



India Torture Update

Special Focus: Tamil Nadu



A Publication of Asian Centre of Human Rights

October 2018

1. Editorial: India's refoulement policy violates the UNCAT

On 4 October 2018, the Indian authorities deported seven Rohingya Muslims identified as Md Jamal, Mohbul Khan, Jamal Hussain, Md Yonus, Sabir Ahmed, Rahim Uddin and Md Salam¹ to Myanmar at the Indo-Myanmar border at Moreh in Manipur. The seven men were arrested for illegal entry in 2012 after they were caught by the police in the Shilchori-Nagatila region of Assam. They served a sentence of three months for the crime of entering India without valid documents. After completing the jail term, they were incarcerated for six years at the foreigners detention centre in Silchar Central Jail before being deported to Myanmar.²

The deportation took place despite appeal by United Nations Secretary General Antonio Guterres not to send them back to their country of origin.³ The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms E. Tendayi Achiume reminded the Indian Government of its “international legal obligation to fully acknowledge the institutionalised discrimination, persecution, hate and gross human rights violations these people have faced in their country of origin and provide them the necessary protection”.⁴ The United Nations High Commissioner for Refugees (UNHCR) stated that conditions in Rakhine state were “not yet conducive for return” of the Rohingyas.⁵

The deportation of the Rohingya refugees is a serious setback on the issue of refugee rights.

India is a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and Article 3.1 of the UNCAT states that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

Article 3(2) of the UNCAT further states, “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

The ‘consistent pattern of gross, flagrant or mass violations of human rights’ of the Rohingyas is exemplified by exodus of more than 700,000 Rohingya refugees from Myanmar’s Rakhine State to neighbouring Bangladesh from August 2017

after Rohingya insurgent attacks on the Myanmar security forces triggered a sweeping military response. The UN Independent International Fact-Finding Mission on Myanmar in its report on 27 August 2018 stated that Myanmar’s top military generals, including Commander-in-Chief Senior-General Min Aung Hlaing, must be investigated and prosecuted for genocide in the north of Rakhine State, as well as for crimes against humanity and war crimes in Rakhine State. The Mission, established by the UN Human Rights Council in March 2017, found patterns of gross human rights violations and abuses committed in Kachin, Rakhine and Shan States that “undoubtedly amount to the gravest crimes under international law”, principally by Myanmar’s military, the Tatmadaw, but also by other security forces.⁶

The mere issuance of “certificate of identity - a temporary travel document”⁷ by the Myanmar Government was considered adequate for the Government of India and the Supreme Court of India to deport the Rohingyas without considering the consequences on refoulement. The Indian Express reported on 16 October 2018 that all seven of them were escorted through a four-day journey from Moreh to Kyauktaw in northern Rakhine by Myanmar immigration officials, and were handcuffed for part of the way. One of the seven returnees, Mohammed Yunus, said they were handcuffed as soon as they reached Mandalay, where they were taken to an immigration office, “kept in a closed room, and made to sign some papers.”⁸

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The refolement of the Rohingya refugees exposes India's flawed refugee policy based on political expediency. India's approach towards the Sri Lankan Tamil refugees and Tibetan refugees has been markedly different.

While the seven Rohingyas were being taken to the Indo-Myanmar border on 4 October 2018, the Supreme Court of India dismissed a petition to restrain the government of India from taking steps to deport the Rohingya refugees to Myanmar.⁹ The SC has effectively refused to hear their claim for refugee status.

2. Special focus: Custodial torture in Tamil Nadu

Custodial torture and custodial deaths are regularly reported from Tamil Nadu. As per the data collated, the NHRC recorded 140 deaths in police custody and 581 deaths in prison custody during 2008-2018 in Tamil Nadu as given below:

Table: Custodial deaths in Tamil Nadu from 2008-2018

<i>Year</i>	<i>Police custodial deaths</i>	<i>Judicial custodial deaths</i>
01/04/2008 to 31/03/2009	6	69
01/04/2009 to 31/03/2010	8	68
01/04/2010 to 31/03/2011	6	71
01/04/2011 to 31/03/2012	7	58
01/04/2012 to 31/03/2013	10	67
01/04/2013 to 31/03/2014	9	70
01/04/2014 to 31/03/2015	9	49
01/04/2015 to 31/03/2016	4	64
01/04/2016 to 31/03/2017	Not available	Not available
01.04.2017 to 28.02.2018	11	65
Total	140	581

(Source Annual Reports of the National Human Rights Commission from 2008-2009 to 2015-2016 Reply of Minister of State for Home Affairs Shri Hansraj Gangaram Ahir to Unstarred Question No. 2135 in Rajya Sabha on 14 March 2018)

2.1 Torture in Police custody

Torture is rampant in Tamil Nadu. The following emblematic cases establish the patterns of torture in Tamil Nadu.

Case 1: Tortured to death of A Karthik at MKB Nagar PS, Chennai

On 14 October 2018, a 36-year-old youth identified as A Karthik died in the custody of MKB Nagar police station in Chennai due to alleged torture during interrogation. The deceased, a resident of B V Colony in Vyasarpadi area of Chennai, was arrested by police on 14 October 2018 morning pursuant to a complaint of robbery filed against him and taken to the MKB Nagar police station.¹⁰

The police claimed that the deceased Karthik complained of chest pain and started vomiting while being interrogated at the lock up in the afternoon of 14 October 2018. The deceased was allegedly rushed him to a nearby private hospital for first aid and when his health deteriorated, the police shifted him to Government Stanley Hospital, Chennai where the doctors declared him brought dead. However, the family members of the deceased refuted the claims of the police and alleged that the deceased died due to brutal torture by the police while in custody.¹¹ On 15 October 2018, two sub-inspectors — Jagadeesan and Raja of MKB Nagar Police Station and Shyam Sundar, a constable who were allegedly responsible for the death were transferred to the Armed Police. A magisterial inquiry was conducted.¹² The Tamil Nadu State Human Rights Commission (TNSHRC) suo moto intervened in the case.¹³

Case 2: Death of G Pydiraju due to alleged torture during interrogation

On 11 September 2018, a native of Nellimarla of Vizianagaram district identified as G. Pydiraju died in the custody of the Central Crime Station (CCS) of the Tamil Nadu Police in Vishakapatnam during interrogation. The deceased who was allegedly involved in a number of house breaking cases reported from Vizianagaram, Rajahmundry and Visakhapatnam city, was lodged at the CCS.¹⁴

Case 3: Torture of M. Ilampiraiyaan in illegal detention

On 26 August 2018, M. Ilampiraiyaan (25), a post graduate in Computer Applications (MCA) hailing from Desikapuram in Virudhunagar district of Tamil Nadu was arrested, illegally detained and tortured by police personnel from Rajapalayam South police station in Madurai. According to the victim, who belongs to 'Pallar' Scheduled Caste community, on the day of the incident he was riding as second pillion on a motorcycle on Rajapalayam-Sankarankoil highway. On seeing the police, the driver of the motorcycle asked him to get down and they sped away. However, a couple of policemen who saw him riding second pillion approached him and asked him to call on his mobile the other two friends

who sped away. Ilampiraiyaan could not call since he did not have a mobile phone. On knowing that he is from Desikapuram and belonged to a particular SC community, the police allegedly scolded him with casteist slurs and when he objected, they beat him up. He was subsequently taken to Rajapalayam South police station, where he was allegedly beaten up by at least six police personnel with lathis and boots. Police framed him in a false case on charges of ‘detering a government servant from discharging duty’, ‘use of obscene words’ and ‘criminal intimidation.’ He was remanded in judicial custody and was granted bail four days later.¹⁵ Ilampiraiyaan bled through the nose and sustained injuries. He later underwent treatment at Srivilliputtur Government Hospital and Government Rajaji Hospital.¹⁶

Case 4: Body of a college student detained by RPF found on railway tracks

On 25 August 2018, a 22-year-old college student, Mouliswaran, who was taken for an inquiry to the Gummidipoondi Railway Protection Force (RPF) post during the early hours was found dead on the railway track a few hours later. Mouliswaran of Chinnakavanam village in Ponneri Thiruvallur district of Tamil Nadu was pursuing his second-year BA in Political Science in a Government College in the area. On the morning of 25 August, his body was found on the railway track near Ponneri. According to RPF officials, the youth was handed over by the residents of Chinnakavanam village to the gateman of level crossing gate 26 near Ponneri. The gateman handed over Mouliswaran to RPF inspector Angadkumar around 2.30 a.m. The RPF claimed the deceased escaped from their custody and committed suicide on the railway tracks. On the contrary, friends and villagers contested the police version and alleged that the deceased was killed by the RPF during interrogation and his dead body was thrown on the tracks to make it look like a case of suicide.¹⁷

Case 5: Torture to death of M Manikandan in police custody

On 2 August 2018, a 25-year-old youth identified as M Manikandan, died in the custody of Mudukulathur police station due to alleged torture. The deceased, a resident of Mudukulathur town in Ramanathapuram district of Tamil Nadu, was brought to the station for interrogation on 2 August in connection with a theft complaint lodged by M Mahadeven, a resident of Government Hospital Street at Mudukulathur, on 23 July 2018. Manikandan was picked up for interrogation on 1 August as well, but was let off after a short while.¹⁸ On 7 August, Ramanathapuram district police moved five police personnel, including a Sub-Inspector, attached to Mudukulathur police station to Armed Reserve (AR) Police pending a magisterial inquiry under Section 176(1A) CrPC into the custodial death of Manikandan.¹⁹

