests, leading to another death in police firing.⁴¹

2.2 Torture and sexual abuse of women in custody in Assam

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.

Case 1: ASI suspended for outraging modesty of two women in Guwahati

On 14 and 15 September 2018, Mohan Doley, an Assistant Sub-Inspector posted at Satgaon Police Station in Guwahati allegedly sexually assaulted two women when the victims had gone to the police station. The first victim – in her late thirties – had gone to register a case of domestic violence while the second victim girl had gone to the police station on the night of September 15 after her brother was picked up by the police in connection with a case.⁴²

The victims had complained and taking cognizance the Police Commissioner, Pradip Chandra Saloi had asked the Noonmati Assistan Commissioner of Police, Purabi

Mazumdar to conduct an inquiry and submit a report. The inquiry conducted by ACP, Noonmati found sufficient evidence against the ASI, Mohan Doley after which he was suspended. A case was also registered under Section 354 of IPC (assault or criminal force to woman with intent to outrage her modesty). Doley had absconded after the case was registered and was later arrested from Six Mile.⁴³

Case 2: Rape of a 14-year-old minor girl by Officer-in-charge of a police outpost in Hajo under Kamrup district of Assam

On 13 April 2018 at about 2.30 am, a 14-year-old minor girl was allegedly raped by the Officer-in-Charge (OC) of a police outpost⁴⁴ under Hajo PS in Assam's Kamrup (Rural) district⁴⁵. The rape survivor alleged that at about 2.00 am, the OC Binod Chandra Das sent Dipali Rabha, the woman officer present at the station, out, locked the door, and made her touch his private parts. She said when she started crying, the rapist officer called the woman officer back in, but sent her out again, and forced himself upon her. She said the rapist later asked her to go to sleep. Pursuant to a complaint of kidnapping by her parents, police had picked up the survivor and a Muslim youth with whom she had eloped some ten days before the rape. While the youth was arrested and put behind the bars, police brought the girl to the police outpost for her statement and medical examination. Next day, the survivor was handed over to her parents whom she later informed about the rape by the accused police officer. On 30 April 2018, the survivor's parents alongwith some local Hindu groups filed a first information report against the accused policeman, who had been later arrested.⁴⁶

Case 3: Two women journos and dozens of Mizo students injured in batoncharge by Assam police lathicharge at Assam-Mizoram border⁴⁷

On 10 March 2018, two journalists and a dozen of Mizo students were injured when Assam police resorted to lathicharge to disperse over 100 students in a disputed territory near Bhairabi town in Kolasib district along Mizoram-Assam border.

Emmy C Lawbei, a reporter of the News 18 and Catherine C. Sangi, correspondent of All India Radio were among those injured in the police action. Lawbei said that the Assam Police personnel were indulging in indiscriminate attack on all the Mizos present there including members of the press despite showing their press cards.

Earlier on 8 March, at least 20 persons were injured when Assam police lathi-charged Mizo Zirlai Pawl members who were trying to reconstruct a rest house at a disputed place along the Mizoram-Assam border near Bairabi town in Kolasib district.

2.3 Torture and deaths in judicial custody in Assam

Assam has 31 prisons including six Central Jails, 22 District Jails, one sub jail, one open jail and one special jail.⁴⁸

In the last decade during 2008-2018, at least a total of 191 prisoners died in jails of Assam. This included 27 deaths in 2008-09; 14 in 2009-10; 25 in 2010-11; 20 in 2011-12; 21 in 2012-13; 14 in 2013-14; 22 in 2014-15; 22 in 2015-16 and 26 in 2017-18.⁴⁹ However, no data is yet available for the year 2016-17.

Cases of unnatural deaths of prisoners, including due to torture, continued to be reported in Assam. The state government of Assam informed the High Court that there were 16 unnatural deaths between 2012 and 2016 in different jails across the state.⁵⁰ Earlier, on 15 September 2017, the Supreme Court directed the Chief Justices of all 24 High Courts in India to suo motu register petitions to identify the kin of prisoners who died unnatural deaths from 2012 and order the States to award them compensation. The payment from the year 2012 was chosen because National Crimes Records Bureau (NCRB) under Ministry of Home Affairs has records of unnatural deaths from that year.⁵¹ The SC took cognizance of a letter addressed to it in 2013 by its former Chief Justice R.C. Lahoti on the deplorable conditions of 1,382 prisons across the country and turned the letter into a PIL numbered as Writ Petition (Civil) No. 406 of 2013 (Re- Inhuman conditions in 1382 Prisons). The Supreme Court vide judgment on 25 September 2018 disposed off said PIL directing the Government of India to constitute a three member panel on prison reforms to be headed by Justice (Retd.) Roy as chairman and Inspector General of Police, Bureau of Police Research and Development and Director General (Prisons) Tihar Jail, New Delhi as its Members.⁵²

The state government of Assam submitted before the court that out of the 16 cases of death of prisoners due to unnatural causes, compensation was paid only to the next of kin of only two prisoners as per the direction of the Assam Human Rights Commission as well as the High Court and in remaining 14 cases, no compensation had been paid yet.⁵³ On 4 June 2018, a bench of Chief Justice Ajit Singh and Justice Achintya Malla Bujor Barua directed the Assam government to pay compensation of Rs 3 lakh each to the next of kin of all the prisoners who died unnatural deaths while in jail since 2012 within 30 days.⁵⁴

Cases of deaths and torture in Assam prisons

On 27 December 2018, an under-trial prisoner identified as Tutumoni Bordoloi, son of Dhansing Bordoloi of Bogoriguri village under Nagaon Tehsil in Nagaon district, Assam died in the custody of Nagaon Central Jail. The deceased was lodged at the central prison since 19 November 2018. As per advice of the local Civil Hospital authority, the deceased was shifted on 17 December 2018 to Guwahati Medical College and Hospital where he died after 10 days of admission. Executive Magistrate, Kamrup (Metro), Guwahati was entrusted to enquire into the matter and find out the circumstances leading to the death of the deceased.⁵⁵

On 21 August 2018, an undertrial prisoner identified as Bikash Kalita, a resident of Jorhat District of Assam died under mysterious circumstances at Nalbari District Jail under Nalbari district. The deceased was arrested by the police on 17 August 2018 in connection with a case registered against him by a girl for attempting to kidnap her at Simala police station under Baska district of Assam. On 18 August 2018, the deceased was produced before the Chief Judicial Magistrate court, Nalbari and the court remand him to judicial custody. The jail officials claimed that Bikash Kalita allegedly committed suicide inside the bathroom of the jail premises in the early morning of 21 August 2018.⁵⁶

On 1 June 2018, Babul Biswas (39), a resident of Kathalguri village under Rowta PS in Udalguri district of Assam, was found dead under mysterious condition inside the Udalguri District Jail. The deceased was serving life imprisonment in a murder conviction (Rowta PS case No 80/10 under IPC 302) since 5 July 2011. Biswas' body was found hanging by the neck with a gamocha (towel) from a window with one of his feet touching the ground while the other touching a drum.⁵⁷

The dead body of Babul Biswas (39), a life convict lodged at Udalguri District Jail in Assam was found hanging by the neck with a gamocha (towel) from a window with one of his feet touching the ground while the other touching a drum. Jail officials claimed the deceased committed suicide.