Case 6: Torture to death of a labourer in police custody

On 25 July 2018, a 20-year-old youth identified as Anish died at Kaliyakkavilai police station under Kanniyakumari district of Tamil Nadu due to alleged torture by the police. The deceased, a labourer from Kaliyakkavilai of Kanniyakumari district, was arrested on 23 July 2018 from Kerala-Kanniyakumari border area for allegedly making and selling illegal liquor. After arrest, the deceased was taken to Kaliyakkavilai police station.²⁰ The police claimed that on 25 July 2018 Anish suddenly fell ill and was rushed to the Government Hospital at Thiruvananthapuram, where he died during treatment. The family members alleged that the police tortured Anish to death while in custody.²¹

Case 7: Custodial death of a 50-year-old Kumaraselvam

On 19 July 2018, a 50-year-old man identified as Kumaraselvam (50) died at Thanjavur Medical College Hospital in the custody of Madhukkur police under Thanjavur district of Tamil Nadu under mysterious circumstances. The deceased was arrested by the police on 17 July 2018 in connection with a complaint registered by his relative with Madhukkur police station on 13 July 2018. The police claimed that after Kumaraselvam was brought to the police station on 17 July 2018 he complained of chest pain and was rushed to a hospital at Pattukottai and then shifted to the Thanjavur Medical College Hospital where he died during treatment.²²

Case 8: Torture to death of V Anthony at Neelankarai PS, Chennai

On 18 May 2018, 25-year-old V Anthony died at Neelankarai police station in Chennai due to alleged torture during interrogation. The deceased was from Ezhil Nagar in Perumbakkam in Kanchipuram district of Tamil Nadu and was arrested by the police on 17 May night in connection with a case of robbery. After arrest he was detained at Neelankarai Police Station and died in the wee hours of 18 May 2018. The police rushed the deceased to a private hospital where the doctors declared him brought dead.²³ On 22 May, three days after the custodial death of the deceased, Chennai city police commissioner A K Vishwanathan transferred four police officers posted at Neelankarai police station.²⁴

Case 9: Custodial death of N Murugesan

On 30 March 2018, a 28-year-old man identified as N Murugesan of Ullaasa Nagar near Kodarankulam in Tirunelveli, Tamil Nadu died at Tirunelveli Medical College and Hospital in the custody of police. Police claimed that the deceased, an alleged wanted criminal was arrested along with an accomplice, Manickaraja alias Raja. Police stated that the bike which the duo was riding met with an accident on the Madurai - Kanyakumari national highway as they tried to escape on spotting a police patrol vehicle.²⁵

Case 10: Torture to death of Suresh

On 14 February 2018, a 40-year-old lorry driver identified as Suresh died due to alleged torture by policemen from Baluchetty Chatram police station under Kancheepuram district of Tamil Nadu. Suresh, a resident of Gandhi Nagar of Orikkai, Kancheepuram, was allegedly arrested by the police for interrogation in connection with sand smuggling incident on 11 February 2018. After three days, the deceased was found dead in Thammal Lake in Kancheepuram on 14 February. Relatives and family members of the deceased alleged that Suresh was detained illegally and was tortured to death while in police custody. The police claimed that after interrogation the deceased was let off.²⁶

Case 11: Torture to death of Ms Mariammal

On 15 January 2018, a 54-year-old house maid identified as Ms Mariammal died at Kalpakkam Police Station in Kanchipuram district of Tamil Nadu due to alleged torture. The deceased, a native of Rajapalayam in Virudhunagar district, was arrested from her village on 14 January 2018 on suspicion of stealing 15 sovereign worth gold jewellery from her employer in Kalpakkam Township. The deceased was brought to the Kalpakkam police station for interrogation. The police claimed that during interrogation, Mariammal complained of chest pain and was rushed to a clinic nearby and was referred to a private hospital in Kelambakkam where she died in the early morning of 15 January.²⁷

2.2 Torture and deaths in judicial custody

There are 137 prisons in Tamil Nadu. These include 9 Central Jails, 9 District Jails, 96 Sub Jails, three Women jail, 12 Borstal Schools, three Open Jails, and five Special Jails.²⁸

During 2008-2018, a total of 581 prisoners have died in jails of Tamil Nadu. This included 69 deaths in 2008-09, 68 deaths in 2009-10, 71 deaths in 2010-11, 58 deaths in 2011-12, 67 deaths in 2012-13, 70 deaths in 2013-14, 49 deaths in 2014-15, 64 deaths in 2015-16, and 65 deaths in 2017-18²⁹. No data was available for the year 2016-17.

Lack of medical facilities is one of the serious problems in the prisons of Tamil Nadu. On 3 October 2018, the Madras High Court expressed dissatisfaction with a report submitted by Home Department of Tamil Nadu government in respect of deaths of prisoners in its jails. A bench comprising Justices S Manikumar and Subramonium Prasad observed that a detailed study was needed to improve medical and other facilities in jails, and appointed senior advocate R Vaigai as amicus curiae to assist the court.³⁰ In its report to the High Court, the state government said there were 157 deaths of convict prisoners during 2012-2016 out of which 109 prisoners died of illness and old age, two due to accidental falls and 22 others allegedly committed suicide.³¹

Prisons in Tamil Nadu lack security. On 5 June 2018, a 19-year-old prisoner identified as M. Vijay killed a 46-year-old

prisoner identified as M. Ramesh in Coimbatore Central Prison. The deceased, Ramesh, of Hudco Colony near Peelamedu was beaten to death by Vijay of Parattaiammal Kovil Street near Perur, with a stone outside their block. Both of them were inmates of tower block-III in the prison complex. Eyewitnesses said Vijay attacked the deceased with a stone on his head and face. Both were remanded in the prison in May 2018 on charges of hurt in different cases.³² On 6 June 2018, the prison authorities suspended two warders for negligence of duty, following the murder of Ramesh.³³

Prisoners are often subjected to torture. In February 2018, a petition submitted to the Principal District Judge, the Coimbatore Bar Association alleged torture of inmates inside the Central Prison. The remand prisoners are subjected to torture by the security personnel at the Coimbatore Central Jail at the time of admission and gathering of their details which is being carried out in front of the blocks and on terrace, where there were no cameras. Prisoners are assaulted with wooden logs and pipes and are forced to do 500 sit-ups without break and kneel down for a long time. A few of them were tonsured and abused as well.³⁴ In May 2018, M Ganesh Kumar, a legal aid advocate, in his report submitted to the Principal District Judge stated that many prisoners were tortured by prison warders at the Coimbatore Central Jail and recommended court interventions to prevent such violations. Mr Kumar was appointed in April 2018 by the legal aid services to report on the condition in Coimbatore central prison. The report said that prison warders attacked several prisoners including A Babu alias Syed Ibrahim who was severely beaten up and injured. Officials failed to inspect the quality of the food being served and doctors in the prison hospital did not cooperate with him during the inquiry.³⁵

In August 2018, The Times of India reported about the massive corruption in the Central prisons in Tamil Nadu as jailers were charging a bribe for each day's leave entitled to a convicted prisoner for good conduct as per the Tamil Nadu Prison Manual. As per the prison manual convicted prisoners who complete three years with good conduct are entitled to avail a total of 15 days as ordinary leave in four spells (6+3+3+3) every year. Besides, prisoners can avail of 30 days ordinary leave under rule 22 (2) of the Tamil Nadu Suspension of Sentence Rules 1982, once every two years. But this temporary relief from prison life is under the discretion of the Inspector General of Police (prisons). Prisoners and their families as eligible inmates are allowed to go on leave only after paying a bribe anywhere between Rs 3,000 and Rs 5,000 for each day's leave.³⁶

On 7 October 2018, a 34-year-old convict prisoner identified as P Sasi alias Sasikumar alias Ravichndran died at Tiruchi Central Prison in Tamil Nadu. The deceased was a convict prisoner serving life sentence after conviction in a murder in 2007. The jail officials claimed that on 7 October 2018, the deceased complained of chest pain and they rushed

him to Mahatma Gandhi Government Hospital, Tiruchi where he died on the same day during treatment.³⁷

On 18 July 2018, a 53-year-old under trial prisoner allegedly committed suicide in Palayamkottai Central Prison in the early hours of the day. Prison authorities said at around 1.30 am, the deceased identified as P Karuppaiah was found hanging from the metal window of the toilet in his cell using his dhoti. He was rushed him to Tirunelveli Medical College and Hospital. The doctors declared him as dead on arrival. The deceased, hailing from a village near Sivagiri in Tirunelveli district had been in the jail since 4 July after being arrested in connection with an attempt to murder case.³⁸

On 30 January 2018, a 27-year-old under trial prisoner identified as Selvam alias Perachi Selvam died under mysterious circumstances in the custody of authorities of Palayamkottai Central Prison at Virudhnagar Government Hospital while being escorted to Chennai to produce him before the Advisory Committee hearing detention under the Goondas Act. They claimed that the deceased complaint of uneasiness and chest pain while passing through Virudhnagar from Tirunelveli to Chennai. The jail authorities claimed that they rushed him to a private hospital, where the doctors referred him to Virudhunagar Government Hospital, where Selvam died during treatment on the same day.³⁹

3. Torture in India during October 2018

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

3.1 Emblematic cases of torture in police custody

Case 1: Death of Vaidhnath Choudhary due to denial of medical access by the police, Rajasthan