On 14 January 2018, an under trial prisoner of Silchar Central Jail identified as Phurailatpam Rocket Sharma alias Inaocha alias Biswanath Sharma (60), former vice president of Barak Valley Drivers' Union died under mysterious circumstances at Silchar Medical College. The deceased, a bus driver plying between Silchar and Guwahati, was arrested in connection with an FIR registered at Silchar police station under Sections 419/420/406 of Indian Penal Code in November 2017. He was remanded to judicial custody by the Chief Judicial Magistrate, Silchar on 18 November 2017. He was granted bail by the Magistrate and was about to be released on furnishing the necessary bail bond on 17 January 2018. However, Rocket's wife Phurailatpam (O) Kodombini received a phone call on 14 January informing her that Rocket suffered a heart attack and he had been taken to Silchar Medical College for treatment. As her brother Bramacharimayum Ashwani Sharma reached the hospital, he found Rocket dead and post mortem had been already conducted without informing the family. On examination of the deceased's body, Rocket's family members saw bruises and stitches at the back of his head and his shoulders, blood near his mouth and his stomach was also seen sunken.⁵⁸

3. Torture in India during January 2019

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

3.1 Emblematic cases of torture in police custody

Case 1: Tortured to death of a septuagenarian man by SI Herpat Singh of Bhojipura PS in Bareilly district of UP

On 31 January 2019, Tika Ram (70), resident of Etauwa Kedarnath village of Bareilly district UP succumbed to his injuries while being shifted to the All India Institute of Medical Sciences (AIIMS), New Delhi from Bareilly town. The deceased, a retired school principal, was detained illegally by Sub Inspector Herpat Singh at Bhojipura police station when the deceased went to lodge a complaint against his neighbor Devidas on 5 January 2019 after the later allegedly threw garbage on the boundary wall of the deceased's home on the previous evening. Instead of attending the pleas of the septuagenarian, SI Singh brutally tortured Tika Ram who sustained severe injuries, including on the head.⁵⁹

The deceased's elder son, Tarachand who accompanied his late father to the police station, claimed that did not listen to them and instead started abusing them and then brutally thrashed his father, injuring him gravely. He said he took his injured father to a nearby private hospital, from where doctors referred him to a bigger private hospital in Bareilly. When his condition deteriorated, Tika Ram was again referred to AIIMS, New Delhi but he died on the way to Delhi.⁶⁰

Case 2: Tortured to death of a minor boy in the custody of SS Colony PS in Madurai district of Tamil Nadu

On 24 January 2019, M Muthukarthick (17), a resident of Kalai Ambalakarar Street in Kochadai of Madurai district of Tamil Nadu died in the custody of S S Colony police station in Madurai district. The deceased was arrested by a police team led by Inspector Alexraj of S S Colony police station for interrogation in connection with a theft case on 13 January 2019. After arrest, Sub-Inspector Sathish brought the deceased to Thilagar Thidal police station where he kept him in illegal detention from 13-16 January 2019. On 24 January 2019 the deceased died at Government Rajaji Hospital. The deceased's mother M Jaya claimed that her son died due to torture by Sub-inspector Sathish during interrogation. She further claimed that she found her son in a very bad shape at S S Colony police station because of police torture. She further said she saw him vomiting blood and that the deceased was rushed to a private hospital from where he was shifted to Government Rajaji Hospital on 18 January 2019.⁶¹

Case 3: Custodial torture of Raghupathi (33) at Subedari PS in Warrangal district of Telangana

On 23 January 2019, Raghupathi (33), a manager of Achala Chit Fund's Balasamudram branch in Telangana's Warrangal town was tortured at Subedari police station. After subjecting him to torture, the police tied the victim to a wooden log inside the premises of Subedari police station. The victim was summoned to appear at Subedari police station in connection with a complaint filed against him

about a property mortgaged by a chit fund member B. Naganna accusing the Achala Chit Fund company of not releasing his mortgaged papers despite repayment of entire amount of the loan he had taken from the company in lieu of his property as mortgage.⁶²

Case 4: Harassment and detention of three youths at Gannavaram PS in Krishna district of Andhra Pradesh

During 18-22 January 2019, police meted out harassment to three youths identified as Nakka Ramanjaneyulu (18), Gandikota Koteswara Rao (20) and Komarathi Pavan (19) at Gannavaram police station in Krishna district of Andhra Pradesh. The victims, all residents of Buddhavaram village in Krishna district, were taken into police custody following an eve-teasing complaint filed against them on 18 January 2019 by a girl. The trio alleged that the police summoned them daily to appear at the police station for investigation but they did not question them about the issue. As harassment, they were being informally detained at the police station for many hours each day. On 22 January 2019 morning the three distressed trio attempted suicide by consuming pesticide in front of Gannavaram Police Station. The victims were rushed to the nearest government hospital for treatment. Condition of one among them turned critical, and was referred to the Pinnamaneni Siddhartha General Hospital in Chinna Avutupalli.⁶³

Case 5: Tortured to death of a 38-year-old youth by police in Faizabad district of UP

On 21 January 2019, 38-year-old Abdul Rahim, an undertrial prisoner and a resident of Faizabad district of UP died in the custody of Gosaiganj jail in the district due to alleged torture by police before being sent to the prison. The deceased was arrested on 14 January 2019 in a case of auto-lifting and sent to Gosaiganj jail. The jail officials claimed that at the time of admission the deceased had told them that he had injuries on shoulder, hips and hands due to torture by police while he was in their custody. They alleged that on 16 January 2019 they admitted him to the jail hospital as he was getting fits and on 19 January 2019 when the deceased's condition deteriorated, he was sent to Balrampur hospital from where the doctors referred him to KGMU Trauma Center, Lucknow where he died during treatment on 21 January 2019. The deceased's brother Khalil also corroborated that during his meeting on 18 January, the deceased informed him about being brutalized by the police during interrogation.⁶⁴

Case 6: Death of Ramkishore Gond under mysterious circumstances inside Vijayraghgarh police station in Katni district of Madhya Pradesh