On 22 October 2018, a 40-year-old Vaidhnath Choudhary died after he was allegedly beaten up by the cops at Karni Vihar police station in Rajasthan's state capital Jaipur when he had gone to get back his son's bike which was seized by the police. At about 8 pm on 22 October Vaidhnath Choudhary, a native of Phagi, Jaipur had gone to Karni Vihar police station to submit documents for challan of his son's bike. He was allegedly beaten up by the policemen at Karni Vihar station when he objected to their slapping of his son. The police personnel also refused to let the deceased go out of the police station when he complained of pain and uneasiness. The deceased's son Rakesh whose bike was seized by the police and was present at the police station said the cops heckled the father son duo and roughed up his father leading to deterioration of his health immediately. He said when they wanted to go to a doctor the cops would not let them go immediately leading to his father falling unconscious and finally death at a private nursing home.⁴⁰ Two sub-inspectors, Mahavir Singh and Ghanshyam, and a constable Gopal were

transferred to the civil lines following public outcry over the inhuman act of the cops.⁴¹

Case 2: Death of Ajit Pujari due to alleged torture in Pune, Maharashtra

On 18 October 2018, a 20-year-old youth identified as Ajit Pujari died in the custody of Swargate police station in Pune city of Maharashtra. The deceased and his brother-in-law Yallappa Bhadravate, both residents of Dhobalwadi, Pune, were picked up by the police from Market Yard on the morning of 18 October 2018 on suspicion of stealing cell phones. After their arrest the police brought both to Swargate police station and detained them. The police claimed that during interrogation on 18 October 2018 afternoon Ajit Pujari suddenly began vomiting and complained of uneasiness and was rushed to a private hospital near Saras Baug. They said that when the deceased's condition deteriorated he was shifted to BJ Government Medical College and Sassoon General Hospitals, Pune where the doctors declared him dead on arrival.⁴² However, co-accused and brother-in-law of the deceased, Yallappa Bhadravate, refuted the claims of the police and alleged that Ajit Pujari has died due to brutal torture by the police while in custody.⁴³

Case 3: Tortured to death of Surubha Jhala (35) by Ahmedabad Rural district Crime branch personnel

On 15 October 2018, a 35-year-old employee of a courier company identified as Surubha Jhala died at Bopal police station under Ahmedabad Rural district of Gujarat due to alleged torture. Jhala was arrested by local Crime Branch officials belonging to Bopal police station for investigation of a case of theft of gold worth Rs 2.50 crore pursuant to a complaint filed against him by his company. After his arrest on 14 October 2018 the local crime branch officials brought him to the old Bopal police station for interrogation. The police claimed that on 15 October 2018 morning Surubha Jhala complained of uneasiness and was rushed to a hospital where the doctors declared him dead on arrival.⁴⁴ Ahmedabad Rural District Police have registered a case of murder against officials of its Local Crime Branch (LCB) and Special Operations Group (SOG) after the post mortem report of the deceased revealed multiple injuries on his body. The FIR which was filed late on the night of 21 October 2018 based on a complaint filed by the brother of the deceased had not named any police officer.⁴⁵ The FIR also alleged that the man died due to severe beating and electric shocks.⁴⁶ Ahmedabad rural police also formed a special investigating team (SIT) to probe the custodial death of the deceased.⁴⁷

Case 4: Torture and unlawful detention of Manju Singh Chauhan and her husband by Ghaziabad Police, UP

On 10 October 2018, Manju Singh Chauhan (35) and her husband Dhan Singh (40) were illegally detained and tortured

by policemen in Ghaziabad, Uttar Pradesh. The husband wife duo was inside their car at Kendraya Vidyalaya in Kamala Nehru Nagar area when sub-inspector Balram Singh Sengar and an unidentified constable accosted them and asked unnecessary and objectionable questions. When objected, the cops beat up the man and his wife. Thereafter, the couple was taken to Kavi Nagar police station and detained at the lock up during the night. The couple alleged that they were again thrashed and harassed by SI Balram Singh Sengar, Senior Sub-Inspector Hindveer Singh and SHO Pradeep Kumar Tripathi while in detention during the night of 10 October 2018.⁴⁸

The police claimed that the couple was taken to the Kavi Nagar police station after they had a heated altercation with a police patrolling team near Kendriya Vidyalaya in Kamla Nehru Nagar area and were arrested and booked for allegedly deterring public servants from discharging their duty and criminal intimidation along with other charges.⁴⁹

On a complaint by the woman, the Ghaziabad Senior Superintendent of Police suspended Kavi Nagar SHO Pradeep Kumar Tripathi and Sub Inspector Balram Singh Sengar and Senior Sub inspector Hindveer Singh after finding them guilty of misbehavior and implicating the complainant and her husband in a false case.⁵⁰

Case 5: Unlawful arrest and torture of Rajendra Mahakud in Odisha

On 8 October 2018, police illegally arrested one Rajendra Mahakud, resident of Belda village of Anandapur town in Keonjhar district of Odisha, arbitrarily detained him at Bamebari police station and tortured him in a case of mistaken identity. Police also did not provide food. The victim's wife Kalpalata claimed that on 8 October 2018 night a police team led by Sub-Inspector Pratibha Sahu belonging to Bamebari police station came to their house and picked up the victim stating that they have an arrest warrant against her husband Rajendra Mahakud. The victim and his wife had no clue as to why he was being arrested. The victim was released subsequently only after the policemen realized their fault and arrested the actual culprit by the same name as the victim.⁵¹

Case 6: Tortured to death of Shaik Babar Basha in Nellore district of AP

On 6 October 2018, a 28-year-old youth identified as Shaik Babar Basha died in the custody of police due to torture. The deceased, a resident of Velupadu village of Dagadarthi mandal in Nellore district of Andhra Pradesh, was arrested for investigation into a case of theft of a Toyota Innova vehicle pursuant to a complaint filed against him by one Santosh at Ulavapadu police station on 4 September 2018. The police claimed that on 6 October 2018 when the police along with the deceased was ready to move to Guntur to recover the stolen car the deceased complained of chest pain and was

rushed to Ulavapadu Primary Health Centre for first aid. The police said the deceased was subsequently shifted to a hospital at Kandukur town where he died during treatment on the same day i.e. 6 October 2018.⁵²

Case 7: Death of 18 year old at Mon Police station, Nagaland

On 4 October 2018 night, an 18-year-old youth identified as Rolongse alias Akum died in the custody of Mon Police Station in Mon district of Nagaland under mysterious circumstances. The deceased, a resident of Chamongar village under Tuensang District of the state, was picked up by a police patrol team when found quarrelling with a fellow handyman of Super Travel Bus in which both worked and detained him at the police station lock-up at around 8:20 pm. Police claimed that at about 9:30 pm i.e. about 70 minutes of his detention at the lock up the body of deceased was found hanging by the bar of the lock-up cell with his belt. Two police personnel, an Assistant Sub Inspector and the lock-up sentry on duty, were suspended in connection with the incident on charges of negligence of duty.⁵³

Case 8: Fear of torture forces a senior citizen to commit suicide in Maharashtra

On 2 October 2018, Chandrakant Shinde (65), a resident of Goveli village near Kalyan city, Maharashtra, committed suicide at his residence at about 4:00 am in the morning allegedly for fear of being tortured again by the Crime Branch where he was summoned to appear at 10 am that morning. His family claimed that he had been summoned for a second round of questioning at Kalyan Crime Branch at 10 am. He was earlier summoned and questioned by the crime branch on 1 October in connection with the recovery of four detonators and two gelatine sticks from an autorickshaw parked outside a DCP's office in Kalyan. Shinde's family blamed the police for his death, alleging that he was tortured after being picked up for questioning on 1 October.⁵⁴

Case 9: Sexual exploitation of minor orphan dalit boy by policeman in Harthras in UP

In the first week of September 2018, a 15-year-old orphan dalit boy working at a highway restaurant accused an Uttar Pradesh Police constable of wrongfully confining, sodomising and beating him on several occasions during September 2018 inside his room within Chamar Gate police station building. The minor victim hailing from Kasganj of Hathras district studying in Class X at local government school lives near Chamar Gate police station and has been working as waiter at a roadside eatery to meet his both ends. The accused police constable was posted with the DIAL 100 (Emergency Response Team) of the UP Police. The incident came to light after the victimized boy mustered courage to narrate his ordeal to another policeman after the accused constable

Sandesh Kumar Yadav went on leave on 30 September 2018. Hathras district police Chief Jay Prakash said a medical examination of the victim had confirmed the incident and the minor boy had been admitted to hospital and two constables were deployed for his security. Besides registration of a criminal case against the accused constable, a departmental inquiry had also been ordered.⁵⁵

3.2 Emblematic cases of torture and deaths in judicial custody

Prisoners continued to be subjected to torture and ill treatment in the jails.