On 13 January 2019, Abhishek alias Ramkishore Gond (26), a resident under Vijayraghgarh police station in Katni district of Madhya Pradesh died under suspicious circumstances in the custody of Vijayraghgarh police station in Katni district. His body was found hanging in the toilet inside the police station lock up where he was detained during

the previous night. Police claimed that 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 in the evening of 12 January 2019 in connection with alleged murder of his girlfriend on 1 January 2019.⁶⁵

Case 7: Tortured to death of a Sadhu baba (50) by Assistant Sub-Inspector of police at Ajnala in Amritsar Rural district of Punjab

On 12 January 2019, a 50-year-old Sadhu baba was allegedly tortured to death by Assistant Sub Inspector (ASI) Attar Singh posted at the Mohkamura police station in Ajnala under Amritsar Rural district of Punjab. On that fateful day, the deceased Baba had come to pay obeisance at a temple on the occasion of Maghi Festival in Ajnala. He was hit by the white color car of ASI Attar Singh. But the ASI took the Baba under his custody stating that the Baba was an agent of the ISI. He started beating and kicking the Baba accusing him of being a spy. The Baba was grievously injured and died while being taken to the Guru Nanak Dev Hospital in Amritsar.⁶⁶

Case 8: Police assault on Congress party workers in Solapur, Maharashtra

On 9 January 2019, the Maharashtra Police beat up several Congress workers, including from the youth and student wings, when they attempted to protest against Prime Minister Narendra Modi's visit to Solapur. The PM was in Solapur to launch various developmental projects. In videos that went viral in social media and internet, plain-clothes security personnel are seen pushing, kicking and punching some Youth Congress and National Students Union of India activists, who were raising slogans of 'Chowkidar Chor Hai', showing black flags and releasing black balloons as PM Modi's convoy zoomed past.⁶⁷

Case 9: Alleged tortured to death of a 56-year-old man at Kottampati PS in Madurai district of Tamil Nadu

On 4 January 2019, Chinnavellai (56), an alleged drug pedaller, resident of Pudupatti village in Natham taluka under Dindigul district of Tamil Nadu died under mysterious circumstance in the custody of Kottampati police station in the district. The deceased was arrested by a special team of Madurai district police led by Sub-Inspector Raja along with his accomplice Joseph in Mudurai-Dindigul district border in connection with a case under the Narcotic Drugs and Psychotropic Substances Act, 1985. The special team allegedly recovered 1.5 kg ganja and Rs 26,000 from them and both of them were subsequently handed over to the Kottampati police station late on 4 January 2019. The police claimed that during interrogation the deceased complained of uneasiness and fell unconscious. The police took him to Primary Health Centre at Karungalakudi from where the doctors referred him to the Government Hospital in Melur where the doctors declared him brought dead.⁶⁸

Case 10: Tortured to death of murder suspect in the custody of Aayar PS in Bhojpur district of Bihar

On 2 January 2019, Rajiv Ranjan (40), a resident of Mahthin Tola of Bhojpur district of Bihar was allegedly tortured to death in the custody of Aayar police station in the same district. The deceased was arrested on 1 January 2019 night from his house in connection with the murder of a vendor, Kaushal Singh, under Aayar police station area on 30 December 2018. The police claimed that during arrest Rajiv Ranjan was running away to avoid his arrest and he fell down and suffered head injury. The police took him to Jagdishpur Primary Health Centre from where the doctors referred him to Ara Sadar hospital where the deceased died during treatment on the early morning of 2 January 2019.⁶⁹

However, the family members alleged that Rajiv Ranjan was tortured by the police while in custody and the deceased died to injuries sustained in beatings by the police. Rajiv's brother Manoranjan also alleged that Rajiv was killed under a conspiracy.⁷⁰

Case 11: Tortured to death of an e-rickshaw driver at Azizganj police post in Shahjahanpur district of Uttar Pradesh

On 1 January 2019, a 45-year-old e-rickshaw driver was beaten to death in the custody of Azizganj police post in Shahjahanpur district of Uttar Pradesh. Baleswar, the deceased e-rickshaw driver, was forcibly taken to Azizganj police post by police personnel for refusing to pay hafta (bribe). They illegally detained him and seized his e-rickshaw. They beat him up brutally and when his condition deteriorated, the police took him to a hospital where the deceased died on the night of 1 January 2019.⁷¹

Two UP Police Constables suspended for beating to death one Baleswar (45), an e-rickshaw driver at Azizganj police post in Shahjahanpur district not paying hafta (bribe)

Geeta Devi, the deceased's wife, claimed that the police tortured her husband in custody for refusing to pay bribes and he died due to injuries sustained due to beatings by the police. The Police department suspended two constables viz. Tauseem Haider and Gaurav Kumar who were responsible for the death of the deceased.⁷²

3.2 Torturous prison conditions and deaths in judicial custody

The conditions of prisons in India remain atrocious. The lack of basic facilities coupled with disproportionate overcrowding, poor sanitation and medical facilities renders the lives of prisoners horrible. The Supreme Court of India observed that among India's prison population, undertrial prisoners accounted for 62% against the world average of 18-20%. The court noted that this statistic raised questions about the humaneness of the prison system in India.⁷³

Cases of deaths and torture in judicial custody

Deaths of prisoners as a result of torture and ill treatment in the jails are a regular phenomenon.

On 27 January 2019, Sakshi Nimse (34), wife of late Shailesh Nimse, died under suspicious circumstances in the custody of Adharwadi jail in Kalyan city of Maharashtra. The deceased was facing trial for allegedly killing her husband in April 2018 on suspicion that her husband was having an extra-marital affairs. On 27 January 2019 the deceased was found hanging inside the toilet in the jail premises. Jail officials claimed that the deceased committed suicide by using a nylon rope tied to her neck on 27 January 2019.⁷⁴

On 26 January 2019, Chhote Lal (40), a resident of Hajipur under Vaishali district of UP died in the custody of Kanpur district Jail. The deceased arrested and sent to judicial custody on 9 June 2016 in connection with a murder case was an undertrial prisoner. Jail officials claimed that on 26 January 2019 the deceased suddenly fell down while he was watching the Republic Day program inside the jail premises, after which he was taken to the prison hospital. After preliminary treatment, he was referred to the district hospital, where he was declared dead.⁷⁵

On 25 January 2019, an undertrial prisoner Rajendra, a resident of Chipura village in Patna, Bihar died under suspicious circumstances in the custody of Beur Central Jail, Patna. He was arrested and sent to judicial custody in December 2018 in connection with a liquor related case. Jail officials claimed that on 25 January 2019 night, the deceased complained of sudden chest pain, after which he was immediately taken to the jail hospital. When his condition deteriorated he was referred to the Patna Medical College and Hospital (PMCH), where he died during treatment.⁷⁶