On 25 October 2018, a 43-year-old undertrial prisoner Bal Krishan died at Udhampur District Jail in Jammu and Kashmir under mysterious circumstances. The deceased, son of Ram Chand, a resident of Majalta in Udhampur district, was lodged in the Udhampur district jail since September 2018 in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985. The jail officials claimed that on 25 October 2018 morning Bal Krishan was found lying unconscious inside the jail premises and was rushed to the Udhampur District Hospital where the doctors declared him brought dead.⁵⁶

On 22 October 2018, a 35-year-old convict prisoner died under mysterious circumstances at Ludhiana Central Jail in Punjab. The deceased identified as Harpreet Singh was lodged at Ludhiana Central jail to serve a prison term of 10 years in connection with a rape case. The jail officials claimed that Harpreet Singh committed suicide by hanging.⁵⁷

On 22 October 2018, undertrial prisoner Gulbasar Khan died under mysterious circumstances at Kawardha District Jail in Chhattisgarh. The deceased, a resident of Sarangpur of Bodla town under Kabirdham district of Chhattisgarh, was arrested and sent to judicial custody a few months earlier after his wife Kavaldha alleged him of torture and unnatural act. Jail officials claimed that on 22 October 2018 the deceased suddenly fell sick and he was rushed to the District Hospital. The doctors at the District Hospital on examination declared him dead. However, the family members of the deceased alleged that Gulbasar Khan was killed by the jail authorities and the dead body of the deceased had several marks of injuries, especially in the neck.⁵⁸

On 19 October 2018, a 38-year-old undertrial prisoner Mulaiya, son of Ramkishan Kol, a resident of Kihuniya of Markundi under Chitrakoot district had died under mysterious circumstances at Chitrakoot district Jail in Uttar Pradesh. The deceased was arrested and sent to Banda jail on 13 June 2018 in connection with a case of assault and possession of weapons. On 31 August the deceased was transferred to the Chitrakoot district jail at Ragauli. The jail officials claimed that on 19 October 2018 morning the deceased complained of pain in his chest and they called a doctor who referred the deceased to the District Hospital where he died during treatment.⁵⁹

On 18 October 2018, Kanhaiya Lal (43) lodged at Bahraich district jail in Uttar Pradesh died under mysterious circumstances. The deceased, a resident of Neel Kothi village of Nanpara Dehati area under Bahraich district, was arrested and sent to judicial custody on 24 December 2015 in connection with a case under the Narcotic Drugs and Psychotropic Substances Act, 1985. The jail officials claimed that the deceased who was suffering from Asthma was taken on the night of 18 October 2018 to Bahraich district hospital where he died during treatment. However, the doctors at the district hospital refuted the claim of the jail authorities and claimed that the deceased was brought dead and they did not have an opportunity to treat him.⁶⁰

It is pertinent to mention that Kanhaiya Lal was the fifth (5th) prisoners to have died under suspicious circumstances at the Bahraich district jail since 18 July 2018.⁶¹

On 14 October 2018, a 30-year-old handicapped under trial prisoner Guddu @ Bhanu Pratap, resident of Khiron in Raebareli district died under mysterious circumstances at Raebareli district Jail in Uttar Pradesh. The deceased was arrested and sent to judicial custody on 17 July 2018. He had lost his right hand in an accident 3 years ago. On 14 October 2018 afternoon, his body was found hanging with a towel (gamsha) inside the toilet at barrack no.7 of the district jail.⁶²

On 14 October 2018, an under trial prisoner identified as Suresh (38) lodged at Jawad Sub District Jail under Neemuch district of Madhya Pradesh died under mysterious circumstances. The deceased, son of Shankar Prajapati, a resident of Ratangarh city of Neemuch district was arrested and sent to judicial custody under Arms Act on 8 October 2018. He died on 14 October 2018 during treatment at Neemuch district hospital. Jail officials claimed that on 14 October 2018 the deceased complained of stomach ache and he died in the evening on the same day.⁶³

On 12 October 2018, an undertrial prisoner identified as Mahendra Besra died under suspicious circumstances at Godda sub-jail in Jharkhand. The deceased, a resident of Poreyahat station area under Godda district was lodged at the Godda sub-jail since 28 September 2018. The family members of the deceased alleged that the jail authorities had not given any information to them about the death of the deceased. They claimed that the son and daughter of the deceased who came to meet their father were made to wait a whole day but were not informed about the death of the deceased although their father was lying dead. They alleged that the jailer forcibly took signatures of the children on a plain paper and thereafter post mortem was conducted on the body of the deceased.⁶⁴

On 8 October 2018, a 35-year-old under trial prisoner Sanjay Athwal lodged at Sabarmati Central Jail in Ahmedabad city of Gujarat died at the city's civil hospital. The deceased was arrested on 5 October 2018 on charges of bootlegging and he was sent to the Sabarmati Central Jail next day on

judicial remand. Jail officials claimed that the deceased prisoner was an alcohol addict and died due to some illness. However, the family members of the deceased alleged that Sanjay Athwal died due to torture by the police soon after arrest and then by jail officials.⁶⁵

On 4 October 2018, a convicted prisoner identified as Rakesh Raj died at Gorakhpur district jail in Uttar Pradesh. The deceased, a resident of Dumri Village of Sehjanwa under Gorakhpur district, was serving a ten-year sentence for murder since 2011. The jail officials claimed that on 4 October 2018 afternoon, the deceased was admitted at Gorakhpur district hospital after he fell unconscious and he passed away at the hospital during treatment on the same day.⁶⁶

On 3 October 2018, a convicted prisoner identified as Nityanand Mandal died at Central Jail, Purnia in Bihar under suspicious circumstances. The deceased, a resident of Sripur of Bhawanipur block under Purnia district of Bihar, was lodged at ward-13 of the Central Jail, Purnia for the last six years. The jail officials claimed that the deceased prisoner was a patient of asthma and had been receiving treatment at the jail dispensary. At around 5.00 AM on 3 October when the deceased was found coughing incessantly the jail doctor was called and after examination, the doctor referred him to Sadar Hospital. While being shifted to Sadar Hospital on the jail ambulance, the deceased prisoner died on the way. However, the family members alleged that the deceased was killed by the jail authorities and they demanded a judicial inquiry to find out the truth.⁶⁷

On 1 October 2018, a 62-year-old prisoner Ranbir Singh of Chahar village under Bhiwani district lodged at Haryana's Bhiwani jail died at Bhiwani Civil Hospital. According to jail authorities, the deceased complained of chest pain and was rushed to Bhiwani civil hospital, where he died at 9.30 pm. The doctors at the hospital declared him dead on arrival. The deceased was convicted in a cheque bounce case and sent to Bhiwani jail on 29 September 2018. He had been sentenced to two years imprisonment after the cheques he gave for repayment of a tractor loan were not honoured.⁶⁸

On 30 September 2018, a convict prisoner identified as Gadadhar Sahu died under mysterious circumstances in the custody of Jharpada Special Jail in Odisha's state capital Bhubaneswar. The deceased, a resident of Badatota village, Jatani tehsil under Khordha district, was lodged in Jharpada Special Jail since 2015 to serve a 10 year jail term in a rape conviction.⁶⁹ The jail officials claimed that on 30 September 2018 morning, Gadadhar Sahu complained of uneasiness and was rushed to the Capital Hospital, Bhubaneswar where he died during treatment. However, the family members of the deceased refuted the claims of the jail officials and stated that Gadadhar Sahu has died due to brutal torture by the jail authorities.⁷⁰

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.

Case 1: NHRC asks for Action Taken Report on alleged sexual predation of a minor girl Odisha

In the last week of October 2018, the NHRC directed the Jajpur Superintendent of Police to furnish an Action Taken Report on the alleged sexual predation of a minor girl by a police officer of inspector rank. The rights panel, acting on a petition moved by Sangita Swain, secretary of Angul-based Human Rights Watch organization, asked the Jajpur SP for initiating appropriate penal action against the Kaliapani police station Inspector-in-Charge.⁷¹

The accused police officer had allegedly meted out physical and mental torture on the victim girl. A complaint in this regard had been lodged with the local police on 26 May 2018. However, police did not act on it. The copies of the complaint were also submitted to the Jajpur SP and DGP but no action was taken against the accused IIC.⁷²

Case 2: Torture of Ms Balbir Kaur at Ranjit Avenue Police station, Punjab

In the last week of October 2018, Ms Balbir Kaur was severely tortured at Ranjit Avenue police station in Amritsar, Punjab. The victim, a resident of Dhariwal Kalan village in Ajnala in Amritsar was summoned to Ranjit Avenue Police station for questioning after some unknown thieves had decamped with cash and jewellery from the house where she worked as a domestic maid around mid October. The victim alleged that police personnel tortured her in custody. Her mother-in-law claimed that Balbir Kaur sustained injuries and was not able to walk due to torture by the police and she has been under treatment at the Civil Hospital since her release from illegal detention. She was released only after members of Gharelu Mazdoor Ekta Union, Daswinder Kaur and Manjit Kaur, protested outside Ranjit Avenue police station.⁷³

Case 3: Torture of Ms Salika at Bajpe police station, Karnataka

On 25 October 2018, a 44-year-old woman Salika was tortured by police in illegal detention at Bajpe police station in Mangaluru city of Karnataka. Inspector Parashiva Murthy summoned her to Bajpe police station and asked her about the whereabouts of her husband, who has been absconding after charges of rape under the POSCO Act was registered against him in 2017. The victim alleged that inspector Parashiva Murthy tortured her mentally and physically including by hitting her with a plate on her head during interrogation. She sustained injuries and received medical treatment at a local hospital for the same. On the complaint of the victim at Bajpe

Police station, an FIR has been registered against the accused inspector Murthy under sections 324 and 323 of IPC for voluntarily causing hurt.⁷⁴

Case 4: Torture and stripping naked of two women at Kotwali Police Station in Bilaspur, Chhattisgarh

On 14 October 2018, a 60-year-old woman and her 27-year-old daughter, arrested on the charges of theft, were stripped naked and severely beaten by woman police officer in front of male police officials at City Kotwali Police Station, Bilaspur, Chhattisgarh. The mother and daughter duo sustained injuries on their vital body part and narrated when they were produced before a local court. Due to the injuries, they were unable to walk. The court reportedly ordered an inquiry into the matter.⁷⁵ The NHRC also issued a notice to the Director General of Police, Chhattisgarh, calling for report in the matter within four weeks along with action taken against the guilty police personnel.⁷⁶

Case 5: Torture of three women at a police station in Mumbai

On 4 October 2018, three women viz Mamta Meher (25), Alisha Pillai (23) and Kamal Shrivastava (22) from Mira Road, Mumbai who were arrested on 2 October for allegedly creating a ruckus at a Bhayander playground were allegedly tortured in lock-up and they filed a complaint at the Thane magistrate's court. In their complaint to the court where they were produced, the arrested women alleged that a male constable hit them with a baton and beat them even more when they protested in the lock-up. Their lawyer, Edgar Braganza, stated that the three were beaten with belts in lock-up, leaving welt marks on their bodies, including on the back, legs, shoulders, hands, palms, elbows and knees.⁷⁷