On 23 January 2019, an under-trial prisoner K Basavasankara Rao (56), a resident of Repalle in Guntur district of Andhra Pradesh died in the custody of Repalle sub-jail. The deceased was arrested and sent to judicial custody along with 10 other persons on 23 January 2019 in connection with a murder case. Jail officials claimed that on 23 January 2019 night, the deceased suffered a massive heart attack and he was taken to a private hospital in Repalle, from where he was later shifted to a government hospital in Guntur, where he was declared dead.⁷⁷

On 22 January 2019, a convicted female prisoner Radha Devi (25), a resident of Salai village under Kasganj district of Uttar Pradesh died under suspicious circumstances in the custody of Etah district Jail. The deceased was lodged at Etah district jail in 2016 after she was charged under IPC sections 302 (murder) and 307 (attempt to murder). On 21 January 2019, she was convicted and sentenced to life imprisonment. Jail officials claimed that on 21 January 2019 night, the health of the deceased suddenly deteriorated, after which she was admitted to the Etah district hospital, where she died in the morning of 22 January 2019.⁷⁸

On 20 January 2019, an under-trial prisoner Surendra (43), a resident of Khanpur Kalan village of Sonapat district of Haryana died under suspicious circumstances in the custody

of Sonipat Jail. The deceased was arrested and sent to judicial custody on 30 December 2018 in connection with a murder case. Jail officials claimed that the deceased committed suicide by hanging himself in the bathroom of the jail.⁷⁹

On 20 January 2019, an undertrial prisoner Mahendra Pal (41), son of Baburam, a resident of Chandpur village in Aonla Tehsil under Bareilly district of Uttar Pradesh died under mysterious circumstances in the custody of Lohaghat Jail, Champawat district in Uttarakhand. The deceased was arrested and sent to judicial custody in connection with a smuggling case. Jail officials claimed that the deceased suddenly complained of chest pain, and he was admitted to the Community Health Center, Lohaghat, where he was declared dead on 20 January 2019.⁸⁰

On 19 January 2019, an under-trial prisoner Yogesh Rathod (29), a resident of Bharamba Tanda in Kannad tehsil of Aurangabad district of Maharashtra was allegedly tortured to death in the custody of Aurangabad Central Jail. The deceased was arrested some days earlier in a case of house trespass and sent to jail. The jail officials claimed that on 19 January 2019 evening the deceased was found unconscious in his cell and rushed to a government hospital where the doctors declared him brought dead. However, the family members of the deceased alleged that Yogesh Rathod was tortured to death by the police/jail officials in their custody.⁸¹

On 13 January 2019, a convicted prisoner Santosh Paswan (40), a resident of Raghunathpur Village of Barsoi Block in Katihar District of Bihar died under suspicious conditions in the custody of Katihar Divisional Jail. The deceased was serving life sentence since 5 January 2019 in connection with a case of murder his own mother. Jail officials claimed that on 13 January 2019, the health of the deceased suddenly deteriorated and he was taken to the Sadar hospital, Katihar. But he died on the way to hospital.⁸²

On 9 January 2019, an under-trial prisoner Gaurav Tamboli, son of Panchram, a resident of Karnod village of Bamhanidih police station area under Janjgir district of Chhattisgarh died under suspicious circumstances in the custody of Janjgir district Jail. The deceased was arrested and sent to judicial custody on 5 August 2018 in connection with a case of cheating. Jail officials claimed that on the early morning of 9 January 2019, the deceased was admitted to the district hospital after he suffered chest pain and he died during treatment. However, the deceased's family members have stated that Gaurav was completely healthy and he did not have any health problem. So, they suspected foul play in his death.⁸³

On 9 January 2019, convicted prisoner Akhilesh Kumar (27), a resident of Darbaripur village in Haryana's Gurugram district died under mysterious circumstances in the custody of Gurugram Jail. The deceased was sentenced to life imprisonment by the District and Sessions Court in a murder case. Jail officials claimed that the deceased was suffering from

illness for the last a few days. Later, after complaints of breathing problem he was admitted to the Gurugram civil hospital, where he died during treatment.⁸⁴

On 6 January 2019, convicted prisoner Anil Kumar (50), son of Dinanath, a resident of Makarandpur village of Deoria police station area under Pilibhit district of UP died under mysterious circumstances in the custody of Pilibhit district Jail. The deceased was serving a prison term of four years pursuant to a conviction under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 18 December 2018. Jail officials claimed that on 6 January 2019 at around 4:00 am, the deceased complained of body pain for which he was given medicine by the prison's doctor. Later he was taken to the nearby district hospital, where he died during treatment. The family members of the deceased alleged that Anil Kumar was murdered by the jail staffs inside the jail. Laxmi Devi, the wife of the deceased, alleged that her husband was completely healthy when she had met him on 30 December 2018 and therefore he could not have died due to any illness as claimed by the jail officials.⁸⁵

3.3 Torture and rape of women in custody

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. Incidents of sexual abuse of inmates at orphanages and shelter homes for women are continued to be reported from across the country.

Case 1: Custodial torture of Mrs Saraswati (45) by Bengaluru police

On 19 January 2019, Mrs Saraswati (45), a resident of Chittoor in Andhra Pradesh was tortured by police at Kumaraswamy Layout police station in Karnataka's capital Bengaluru. The police took the victim to the Kumaraswamy Layout police station from a hotel where her daughter Rakeswari works, to resolve a family dispute in respect of her daughter who fled the home of her husband in Chittoor. Saraswati wanted her daughter to return home but Rakeswari refused citing domestic violence by her husband and in-laws. Saraswati allegedly tried to force her daughter to accompany them to Chittoor. At this, Assistant Sub-Inspector Renukaiah slapped, punched and pushed away Saraswati and her relatives out of the police station premises.⁸⁶

Case 2: Torture of a female law student and her husband by police in Amritsar

On 19 January 2019, police allegedly thrashed Mrs Yadha, a law student at Guru Nanak Dev University (GNDU) and her husband Gurnor Singh Baweja in Amritsar, Punjab. Yadha said she called at helpline 181 to register her complaint against misconduct by a relative and after sometime a group of policemen from Cantonment PS, Amritsar reached the spot. She claimed that instead of

attending her plea, the cops started hurling abuses and misbehaving with her. She said, the policemen confined her and her husband in a room and took away his wallet. Yadha's husband Baweja said the cops misbehaved and assaulted his wife as they grabbed her by hair before slapping her. As he protested, they also thrashed him.⁸⁷

Pursuant to a complaint by Yadha, DCP (Law and order) directed ACP (West) to conduct an inquiry into the incident and file a report.⁸⁸

3.4 Judiciary's action against torture in January 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.

Supreme Court asks States/UTs to file responses to Anti-Torture Bill

On 22 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. In an affidavit filed by the Joint Secretary, Ministry of Home Affairs, Government of India, it has been stated that to implement the 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment', the Prevention of Torture Bill, 2017 was referred to all the States for their inputs and comments on 28 February 2018 and reminders were sent to the States on 27th June, 2018, 27th November, 2018 and 20th December, 2018. But so far responses have been received only from eight States/UTs namely (1) Himachal Pradesh, (2) Jharkhand, (3) Meghalaya, (4) Sikkim, (5) Tripura, (6) Uttarakhand, (7) Andaman and Nicobar Islands, and (8) Chandigarh. The Supreme Court further directed the Chief Secretaries of the States/Union Territories "to be personally present before the Court on 13th February, 2019 in the event there is any failure to comply with the directions contained in the present order".

On 22 January 2019, the Supreme Court directed Chief Secretaries (CS) of all States and Union Territories to submit their feedback/comments on the Centre's "Prevention of Torture Bill, 2017" within three weeks and in case of failure, the CS to remain personally present in the court 13 February 2018

The Supreme Court was hearing the petition filed by former Law Minister of India Dr. Ashwini Kumar 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 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Supreme Court had on 27 November 2017 disposed of the petition after the Centre gave the assurance

that it was "seriously considering" the Law Commission of India's report on the issue.⁸⁹ But on 15 January 2019, the Supreme Court agreed to examine afresh Kumar's petition as no progress was made on the issue.⁹⁰

Gujarat High Court transfers Surubha Jhala custodial death case to CID

On 11 January 2019, the Gujarat High Court transferred the investigation in the custodial death of Surubha Jhala to the Criminal Investigation Department (CID) after it expressed unhappiness over the shoddy probe being carried out by the Special Investigation Team (SIT) headed by Deputy Superintendent of Ahmedabad Rural Police KT Kamariya.⁹¹

On 15 October 2018, Surubha Jhala (35), an employee of a courier company, was tortured to death at the Old Bopal police station in Ahmedabad, Gujarat, a few hours after he was taken into custody for questioning by the special operations group (SOG) and local crime branch (LCB) in connection with theft of gold worth Rs 2.5 crore.⁹² The deceased's family members alleged that Surubha died after he was allegedly beaten up in police lock up as he had not confessed to the crime.⁹³ The state government constituted a SIT but the brother of the deceased filed a petition before the Gujarat High Court demanding that the case be handed over to the Criminal Investigation Department (CID).⁹⁴

On 12 December 2018, SIT head Kamaria appeared before the High Court and stated that the SIT had arrested sub inspector NA Rayma, head constable Mukeshsinh Daulatsinh Jadav – both of SOG and constable Sadiq Usmanbhai Kotharia of LCB on 25 October 2018⁹⁵ for allegedly torturing Surubha Jhala in their custody. On 13 December 2018, Justice Sonia Gokani stated that she had gone through the case record and directed the investigation officer not to confine the probe to the three arrested SOG personnel and directed the SIT to investigate the roles played by "others" in the custodial death.⁹⁶ On 17 December 2018, the Ahmedabad rural police issued a public notice which stated, "Any person who has any evidence regarding the custodial death case of Surubha Jhala, can approach special investigating team (SIT) office at Bopal."⁹⁷

Madhya Pradesh High Court gives last opportunity to CID to submit final report in custodial death case of Pankaj Vaishnav

On 8 January 2019, the Indore bench of Madhya Pradesh High Court granted the final opportunity to the Criminal Investigation Department (CID) to submit final report of investigation in four weeks in the custodial death case of Pankaj Vaishnav at MIG police station, Indore, on 20 December 2015. Vaishnav (24), a railway court peon, was detained by the police at MIG police station in connection with a motorbike theft case on 19 December 2015 and he died the next day. The then police station in charge MA Syeed along with two others have been accused for culpable homicide of the deceased.⁹⁸

Due to delay in submission of the final report of the inquiry, Justice Rohit Arya summoned the investigating officer, Pawan Mishra and questioned him about the delay in completing investigation of the case on 8 January. In its last progress report submitted to the court in June 2018, the CID stated that the deceased had committed suicide.

But on 27 January 2016, a judicial inquiry conducted by Jitendra Singh Kushwah, a district court judge, found that Vaishnav did not commit suicide as claimed by the police but he was murdered in the police station. The judicial inquiry based on the forensic report concluded that Vaishnav was hanged from the ceiling of police station toilet after he was already dead. It also stated that the statements of the police personnel of the police station did not match and changed many a time during inquiry into the matter. The report also revealed that the case diary was tampered with and contrary to the police's statement, all computers in the police station were functioning on December 20, the day Vaishnav was found hanging.⁹⁹

3.5 Interventions by the NHRC/SHRCs during January 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 6636 fresh cases while it disposed of a total of 6398 cases (Fresh + Old) during December 2018. A total of 20,920 cases (Fresh + Old) were under consideration of the commission till end of the November 2018.¹⁰⁰ A large number of complaints relate to torture.

In November 2018, the NHRC has awarded a total of Rs 94,55,000 in 53 cases of human rights violations, including 10 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 rape outside police station among others.¹⁰¹

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

Uttar Pradesh: State government pays Rs 1 lakh compensation to custodial death victim on NHRC's direction

On 8 January 2019, the NHRC informed the complainant, Asian Centre for Human Rights, that the state government of Uttar Pradesh has submitted the receipt of payment of Rs. 100,000 as monetary compensation to the wife of the deceased Ansar Ahmad in NHRC Case No. 25395/24/44/2010-AD. The complaint was filed by the Asian Centre for Human Rights under its programme "National Campaign for Prevention of Torture". Earlier on 4 August 2016, the Commission had made the recommendation for payment of Rs 1 lakh compensation to the family of Ansar Ahmad who died in the police custody due to alleged torture. The state government of Uttar Pradesh

objected, but overruling the objection the NHRC stated reiterated its recommendation on the ground that "The fact, however, remains that the State is vicariously liable for the death of Ansar Ahmed as either the doctor who examined him at CHC was negligent or he had died as a result of police beating after he was handed over to the police." Still the state government continued to drag its feet which forced the NHRC to issue summons to the Chief Secretary, Government of Uttar Pradesh to appear in person before the Commission on 10.01.2019 along with the proof regarding payment of the compensation. The Special Secretary, Government of Uttar Pradesh vide communication dated 28.12.2018 submitted proof of payment of the recommended amount to the wife of the deceased.¹⁰²

Tamil Nadu: SHRC recommends Rs 50,000 for custodial torture of A Divakar

On 14 January 2019, the Tamil Nadu State Human Rights Commission recommended to the State government to pay Rs 50,000 to A. Divakar, fish vendor from Tondiarpet, who was detained and tortured at the Harbour police station in 2015 by two police officers. In his complaint A Divakar accused police Inspector Rajasekaran and Sub-Inspector Akbar of detaining and assaulting him after another person had lodged a complaint against him over a money dispute. The two police officers denied the allegations but SHRC member D Jayachandran on the basis of the medical certificates concluded that Divakar was assaulted and tortured by the police officers and recommended payment of Rs 50,000 as compensation to the victim which should be recovered equally from the two police officers.¹⁰³