Case 6: Repeated rape of a minor girl and her mother by ASI Shamsheer Singh of Kalayat Police station in Kaithal district of Haryana

On 3 October 2018, Haryana Police booked 18 persons, including seven police personnel, for allegedly repeatedly raping a minor girl and her mother for almost two months between July and September this year in a village near Kalayat town of Kaithal district. Kaithal superintendent of police Astha Modi told media that a case had been registered against seven police men and 11 others, including a sarpanch and a former sarpanch, on the basis of the survivor's complaint on 2 October under Sections 376 D (gang rape), 323 (punishment for voluntary causing hurt), 342 (wrongful confinement), 384 (punishment for extortion), 120B (criminal conspiracy) and 506 (criminal intimidation) of the Indian Penal Code and the Protection of Children from Sexual Offences (Pocso) Act.⁷⁸

In her complaint the minor rape survivor alleged that she lodged a false complaint of molestation against her father due to fear of the accused ASI Shamsheer Singh as he threatened to

implicate her, her mother and brother in false cases and send them to jail. She alleged that during the course of investigation of the false case, the accused ASI Shamsheer Singh came to her house in Haripur village under Kalayat Police station on 26 July 2018 and raped her and her mother while the village sarpanch and several policemen stood guard outside.⁷⁹ She also alleged that the village sarpanch even kept her and her mother in illegal confinement so that they did not tell the truth to anybody about the false case against her father. The accused ASI Shamsheer allegedly also stole Rs 50,000 from her home on the pretext of search of her house.⁸⁰

Seven police personnel booked in the case have been identified as assistant sub-inspectors (ASI) Shamsheer Singh, Roshan Lal and Dhanpati, Bajir Singh, head constable Randeep and constables Dilavar and Isham Singh.⁸¹

3.4 Judiciary's action against torture

In a number of cases, courts have delivered judgments/directions against cases of torture.

Case 1: High Court handed over probe in 2013 custodial death case in Punjab to CBI

On 23 October 2018, the Punjab and Haryana High Court transferred the probe into the custodial death of jail inmate Raju Chand at Kapurthala Central Jail in 2013, to the Central Bureau of Investigation. Raju's mother Manjit Kaur had filed a writ petition in the High Court alleging that her son Raju died due to inhuman torture in the jail by the police. She alleged that several cops had kidnapped Raju from his residence on the pretext of investigation. On 4 November 2013 she was informed that his condition had deteriorated and was admitted to Guru Nanak Dev Hospital, where he died during treatment. She said there were numerous injury marks on the body of his son.⁸²

The High Court ordered registration of a case and formed a Special Investigation Team headed by an ADGP-rank officer to probe the matter. The police had registered a case on 21 March 2016 under Sections 302, 304-A, 148, 149 and 120-B of the IPC. Following the directions of the High Court and the District Sessions Judge, Amritsar, the police had booked around 33 government officials including policemen on 23 March 2016 in connection with the custodial death of Raju Chand.⁸³

Manjit Kaur again approached the High Court when the SIT probe got delayed. The court sought report from the SIT. The SIT allegedly sought to shield the accused government officials. On this, the High Court said the SIT was "illegitimately" favouring the cops who were prima facie responsible for the custodial death. The Court said that since a large number of government servants were involved in the case, the court was of the view to entrust investigations to the CBI. Directing the CBI to submit periodic reports, the Court also issued directions to the CBI to constitute an investigating team of senior officers to ensure speedy probe.⁸⁴

Case 2: Two Gujarat Crime branch officials sentenced to 9 months imprisonment in custodial torture case

On 12 October 2018, a court of judicial magistrate at Rajpipla in Narmada district of Gujarat sentenced two police officials Jatinchandra Dangarwala and Vinu Patanwadiya with the CID (crime) to nine months imprisonment along with fines after finding them guilty of torturing two persons in their custody in 2009. They are currently posted as inspectors in CID (crime) in Vadodara and Navsari.⁸⁵ The two were posted as sub-inspector and head constable respectively in Tilakwada police station in Narmada district in 2009. In June of that year, they had arrested Ramesh Bariya and Dalsukh Bariya. During their production before the judicial magistrate's court, Ramesh and Dalsukh complained to the court about being brutally beaten by the two cops and in response, the court had ordered medical treatment for the duo. Later, on the basis of medical report, a case of assault and criminal intimidation was registered and the two cops were tried in a court of judicial magistrate at Tilakwada. On corroboration of the charges by testimony of witnesses including the doctor who treated the victims and people who have seen the victims being assaulted by the two accused cops, the court had convicted the two accused policemen.⁸⁶

Case 3: West Bengal government directed to pay compensation of Rs 3 lakh in custodial death case

On 11 October 2018, the Calcutta High Court directed the Bengal government to pay an interim compensation of Rs 3 lakh each to the families of 41 prisoners who died unnatural deaths in jails between January 2012 and December 2015. A division bench of acting Chief Justice Debasish Kargupta and Justice Shampa Sarkar gave six weeks for the payment and asked the state to disburse the remaining sum to the families after chalking out a scheme within three months.⁸⁷ In September 2017, the Supreme Court had directed all high courts to take measures to ensure the state governments pay adequate compensation for unnatural deaths in jails.⁸⁸

Case 4: Haryana DGP imposed cost by the High Court for inaction in respect of compensation in a custodial death case

On 10 October 2018, the Punjab and Haryana High Court ordered Haryana's Director General of Police to pay Rs 10,000 as cost to a petitioner for failing to determine the compensation amount even after a gap of three years in a custodial death case. The HC also directed the DGP to appear in person before the court, if he failed to determine the compensation under the Haryana Victim Compensation Scheme 2013 by October 31.⁸⁹ A petition filed by Anand Rai Kaushik, whose brother died in custody of NIT police station, Faridabad in 2013.⁹⁰

Case 5: Three Indian Army officers & four soldiers sentenced to life for murder of five AASU leaders in a fake encounter in Assam in 1994

On 9 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 1994.⁹¹ 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 had 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.⁹² 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.⁹³ 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.⁹⁴ 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.⁹⁵

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'.⁹⁶ It was the inquiry by the Central Bureau of Investigation (CBI) under the direction of the Gauhati High Court that brought out the truth⁹⁷ 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 2002.⁹⁸ 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”.⁹⁹ The Army decided to try them under military law through a court martial.¹⁰⁰ The court-martial process began on 16 July 2018 and concluded on 27 July 2018. The quantum of punishment was pronounced on 13 October 2018.¹⁰¹

Case 6: Kokrajhar CJM Court issues 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.¹⁰² In its order, the Kokrajhar CJM Court note from the materials on record, “one can easily understand the inhuman circumstances under which the alleged ULFA man died... in police custody”.¹⁰³ 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.¹⁰⁴

Case 7: Award of Rs 5 lakhs compensation by Madras High court in custodial death case

On 6 March 2018, the Madurai bench of the Madras High Court ordered the Tamil Nadu government to pay Rs 5 lakh compensation to a widow and two minor children who lost their sole breadwinner due to police torture, eight years ago.¹⁰⁵ Ramesh was arrested by the accused police officials on 22 April 2010 pursuant to a complaint from his employer Thangavelu to the effect that he allegedly gave a bag containing Rs 5 lakh and 2 kg of gold bars to the deceased for handing over it to the owner of Ravi Fertilizer Shop, Melur in Madurai. But the deceased did not deliver the money and the gold to the intended person on the ground it went missing when he was travelling in a bus. The police detained Ramesh under their illegal custody for seven days and then released him. Later, they again picked him up on 10 May 2010. On 11 May at around 3 am, police informed his relatives that Ramesh was in hospital. When they went to see him, they came to know that he had died.¹⁰⁶

Case 8: Ramanathapuram CJM court sentences police inspector to 1 year imprisonment

On 5 March 2018, a judicial magistrate court in Ramanathapuram sentenced an inspector of police Kannan K

to one year imprisonment for brutally torturing Ganeshan when in 2005. The court also slapped a fine of Rs 10,000. Kannan had tortured Ganeshan pursuant to a wrong complaint filed by a female neighbour of the victim accusing him of stealing her gold jewellery. Police took Ganesh into custody and the respondent inspector tortured him brutally during interrogation. Ganeshan sustained injuries due to torture and had to get admitted to hospital in Thiruvadanai for treatment.¹⁰⁷ Ganeshan had lodged a complaint and a report submitted by Paramakudi deputy superintendent of police Arumugasamy after conducting inquiry into the case confirmed that Ganeshan was tortured.¹⁰⁸

3.5 Interventions by the NHRC/SHRC

The National Human Rights Commission (NHRC) continues to intervene against human rights violations. As per latest data available, the NHRC received a total of 6,200 fresh complaints while it disposed of a total of 6,210 cases (Fresh + Old) during August 2018. A total of 22,213 cases (Fresh + Old) were under consideration of the commission till end of the month.¹⁰⁹ A large number of complaints relate to torture.