Tamil Nadu: SHRC seeks reports on custodial death of a minor boy

On 29 January 2019, the Tamil Nadu State Human Rights Commission (SHRC) took suo motu cognizance of news reports about the death of a 17-year-old boy in Madurai, whose family claimed that custodial torture by the police led to his death. The boy from Kochadai in Madurai worked as helper for a truck driver. The police had detained him at the SS Colony police station for inquiry in a case of robbery. He was tortured in the police custody and later taken to a nearby hospital and then shifted to Government Rajaji Hospital (GRH) where he succumbed to his injuries. The SHRC has sought a detailed report from the Madurai City Police Commissioner, along with postmortem, inquest and complete investigation report within eight weeks. On 24 January 2019, the relatives of the deceased had alleged custodial torture of the deceased and protested outside the Government Rajaji Hospital seeking action against police personnel.¹⁰⁴

3.6 Refoulement of Rohingya by India: Futility foretold

Clause (1) Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or



Rohingya refugees being interviewed by Tripura Police
(Courtesy: Arindam Dey/AFP)

Punishment (UNCAT) prohibits expulsion, return (“refouler”) or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Clause (2) of Article 3 of UNCAT requires that a State party while determining the existence of danger of being tortured in the destination State into account all relevant considerations including, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

The Committee Against Torture (CAT Committee) at paragraph 9 of General comment No. 4 (2017) on the implementation of article 3 stated that the non-refoulement obligation in article 3 exists whenever there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination.¹⁰⁵

The situation of the Rohingyas is well-known. Yet, India has been deporting Rohingyas to Myanmar in blatant contravention of the Article 3 of the UNCAT. Indian authorities deported a Rohingya family of five to neighbouring Myanmar on 3 January 2019. The husband, wife and three children had been detained in north-eastern state of Assam since being arrested for illegally entering the country in 2013.¹⁰⁶

The Rohingya issue has come to haunt India. On 23 January 2019, India’s Border Security Forces (BSF) arrested and handed over 31 Rohingyas, including 16 children, who were stranded on the India-Bangladesh border for four days since 18 January, to Tripura Police. The 31 Rohingyas, who apparently came from Jammu and Kashmir, had been stuck in no-man’s land, beyond the barbed wire fence along the Indo-Bangladesh border in Tripura. As the Border Guards Bangladesh (BGB) refused to accept them, India was forced to take them back.¹⁰⁷ All of them were produced before a local court in Tripura which sent them into judicial custody

till 4 February and all of them were sent to Bishalgarh Correctional Centre in Sepahijala district.¹⁰⁸ Twenty seven of 31 Rohingya people are registered as refugees with the UNHCR India.¹⁰⁹

These Rohingya refugees were fleeing following the deportation of seven Rohingya men to Myanmar in October 2018 that sparked fears of further repatriations. There are some 18,000 Rohingya refugees and asylum-seekers registered with UNHCR in India, although government estimates put the total population of Rohingyas in the country at about 40,000.¹¹⁰

India would soon find out the futility of the refolement of the Rohingya refugees.

4. International Action against Torture in January 2019

4.1 UN torture prevention body to visit Switzerland

The United Nations Sub-Committee on the Prevention of Torture (SPT) is at present undertake its first visit to Switzerland from 28 January through 7 February to evaluate the treatment of persons deprived of their liberty as well as the guarantees in place protecting them against torture and ill-treatment.¹¹¹

Switzerland had ratified the Optional Protocol of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (OPCAT) in 2009 and the same year put into place a National Preventive Mechanism, the National Commission for the Prevention of Torture.¹¹²

During its visit, the SPT delegation will meet representatives of federal and cantonal authorities, the public prosecutor’s office, the judiciary and civil society. The delegation will also visit prisons, police stations, detention centers for migrants, as well as psychiatric institutions. The SPT delegation will present its preliminary, confidential observations to the Federal Government and the National Commission for the Prevention of Torture at the end of the visit.¹¹³

4.2 Interventions by UN Experts

I. UN experts urge Pakistan to halt execution of person with disability

UN human rights experts have on 13 January 2019 urged the authorities in Pakistan to halt the execution of Mr. Khizar Hayat, a man with psychosocial disabilities. His execution was scheduled for 15 January 2019.¹¹⁴

The UN experts sought to remind that the imposition of capital punishment on individuals with psychosocial disabilities is a clear violation of Pakistan’s international obligations and urged the Government to stop the execution.¹¹⁵

Mr. Hayat, a former police officer, was sentenced to death in 2003 for the alleged murder of a fellow officer. During his

trial no evidence or witnesses were called in his defense and no questions were asked regarding his mental health, although he was later diagnosed with a mental health condition and has been receiving treatment for the past 10 years. He has spent over 15 years in custody and faced several attacks by other inmates because of his disability and has been kept in solitary confinement since 2012.¹¹⁶

On 18 December 2018, the National Commission for Human Rights Pakistan issued an order directing a stay of the execution on humanitarian grounds. However, on 10 January 2018 the District and Sessions Judge in Lahore issued an imminent execution warrant, disregarding the NCHR's direction.¹¹⁷

II. UN experts alarmed by alleged police killings in Uttar Pradesh

Four UN human rights experts have on 11 January 2019 expressed alarm about allegations of at least 59 extrajudicial killings by police in Uttar Pradesh since March 2017.¹¹⁸ The experts have written to the Indian government with information about 15 cases of what could be extra-judicial killings by the Uttar Pradesh police. They have also taken note of 59 cases of possible fake encounters.¹¹⁹ Most of the 15 cases relate individuals from Muslim communities living in poverty. Evidence indicates the killings took place in police custody. In all of the cases, the police said the killings were during encounters and in self-defence.¹²⁰

On 11 January 2019, four UN human rights experts have expressed serious concerns over allegations extrajudicial killings by police in Uttar Pradesh since March 2017. The experts have written to the Indian government on 15 cases. "We are extremely concerned about the pattern of events: individuals allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture," the UN experts said.

The experts expressed concerns that the Supreme Court's guidelines on investigations were not followed. This included police failing to inform family members of the killings, to conduct examinations of the scene, to provide copies of post-mortem reports to families, and to transfer cases to an independent investigative agency.