In September 2018, the NHRC has awarded a total of Rs 80,50,000 in 48 cases of human rights violations, including 16 cases of deaths in judicial custody; 3 cases of deaths in police custody; 5 cases of abuse of power and 1 case of unlawful detention.¹¹⁰

i. Interventions by Tamil Nadu State Human Rights Commission

Case 1: Police inspector directed to pay compensation of Rs 1 lakh to scrap merchant

In the Second week of October 2018, the Tamil Nadu State Human Rights Commission directed the then Inspector of Washermanpet Police Station to pay a compensation of Rs 1 lakh to a scrap merchant, T. Muthu, for threatening and extorting his gold jewels in custody eight years ago. As per the petition at 6.30 pm on 29 September 2010, two police constables attached to Washermanpet police station, Chennai, came to his shop and asked him to come to the police station as the Inspector Soundararajan wanted to meet him. Once in the police station, the Inspector accused him of buying 55 grams of stolen gold jewel from one Ramesh, whom Muthu even did not know. At this, Inspector Soundararajan detained Muthu at the station, scolded him and threatened him with dire consequences if he did not confess to purchase of 55 grams of stolen gold jewels from Ramesh. Unable to face Inspector’s anger, Muthu gave a gold chain weighing 24.750 gram that he was wearing at that time to the Inspector. The Inspector threatened him that he should not disclose this to anyone.¹¹¹

Case 2: Woman police constable awarded Rs 50,000 compensation in a case of harassment and assault by police

The TNSHRC directed the Tamil Nadu government to pay a compensation of Rs 50,000 to a woman police constable, Ms G Sathya, who was allegedly harassed and tortured by two sub-inspectors in Tirunelveli. G Sathya attached to the Armed Reserve in Coimbatore, stated in her petition that she took medical leave in July 2013 and was at her home in Suthamalli village in Tirunelveli district where her mother and sisters reside. Around midnight on 3 August 2013, two sub-inspectors from Suthamalli police station - Subramanian and Josephine Mary - knocked on her doors and on opening the door, Subramanian slapped her for the delay in opening the door while Mary abused her in filthy language. The petitioner alleged that they had taken Rs 50,000 from her house and they falsely accused her of indulging in prostitution and threatened her.¹¹²

Case 3: Victim awarded compensation of Rs 30,000 against ill treatment by police

The TNSHRC directed the State government to pay Rs 30,000 as compensation to J Rameshkumar, a resident of Alwarpet, Chennai, who was subjected to human rights violation by a sub inspector of police who made him to remove his dress and sit in the police station in his underwear. Based on a false complaint filed by a neighbour the victim was summoned to the police station where SI Vijaya Pandian threatened and treated him like a hardcore criminal and forced him to remove his cloths and sit on the floor only with underwear.¹¹³ TNSHRC Member D Jayachandran directed the state to recover the amount from Vijaya Pandian, sub inspector attached to Teynampet police station.¹¹⁴

Case 4: Rs 2 lakh compensation awarded torture victim

The TNSHRC directed the then SI and Inspector of All Women Police station, Arakkonam to pay a compensation of Rs 2 lakh to a youth on charge of torturing him in illegal custody five years ago. He was arrested and detained on rape charges in Central Prison Vellore for nearly two weeks. SHRC member D Jayachandran ruled that the petitioner Praba had proved that her son was tortured by SI Priyadarshini and Inspector Saraswathi in illegal custody and that Saraswathi registered a rape case against Saranraj and detained him in prison without examining the witnesses.¹¹⁵ Mrs S. Praba of Melath Nagar, Keezhkuppam Village, Arakkonam taluk in Tamil Nadu's Vellore district filed a complaint with the TNSHRC against illegal detention and torture of her elder son Saranraj by the respondents in December 2013. At about 1.30 pm on 10 December 2013 Saranraj who was working in private company, was waiting for a bus at Jothi Nagar bus stop when S. Priyadarshini, the then SI of All Women Police Station, Arakkonam took him to the police station for investigation into accusations of rape. The petitioner saw her

son being severely beaten up by SI Priyadarshini in illegal detention and alleging that Saranraj had duped a woman of Rs 1.50 lakh. Praba claimed that her son became unconscious due to torture by the respondents. Next day inspector A. Saraswathi arrested Saranraj on rape charges and detained him at Central prison Vellore.¹¹⁶

Case 5: Compensation of Rs 50,000 awarded to a torture victim in Tirupur

In September 2018, the TNSHRC recommended compensation of Rs. 50,000 to R. Arun of Palladam who was tortured in custody by the police in Tirupur district of Tamil Nadu. The Commission also recommended that the sum be recovered from an Inspector Thannasipandian¹¹⁷ who had tortured the victim at Avinashi police station. He claimed that his hands were tied and his clothes removed and was made to starve.¹¹⁸

Cases 6: State government asked to initiate disciplinary proceedings against police inspector and Rs 50,000 compensation given to torture victim

On 14 September 2018, the TNSHRC recommended the Tamil Nadu government to pay a compensation of Rs. 50,000 to S. Pugalendhi of Krishnapuram in Kadayannallur, an AIADMK booth agent, who was beaten up by Inspector D. Felix Suresh Pete attached to Kadayannallur Police Station in Tirunelveli district during the Assembly polls on 13 April 2011. SHRC member D. Jayachandran also recommended that the compensation amount be recovered from Inspector D. Felix Suresh Peter, then attached to Kadayannallur Police Station in Tirunelveli district, and to initiate disciplinary action against him.¹¹⁹ The SHRC noted that it was categorically established from the report of the Superintendent of Police in Tirunelveli that the complainant was assaulted by the respondent and he sustained injuries while the respondent inspector failed to lead any evidence to the contrary.¹²⁰

Case 7: MBA graduate awarded Rs 50,000 compensation for illegal detention and torture

On 31 May 2018, the TNSHRC ordered Rs 50,000 compensation to a MBA graduate, V Nandamani, a resident of Kolapakkam, who was subjected to torture and human rights violation by a sub-inspector of police Govindaraj attached to the Guduvancheri police station, Kancheepuram, Tamil Nadu. SHRC member D Jayachandran also directed the government to recover the amount from the sub-inspector.¹²¹ According to Nandamani, on 10 October 2010 he visited his relative Venkatesan at his house in Unamancheri. As they were chatting in front of Venkatesan's house, at about 8 pm, Govindaraj came there along with a few other police personnel and attempted to arrest Venkatesan. Both Venkatesan and Nandamani were arrested and Nandamani

was detained in the police station without any justification and tortured, and finally remanded to judicial custody for eight days, the complainant alleged. After perusing the documents produced in support of the claims made by both the parties, the SHRC concluded that the complainant was subjected to human rights violation.¹²²

Case 8: SHRC directs its Investigation Wing to probe custodial death of a youth at Neelankarai police station, Chennai

On 22 May 2018, SHRC member D. Jayachandran taking suo motu cognisance of media reports about the custodial death of a man at Neelankarai police station in Chennai, has directed the Director General of Police/Director, Investigation Wing of the SHRC to submit a report within four weeks.¹²³ A 28-year-old man identified as V. Anthony, a resident of Tsunami Quarters in Kannagi Nagar, Chennai, died in custody of the Neelankarai police station when he was being interrogated for suspected involvement in thefts. He was taken into custody along with another suspect on 17 May 2018. The police claimed that the deceased complained of uneasiness and was taken to a hospital, where he was declared brought dead.¹²⁴

Case 9: Tortured driver gets Rs 75,000 compensation for torture by police

In February 2018, the TNSHRC directed the state government to pay a compensation of Rs 75,000 to A. Velmurugan, a victim of custodial torture. Three police personnel including a woman SI had tortured the driver after a girl eloped with her lover in Sivagangai district nine years ago.¹²⁵ A. Velmurugan of Satharasankottai, Sivagangai district of Tamil Nadu, submitted that K. Rasiya of Tiruvallur district and his friend S. Murugan of Ilayangudi were in love for two years. They ran away from the village and got married and the couple resided at Tirupur. On 17 April 2009, Velmurugan was taken to Ilayangudi police station for interrogation and he disclosed the whereabouts of the couple. Yet, the police beat him repeatedly. He was stripped semi naked and sub inspector Geethalakshmi assaulted him on his buttocks with palmyra tree plank. Velmurugan sustained injuries and on being released, he got admitted to a government hospital for treatment. On knowing about his admission to hospital, the cops got him discharged from the hospital and got Velmurugan admitted at Government General Hospital, Sivagangai next day. The policemen did this to conceal the evidence of torture on the victim.¹²⁶

Based on corroboration by the duty doctor that Velmurugan was assaulted by two male and a woman police personnel, SHRC member D. Jayachandran held that police personnel had tortured Velmurugan. He noted that this was a gruesome act and a worst example of cruelty and lawlessness amounting to violation of right to life of the victim. The

SHRC ruled that the victim is entitled to compensation against sufferings of humiliation at the hands of the police, which amounts to violation of his right, personal, liberty and dignity.¹²⁷

Case 10: State Government directed to initiate criminal proceedings u/s 302 for tortured to death of a Dalit youth and Rs 10 lakh compensation awarded to next of kin

In February 2018, the TNSHRC directed the Tamil Nadu government to pay a compensation of Rs 10 lakh to a woman whose husband died of police torture in Dindigul district about 10 years ago. SHRC member D. Jayachandran not only recommended for recovering the compensation amount from the respondent police officials viz. Inspector Sarkarai, Sub Inspector Pandiammal, Head Constable Jayaprakash attached to Viruveedu Police Station, but also directed to initiate departmental action against them, besides initiating criminal prosecution under Section 302 IPC and under SC/ST (Prevention of Atrocities) Act, 1989.¹²⁸

According to the petitioner, Panchavarnam of Batlagundu in Dindigul district, her husband Jayapandi was intercepted by the respondent police personnel on 14 February 2008 when he was on his way to a funeral. They questioned him about the wire he carried and alleged that it belonged to a Minister. She claimed that the police personnel assaulted him during interrogation.¹²⁹ The respondent police officials picked up the victim again on 17 February 2008 and brutally tortured him. He was released from the police station but he succumbed to the injuries and died on the way to his home.¹³⁰

The respondent policemen denied the allegations levelled against them. However, on perusal of contentions and submissions made by both parties, the SHRC held the respondents “responsible for the death of Jayapandi and they had violated the human rights of the deceased Jayapandi.”¹³¹ The Commission also recommended provide a government job on humanitarian ground as there is no earning person available in the family of the complainant.¹³²

Case 11: Autorickshaw driver awarded Rs 50,000 compensation for torture

In January 2018, TNSHRC recommended the Tamil Nadu government to pay Rs 50,000 as compensation to an autorickshaw driver, Prakash for violation of his human rights. SHRC member D. Jayakumar held that Prakash had “suffered humiliation at the hands of the police officer, which amounted to violation of his rights,” and hence he was entitled to get compensation. The SHRC Member said their probe established the fact that Prakash was assaulted by the special sub inspector.¹³³ The mother of the victim, N. Kumuthavalli of Ice House, Chennai in her complaint stated that in February 2015 her son Prakash, an autorickshaw driver, had a quarrel with special sub inspector of police Sundarsingh of the Ice House police and since then, the police took him to the

station frequently. On 24 February 2015, Prakash was taken to the police station, where Sundarsingh and head constable S. Pooncholai assaulted him. He sustained injuries and had to be admitted to hospital for treatment.¹³⁴

4. UN Action Against Torture in October 2018

UN Committee against Torture considered 885 individual complaints so far

In his statement before the UN General Assembly during the 73rd Session on 15 October 2018, Mr. Jens Modvig, Chairperson of the Committee against Torture stated that 164 State parties have ratified the UNCAT and called upon all other remaining states to become party to the Convention. The Chairperson also informed the General Assembly about the failure of some States parties to respect their reporting obligations.¹³⁵

He also highlighted the effectiveness of the individual communication mechanism established under article 22 of the Convention against Torture. Since 1989 the Committee has registered 885 individual complaints concerning 40 States parties. Among those complaints, 265 were discontinued, 104 were found inadmissible, and final decisions on the merits were issued for 365. Of these 365 cases, the Committee found violations of the Convention violations in 143 (39%) cases. Considering the fact that individual communications submitted to CAT are all about alleged very grave human rights violations, CAT's findings of a violation rate of 39% is rather modest. As of date, there is a current backlog of 160 individual complaints pending consideration. The Committee recently updated General Comment No. 4 on article 3 of the Convention on the principle of non-refoulement.¹³⁶

Committee against Torture agrees to hear victim of Ireland's 'Laundries'

The United Nations Committee Against Torture has agreed to hear a complaint relating to accusations of systematic human rights violations in the industrial school and the Magdalene laundries 30 years ago. The victim, Ms Coppin filed a complaint against physical and emotional abuses she had suffered during the 12 years she had spent in an Irish "industrial school," one of a now-defunct network of state-funded orphanages and reformatories run by religious orders on behalf of the state. In her complaint she argued that despite having paid roughly \$30 million to 696 women who survived the laundries, including \$63,000 to her, the Irish state has never admitted its role in supporting the laundries. However, according to an official report published in 2013, thousands of inmates of industrial schools, including Mrs. Coppin, were sent to laundries directly from state care. Those who escaped were often returned by the police.¹³⁷

In 1999, she filed a civil action against the Sisters of Mercy, who ran the industrial school, and two other orders — the Religious Sisters of Charity and the Sisters of the Good

Shepherd — who ran two of Ireland's notorious "Magdalene laundries" where marginalized, unwanted, or "fallen" women and girls lived and worked with little or no pay. Her suit claimed that she had been physically and emotionally abused in the industrial school, then transferred to the laundries without due legal process, having committed no crime. There she had been held against her will and forced to work without pay in deprived conditions. But that case was dismissed by the High Court in Dublin on the grounds that too much time had passed.¹³⁸

After exhausting all conventional criminal and civil remedies, the victim had filed a complaint before the Committee against Torture. The decision of the Committee to hear Ms. Coppin's complaint is set to be a test case for all survivors of the laundries.

Subcommittee on Prevention of Torture visits Kyrgyzstan

The United Nations Subcommittee on Prevention of Torture (SPT) visited Kyrgyzstan from 12 to 21 September, 2018.¹³⁹ The Sub-Committee's visit was to assess measures taken to protect persons deprived of their liberty against torture and ill-treatment, and look into progress made in implementing the recommendations made following its first visit in 2012.¹⁴⁰

The UN experts after concluding their second visit to the country welcomed the creation of Kyrgyzstan's National Center for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as the legislative measures taken by the authorities to prevent torture. However, the rights experts told the Kyrgyz authorities that they must further support the National Center's work, including by granting it full access to all places of deprivation of liberty in the country.¹⁴¹

"Kyrgyzstan has taken steps to improve its machinery for the prevention of torture, but much remains to be done. Conditions of detention, in the different places we visited, are significantly substandard," said SPT Vice-chairperson Victor Zaharia, who headed the six-member delegation.¹⁴²

The experts visited more than 20 places of deprivation of liberty, including police stations, temporary detention facilities (IVS), pre-trial detention centers (SIZO), correctional detention facilities (colonies) and psychiatric institutions in the regions of Bishkek, Osh and Jalal Abad.

The delegation also held discussions with government entities and officials, including in Osh, and with parliamentarians, the Coordination Council for Human Rights, the Prosecutor General's Office and civil society representatives. In addition, the experts held working meetings with the National Center for the Prevention of Torture, including a joint visit to a place of detention in Bishkek.

At the end of the visit, the Sub-Committee presented its confidential preliminary oral observations to the government as well as to Kyrgyzstan's National Center for the Prevention

of Torture, which is the country's National Protective Mechanism (NPM). The SPT's confidential written reports to both the Kyrgyz authorities and the National Center for the Prevention of Torture will be sent within a six-month period.¹⁴³

UN experts welcome court ruling that Ixil Mayans were victims of genocide and urged the State to prosecute and punish the perpetrators

On 22 October 2018 UN experts, including Mr. Nils Melzer, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, welcomed a Guatemalan court's ruling that recognized indigenous Ixil Mayans as victims of genocide and crimes against humanity.¹⁴⁴

"The court's decision confirms that the suffering and humiliation suffered by the Ixil peoples at the hands of the Guatemalan army constituted crimes of genocide and crimes against humanity," the experts said. "We celebrate the significant progress made in the search for truth, the fight against impunity and the recovery of historical memory of the events that occurred during the internal armed conflict (1960-1996) estimated to have claimed over 200'000 lives," the experts said.¹⁴⁵

The judgment pertaining to the trial over the deaths of 1,771 people, most of them members of the Ixil community, between 1982 and 1983 established that the Guatemalan army used the most brutal techniques of violence against the civilian population, including killings, torture and cruel and inhuman treatment, sexual violence and forced displacement, causing the partial physical destruction of the Ixil population.

The UN experts said the challenge and the obligation of the State remained of identifying, prosecuting and sanctioning those responsible for these atrocious crimes as an important step towards achieving justice for the victims and their families. "Impunity for perpetrators is unacceptable. It is essential that judicial processes respect international standards in determining the responsibilities of the perpetrators and masterminds of serious violations of international human rights law and international humanitarian law," they said.

The experts also expressed concern about alleged attacks and insults received by victims, plaintiffs and members of the Ixil community who participated in the court hearings as well as threats and attacks targeting judges and justice officials involved in transitional justice cases. The experts saluted the courage and perseverance of those seeking justice over three decades.

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

Kenya had a very tumultuous history. Kenyans suffered unspeakable and horrific gross violations of human rights at the hands of the British colonial administration between 1895 and 1963. In order to establish its authority in Kenya, the colonial government employed violence on the local population on an unprecedented scale, including massacres,

torture and ill-treatment and various forms of sexual violence.¹⁴⁶

Kenya gained independence on 12 December 1963. However, the situation of human rights has not improved in independent Kenya. The Truth, Justice and Reconciliation (TJR) Commission constituted by Gazette Notice No. 8737 of 22 July 2009 concluded that successive governments of Kenya were responsible for numerous gross violations of human rights. In its findings, conclusions and recommendations published in 2013, the TJR Commission concluded that President Jomo Kenyatta (1963 to 1978) was responsible for numerous gross violations of human rights including killings, torture, collective punishment, and denial of basic needs (food, water and health care); assassinations of political opponents; arbitrary detention of political opponents and activists; illegal and irregular acquisition of land by the highest government officials and their political allies. The TJR Commission held the government of President Daniel Arap Moi (1978 to 2002) responsible for numerous gross violations of human rights including massacres; unlawful detentions, and systematic and widespread torture and ill-treatment of political and human rights activists; assassinations, including that of Dr. Robert Ouko; illegal and irregular allocations of land; and economic crimes and grand corruption. The TJR Commission concluded that the government of President Mwai Kibaki (2002 to 2008) was responsible for committing numerous gross human rights violations including unlawful detentions; extra judicial killings; and economic crimes and grand corruption. The Commission concluded that state security agencies, particularly the Kenya Police and the Kenya Army, have been the main perpetrators of bodily integrity violations of human rights in Kenya including massacres, enforced disappearances, torture and ill-treatment, and sexual violence.¹⁴⁷

Kenya has been facing an ongoing terrorist threat from the Somalia-based terrorist group al-Shabaab, against which the Kenya Defense Forces have engaged in military operations in Somalia since 2011 as part of the African Union Mission in Somalia (AMISOM). Al-Shabaab terrorists conducted deadly attacks and guerrilla-style raids on isolated communities along the border with Somalia. In July 2017, al-Shabaab terrorists hijacked at gunpoint Public Works Principal Secretary Miriam El-Maawy and six others travelling in her motorcade in Lamu County. On 26 September 2017, ElMaawy died from injuries she sustained in the attack.¹⁴⁸

Despite the threat of terrorism the Republic of Kenya created history on 13 April 2017 on which day President Uhuru Kenyatta assented to the Prevention of Torture Act 2017. The law that legally banned torture and cruel, inhuman, or degrading treatment or punishment commenced from 20 April 2017.¹⁴⁹

Kenya had ratified the International Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or

Punishment (UNCAT) on 21 February 1997. It also accepted the Inquiry Procedure provided under Article 20 of the Convention. Since becoming a ratifying party, Kenya submitted three Periodic Reports on the Convention to the United Nations Committee on Torture. The Initial Periodic Report which was due since March 1998 was submitted on 6 June 2007 while the Second Periodic Report due in August 2012 was submitted in September 2012 and the Third Periodic Report due in May 2017 was submitted in August 2018.¹⁵⁰

Legal framework for prohibition of torture and cruel, inhuman or degrading treatment or punishment

The ratification of the UNCAT had created legal and political obligations on the Republic of Kenya to comply with and implement the provisions of the Convention at the domestic level.