The experts cited *People's Union of Civil Liberties vs State of Maharashtra* (2014) and say that the Indian government has not been following the guidelines laid down in this case on how investigations should be conducted.¹²¹

They expressed serious concerns about reports that family members of victims and human rights defenders working on the cases have been harassed, subjected to death threats from police and had false criminal cases brought against them in apparent attempts to intimidate them. They called for an urgent review of the use of force by Uttar Pradesh police to ensure all law enforcement operations were conducted in compliance with international standards, for prompt, independent, and thorough investigations into all allegations

of potentially unlawful killings and for perpetrators to be prosecuted.¹²²

They also highlighted their concern over statements issued by high ranking state government and police officials seeming to incite, justify or sanction killings. The National Human Rights Commission of India opened an investigation on 9 May 2018 into 18 deaths, including those raised by the experts, which is ongoing.¹²³

4.3 EU's action against torture

I. CPT urges Norway to improve the situation for prisoners in solitary confinement

The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has on 17 January 2019 published a report on a visit to Norway carried out in 2018. During its visit, the CPT examined the situation of persons deprived of their liberty in police establishments, prisons, the Trandum immigration detention centre, a psychiatric hospital and a nursing home.¹²⁴

The report stated that in some of the prisons visited, the CPT found that a number of prisoners were locked up alone in their cells for 22 hours per day (the daily out-of-cell activities being limited to one hour of outdoor exercise taken alone and one hour of access to a fitness room alone) for prolonged periods with only very limited contact with staff. The CPT recommended that all prisoners subjected to "complete exclusion from company" benefit from a structured programme of purposeful and preferably out-of-cell activities and that they be provided with meaningful human contact on a daily basis.¹²⁵

The Committee also observed major problems in the prisons visited in transferring prisoners with severe mental disorders to psychiatric hospitals and urged the Norwegian authorities to implement their long-standing plan to construct a regional psychiatric security department in the Oslo area.¹²⁶

II. CPT holds high-level talks with the Bulgarian authorities

Representatives of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) held high-level talks with the Bulgarian authorities in Sofia on 15 January 2019.¹²⁷

The main objective of the talks was to discuss the measures taken by the Bulgarian authorities to implement the CPT's recommendations set out in the report on the CPT's 2017 visit to Bulgaria and, more generally, to advance the on-going dialogue between the Committee and the Bulgarian authorities.¹²⁸

The Committee also raised the issues of treatment and conditions of detention of persons in penitentiary establishments, as well as treatment, conditions and legal safeguards offered to psychiatric patients and residents of social care institutions.¹²⁹

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

Torture was routinely used by the apartheid regime in South Africa to punish and suppress those opposed to its brutal and discriminatory policies and practices. Even in post-apartheid South Africa, torture survives.

Torture mostly happens in police cells, correctional services, other places of detention, on the streets and in some cases in people's private spaces. Victims of torture in the post-apartheid South Africa include arrested persons, criminal suspects, non-South African nationals and sex workers amongst others.¹³⁰

Before July 2013, acts of torture were investigated and prosecuted as assault cases. In 2012- 2013, the Independent Police Investigative Directorate reported 4131 cases of assault and 50 cases of torture.¹³¹ From October 2012 to June 2013, Centre for the Study of Violence and Reconciliation (CSVr) received 114 cases of torture in the Trauma Clinic.¹³²

Article 5 of the African Charter on Human and People's Rights prohibits torture and the Robben Island Guidelines provides a guide on preventing torture in Africa. South Africa is signatory to both.

The Bill of Rights in Chapter 2 of the South African Constitution also prohibits torture. Section 14(1) (d) specifically provides for the freedom and security of the person including the right not to be tortured in any way.¹³³

Freedom from torture is enshrined as a non-derogable right under s. 12(1) (d) and (e) of the Constitution of the Republic of South Africa.¹³⁴

South Africa ratified the UNCAT in 1998. Since then, South Africa has had a duty to pass legislation to ensure that torture becomes a crime punishable by law.¹³⁵ South Africa signed OPCAT in 2006 but has not yet ratified it. Ratification of OPCAT will establish an independent national preventive oversight mechanism to monitor the implementation of the Convention against Torture at national level (this includes monitoring, investigating and reporting).¹³⁶

South Africa's Torture Act does not include any provision on the right to redress. Notwithstanding the standalone anti-torture domestic legal framework in place since 2013, torture and ill-treatment continue being an area of great concern in South Africa.

South African Human Rights Commission identified the Prevention of Torture as one of the seven focus areas in order to effectively fulfill its mandate of promoting, protecting and monitoring the realisation of human rights in South Africa.

"Section 11 Committees" have been instituted that advise the Commission on matters related to Prevention of Torture.¹³⁷

Legal Framework/ Domestic anti-torture law, 2013

On 25 July 2013, South Africa's President Zuma signed into law the Prevention and Combating of Torture of Persons Act.¹³⁸ And, on 29 July 2013 the Parliament of the Republic

of South Africa adopted the Prevention and Combating of Torture of Persons Act 13 of 2013 ("The Anti-torture Act") to give effect to the Republic's international obligations in terms of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which was ratified by South Africa on 10 December 1998.

Prior to the enactment of the Anti-Torture Act, the South African Police Service adopted an anti-torture policy in 2009 and in 2011 the Independent Police Investigative Directorate was given the express mandate to investigate all allegations of torture by the police.¹³⁹

In its preamble, the Act acknowledges that South Africa "has a shameful history of gross human rights abuses, including torture of many of its citizens and inhabitants".¹⁴⁰

South Africa almost took 15 years after ratifying the UNCAT to enact an anti-torture law. However, South Africa is yet to ratify the Optional Protocol on the Convention against Torture (OPCAT).

Under the Act, torture is now a recognized crime in South Africa and perpetrators of this specific crime can be charged, tried and prosecuted. The Act criminalise torture and provide for a definition of torture that reflects the UNCAT definition. The Act provides that acts of torture can be punished by a sentence of imprisonment, including imprisonment for life, but without stipulating a minimum sentence.¹⁴¹

The Anti-torture Act, however, does not apply with retrospective effect – victims of apartheid are not covered by the Act.

South-Africa's anti-Torture Act also specifically provides that no immunity for acts of torture can be provided to an accused person "who is or was a head of State or government, a member of a government or parliament, an elected representative or a government official".¹⁴² This is a notable exception to constitutionally enshrined immunity for the Head of States.

Most importantly, the Act creates an obligation on the State to promote awareness of the prohibition of torture, including education and awareness programmes directed at public officials.

According to Section 4, any person who commits, attempts to commit or incites, instigates, commands or procures any person to commit the act is guilty of the offence of torture. Persons found guilty of the offence may be sentenced to imprisonment, including life imprisonment. The Act recognizes criminal individual responsibility regardless of the fact that the accused is or may have been a Head of State, a member of government or an elected representative or government official. In addition, no exceptional circumstances may be invoked as a justification to committing acts of torture.