The Kenyan Constitution of 2010 sought to provide a framework to prohibit torture and cruel, inhuman or degrading treatment or punishment. The 2010 Constitution, among others, provides for the fundamental rights of freedom from torture, right to life, respect for and protection of human dignity and freedom and security of the person. Article 25 provides for freedom from torture and cruel, inhuman, or degrading treatment or punishment while Article 28 guarantees of respect and protection of human dignity; and Article 29 provides for the freedom and security of the person. Clause (d) of the Article 29 states that the freedom and security of the person includes not to be “subjected to torture in any manner, whether physical or psychological,” while Clause (e) prohibits corporal punishment; and Clause (f) categorically prohibits a cruel, inhuman or degrading treatment or punishment.¹⁵¹

However, there was no law until enactment of the Prevention of Torture Act, 2017 to give effect to the non-derogable right of freedom from torture and cruel, inhuman or degrading treatment or punishment as provided under the Kenyan Constitution as well as State’s obligations outlined in the Convention.

The Prevention of Torture Act 2017 provides a platform to apply articles of the 2010 Constitution, including: Article 25 on freedom from torture and cruel, inhuman, or degrading treatment or punishment; Article 28 on respect and protection of human dignity; and Article 29 on freedom and security of the person.¹⁵²

‘Torture’ defined

The Prevention of Torture Act, 2017 provides a comprehensive definition of torture and other cruel, inhuman and cruel treatment and punishment in line with the Convention. Section 4 states: “For the purposes of this Act, “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for obtaining information or a confession from him or

her or any other person; punishing 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 intimidating or coercing him or her or any other person to do, or to refrain from doing, anything; or for any reason based on discrimination of any kind.

Similarly, Section 2 of the Prevention of Torture Act, 2017 provides: “cruel, inhuman and degrading treatment or punishment” includes a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a public officer or a person acting on behalf of a public officer against a person under their custody, causing suffering, gross humiliation or degradation to the person.”

Criminalizing and penalizing torture

Section 5 of the Prevention of Torture Act, 2017 criminalized torture. Sub-section (1) of the Section prescribes an imprisonment term not exceeding twenty five years on conviction for an offence of torture. Sub-section (2) of the provision provides for imprisonment for life on conviction for an offence of torture if the victim (of torture) dies as a result of torture referred to under subsection (1).

On conviction for an offence of ‘cruel, inhuman or degrading treatment or punishment’, Section 7 prescribes a fine not exceeding one million shillings or imprisonment for a term not exceeding fifteen years or both. Section 8 provides for the same quantum of punishment and fine on conviction of a person who “attempts, aids, abets, counsels, procures or conspires with another person” to commit an offence under this Act.

Information obtained through torture inadmissible as evidence and it is an offence to use such information

Sub-section (1) of Section 9 of the Prevention of Torture Act, 2017 renders any information, confession or admission obtained from a person by means of torture or cruel, inhuman or degrading treatment or punishment inadmissible evidence in any proceeding while Subsection (2) provides for “a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both” on conviction for an offence for knowingly using information which is obtained through torture or cruel, inhuman or degrading treatment or punishment. Subsection (3) provides that any information, confession or admission obtained by means of torture or cruel, inhuman or degrading treatment may be admitted as evidence only against a person accused of committing torture or cruel, inhuman or degrading treatment.

Freedom from torture made non-derogable

Section 6 of the Prevention of Torture Act, 2017 made the right to freedom from torture or cruel, inhuman or degrading treatment or punishment an absolute and non-derogable right. Sub-section (1) of the section provides that “No exceptional circumstances, including — (a) a state of war or a threat of war; (b) internal political instability; or (c) a public

emergency, may be invoked as justification of torture or cruel, inhuman or degrading treatment or punishment.” Sub-section (2) bars invoking of an order from a superior officer or a public authority as justification for torture or cruel, inhuman or degrading treatment or punishment while Sub-section (3) shields a subordinate officer from disciplinary action or criminal prosecution arising on account of refusing to obey an order from a superior officer or public authority to commit, aid or abet in the torture or cruel, inhuman or degrading treatment or punishment.

No immunity or amnesty

Section 10 of the Prevention of Torture Act, 2017 categorically provides that no immunity or amnesty shall be granted to a person accused of the offence of torture or cruel, inhuman or degrading treatment or punishment.

Kenya National Commission on Human Rights given the duty to investigate allegations of torture and other violations of the Act

The Prevention of Torture Act, 2017 confers upon the Kenya National Commission on Human Rights (KNCHR) the duty to investigate alleged violations of the provisions of the Act upon receipt of a complaint or on its own initiative and the power to monitor the compliance by the State with international treaty obligations relating to torture and cruel, inhuman and degrading treatment and punishment.

Section 12 of the Act has entrusted the KNCHR numerous functions and powers including investigation of alleged violations of the provisions of this Act upon receipt of a complaint or on its own initiative; promotion of the right to freedom from torture and cruel, inhuman and degrading treatment and punishment pursuant to the provisions of the Constitution and this Act; monitoring the compliance by the State with international treaty obligations relating to torture and cruel, inhuman and degrading treatment and punishment; advise the Government on matters relating to the prevention of torture and cruel, inhuman and degrading treatment and punishment by public and private agencies etc.

Section 25 requires the KNCHR to submit an annual report to National Assembly and such report shall include an overall assessment of Government’s performance with regard to prevention of torture and cruel, inhumane and degrading treatment during the period under review by the Commission.

Protection of vulnerable witness

The Prevention of Torture Act 2017 also provides for the protection of vulnerable witness thus giving a new impetus for victims and their families to report cases of torture and pursue justice.

Section 16 provides that in criminal proceedings involving the alleged commission of an act of torture or other cruel, inhuman or degrading treatment or punishment, a court may, based on factors such as age; intellectual, psychological or

physical impairment; trauma; cultural differences; the possibility of intimidation; race; religion; language etc declare a witness as vulnerable.

Sub-section (4) of Section 16 requires the court to direct that a vulnerable witness be protected by one or more of the following measures — “(a) allowing the witness to give evidence under the protective cover of a witness protection box; (b) directing that the witness shall give evidence through an intermediary; (c) directing that the proceedings may not take place in open court; (d) prohibiting the publication of the identity of the witness or of the family of the witness, including the publication of information that may lead to the identification of the witness or the family of the witness; or (e) any other measure which the court deems just and appropriate.”

Victim has enforceable right to obtain redress for an act of torture or other cruel, inhuman or degrading treatment or punishment

Section 17 of the Act provides for remedies to a victim of torture or other cruel, inhuman or degrading treatment or punishment to obtain redress from the state. Sub-section 1 state that a victim shall have an enforceable right to – “(a) adequate reparation, including restitution; (b) adequate compensation; and (c) rehabilitation.” Sub-section (2) recognizes the right of dependants of the victim to reparation in the event of the death of the victim as a result of an act of torture or other cruel, inhuman or degrading treatment or punishment while sub-section (3) provides that on conviction, the court may direct the convicted person to make restitution or compensate the victim for – (a) the costs of medical and psychological treatment; and (b) any other just relief.

Section 18 of the Prevention of Torture Act 2017 provides for a victim’s right to civil remedy for compensation. It states that notwithstanding any criminal proceedings instituted under this Act or any order made under section 17 as to restitution or compensation, a person may institute civil proceedings for compensation.

Medical treatment and counselling of victim

Section 19 provides that a court, before which any proceeding under this Act is pending, may at the request of a victim of torture or cruel, inhuman or degrading treatment or an intermediary, grant an order for the treatment or counselling of a victim of torture or cruel, inhuman or degrading treatment or punishment. The expenses so incurred for the treatment or professional counselling of a victim shall be charged on the Victim Protection Trust Fund established under section 27 of the Victim Protection Act, 2014.

Torture remains endemic in Kenya. During 2015-2016, Kenya National Commission for Human Rights reported 76 cases of torture and disappearance at the hands of Kenya Defence Forces (KDF).¹⁵³

The Prevention of Torture Act is a step in the right direction to combat torture in the country. ■

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Acknowledgement: This report is being published as a part of the ACHR's "Campaign Against Torture in India: Prevention, Accountability and Rehabilitation", a project funded by the European Commission under the European Instrument for Human Rights and Democracy – the European Union's programme that aims to promote and support human rights and democracy worldwide. The views expressed are of the Asian Centre for Human Rights, and not of the European Commission.

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