With the passing of the Prevention and Combating of Torture of Persons Act in 2013, South Africa has now complied with its international law obligations under the UNCAT to criminalize torture. The Anti-torture Act

highlights the seriousness of the crime of torture through its harsh punishment of imprisonment up to life imprisonment, and further by stipulating that there is no justification for committing a crime of torture.

Important Provisions of “the Anti-Torture Act”

Definition of torture

Section 3 defines “torture” as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person –

- (a) for such purposes as to –
 - (i) obtain information or a confession from him or her or any other person;
 - (ii) punish him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or
 - (iii) intimidate or coerce him or her or any other person to do, or to refrain from doing, anything; or
- (b) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Offences and penalties

The UNCAT requires States parties to criminalise the commission and the attempt to commit torture, complicity in torture, other forms of participation in torture, instigation of, and incitement to torture, as well as acts by public officials that acquiesce or consent to torture.

The Prevention of Combating and Torture of Persons Act covers these modes of liabilities.

Section 4(1) of the Act says that “Any person who (a) commits torture; (b) attempts to commit torture; or (c) incites, instigates, commands or procures any person to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.”¹⁴³

Section 4(2) provides that “Any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.”¹⁴⁴

No immunity for Head of States for acts of Torture

South Africa’s anti-Torture Act also specifically provides that no immunity for acts of torture can be provided to an accused person “who is or was a head of State or government, a member of a government or parliament, an elected representative or a government official”.¹⁴⁵ This is a notable exception to constitutionally enshrined immunity for the Head of States.

Section 4(3) (a) states that “Despite any other law to the contrary, including customary international law, the fact that an accused person— is or was a head of state or government, a member of a government or parliament, an elected

representative or a government official- is neither a defence to a charge of committing an offence referred to in this section, nor a ground for any possible reduction of sentence, once that person has been convicted of such offence”¹⁴⁶

Section 6: Extra-territorial jurisdiction

The legislation provides for extra-territorial jurisdiction over acts of torture if committed by a citizen or resident, or if the acts have been committed against a citizen or resident. Jurisdiction may be exercised even in the absence of any link between the act committed and South Africa, as long as the accused is in the territory of the Republic.¹⁴⁷

Section 6(1) provides that a court of the Republic has jurisdiction in respect of an act committed outside the Republic which would have constituted an offence under section 4(1) or (2) had it been committed in the Republic, regardless of whether or not the act constitutes an offence at the place of its commission, if the accused person — (a) is a citizen of the Republic; (b) is ordinarily resident in the Republic; (c) is, after the commission of the offence, present in the territory of the Republic, or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in the Republic and that person is not extradited pursuant to Article 8 of the Convention; or (d) has committed the offence against a South African citizen or against a person who is ordinarily resident in the Republic.¹⁴⁸

In a first, the Supreme Court of Appeal (SCA) had considered the investigation of crimes committed extraterritorially, and ordered the police to investigate Zimbabwe torture allegations. In the case of *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre*¹⁴⁹, the Court has made it clear that the perpetrators of systematic torture – as was alleged in this case – can be held accountable in South Africa regardless of where the offending acts took place.

Section 8: Expulsion, return or extradition

Notably, South Africa has also incorporated the principle of prohibition of refoulement in relation to torture in its anti-torture law.¹⁵⁰ Section 8(1) of the Prevention of Combating and Torture of Persons Act 2013 says that “no person shall be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture”.¹⁵¹

South-Africa’s Prevention and Combating of Torture of Persons Act prohibits refoulement/repatriation/deportation of any person to another state where there are danger of being subjected to torture

For the purpose of determining whether there are such grounds, all relevant considerations must be taken into account, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights as required by the UNCAT.

Human Rights Committee observations and concerns

The South Africa Human Rights Commission participated in the review of South Africa's report under the United Nations International Covenant on Civil and Political Rights (ICCPR) in Geneva March 2016.¹⁵²

The Human Rights Committee, in its Concluding observations on the initial report of South Africa, on 27 April 2016 expressed concern about the absence of independent and sustained monitoring of places of deprivation of liberty other than prisons.¹⁵³

It was also concerned about the number of reported cases of violence, including sexual violence, excessive use of force, torture and other forms of ill-treatment against detainees, as well as deaths resulting from actions of police and prison officials. It also notes with concern that few investigations into such reported cases have led to prosecutions resulting in the punishment of those responsible (arts. 2, 6, 7 and 10). The Committee called for South Africa to ensure that all deaths occurring in detention and all cases of violence committed in State or contract-managed prisons are investigated properly by an independent mechanism. It should also ensure that perpetrators of, and accomplices in, such violent acts are duly prosecuted and punished in accordance with the law, and that victims and their families are provided with remedies, including rehabilitation and compensation.¹⁵⁴

The Committee also expressed concern at poor conditions of detention in some of the State party's prisons, particularly with respect to overcrowding, dilapidated infrastructure, unsanitary conditions, inadequate food, lack of exercise, poor ventilation and limited access to health services. The Committee notes with concern the conditions of detention in the two super-maximum security prisons and the segregation measures imposed, for instance in Ebongweni super-maximum prison, where prisoners are locked up 23 hours a day for a minimum period of six months.¹⁵⁵

The Committee observed that the Prevention and Combating of Torture of Persons Act does not itself provide for civil claims for redress of torture, and that such claims consequently need to be framed as a common law tort claim for assault or related offences of a less serious nature, since torture is not recognized as a tort.¹⁵⁶

Torture violations in post-apartheid South Africa

Post-apartheid South Africa still confronts torture. Statistics show a surge in reported torture cases.

The Independent Police Investigative Directorate (Ipid) has revealed that deaths while in police detention and allegations of assault and torture are continuing in South Africa and are not limited to the dark days of apartheid. Ipid statistics showed that 216 people died in police custody in 2015-16, of which 66 were reported as deaths by suicide in the form of hangings. In the same year, Ipid received 3,466 complaints of assault and 144 of torture.¹⁵⁷

In 2012-13, Ipid reported 4,131 cases of assault and 50 cases of torture, while the 2013-14 figures were 3,916 cases of assault and 78 cases of torture. In 2014-15, the figures were 3,711 assaults and 145 cases of torture.¹⁵⁸

In 2014 the South Gauteng High Court in Johannesburg ruled that the detention of migrants at the Lindela Repatriation Centre is unlawful and unconstitutional.¹⁵⁹ Concerns of torture violations at the Detention centre led to an investigation into violations of access to health for detainees at the Lindela Repatriation Centre by the South African Human Rights Commission.¹⁶⁰

In its recommendations the Commission requested release of detained persons who had been extra judicially detained in excess of 120 days. Both the Department of Home Affairs and South African Police Services were also requested to take steps to secure the protection of human rights of persons who are arrested and detained.¹⁶¹

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