



# TORTURE UPDATE: INDIA



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India-UK 3rd Home Affairs Dialogue: India demanded extradition of fugitives (Photo: Courtesy MHA)

## I. The indispensability of ratification of the UNCAT for extradition of fugitives to India

The government of India has been seeking extradition of a number of financial fugitives who have taken shelter especially in the United Kingdom (UK). In the Third Home Affairs Dialogue between India and UK held in New Delhi on 30 May 2018, India raised the issue of extradition of financial fugitives including Vijay Mallya. While it made news headlines, there is little the UK government can do on sub-judice matters. Just the way the Government of India cannot interfere in sub-judice matters at national level, the UK government too cannot interfere in sub-judice matters.

The question is whether India is removing the key legal obstacle to facilitate early extradition.

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The answer is emphatic “no”. India has steadfastly refused to ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and therefore, failed to remove of the the key legal obstacles to extradition. 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) further states that “*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 UK like other member States of the European Union is bound by the European Convention on Human Rights and the UNCAT. This implies that even if the UK government agrees, extradition cannot take place without first exhausting the domestic procedures which ends with the adjudication by the Supreme Court. The judgments of the UK Supreme Court are subject to further review by the European Court of Human Rights. The financial fugitives have adequate financial resources to mount legal challenges at every step.

Past lessons are instructive for India.

India sought extradition of Kim Davy who is accused of dropping unauthorised arms, including hundreds of AK-47 rifles, anti-tank grenades, pistols, rocket launchers and thousands of rounds of ammunition, from an aircraft in Purulia district of West Bengal on 17 December 1995. In July 2011, the High Court of Denmark refused India’s extradition request of Kim Davy on the ground that there are allegations of torture and degrading treatment in Indian jails and further that India had not ratified the UNCAT. India down-graded its diplomatic relations as Denmark refused to file an appeal in the country’s

Supreme Court against the High Court decision. In December 2016, India sent a fresh extradition request on Kim Davy but India has not addressed the issues raised in the previous judgment of the Danish High Court.

Indeed, the UK courts held the same view as of the Danish High Court over half a decade later. With respect to extradition of Sanjiv Chawla, an alleged cricket bookie, District Judge Rebecca Crane of the UK ruled in favour of Chawla in October 2017 on inhuman and degrading treatment arising out of severe conditions in Delhi’s Tihar Jail. In her judgment, Judge Crane after hearing the expert evidence from Dr Alan Mitchell, a licensed medical practitioner and a former medical officer with the Scottish prison system, held that “*[There are] strong grounds for believing that the RP [Requested Person: Chawla] would be subjected to torture or inhuman or degrading treatment or punishment in the Tihar prison complex, due to the overcrowding, lack of medical provision, risk of being subjected to torture and violence either from other inmates or prison staff which is endemic in Tihar*”. Therefore, the judge ruled that Chawla’s extradition would constitute violation of Article 3 of the UNCAT prohibiting refoulement or extradition where there are substantial grounds for believing that he would be in danger of being subjected to torture. India’s appeal before the UK High Court is currently under adjudication.

With respect to extradition from the United Kingdom, India had so far succeeded only in the case of Samir Patel, an accused in a case related to the 2002 Gujarat riots as Patel himself did not oppose his extradition. As per reply dated 14 March 2018 to Unstarred Question No.3119 in the Lok Sabha, India had 16 extradition requests pending with the UK Government i.e. of Rajesh Kapoor & Seema Kapoor, Patrick Charles Bowring, Tiger Hanif @ Mohd. Hanif Umarji Patel, Palaniappan Rajaratinam, Pavilose Fernandez@Paul Samuel,

Lokendra Sharma, Sanjeev Kumar Chawla, Kartik Venugopal, Shaikh Sadiq, S. Balakrishnan, Vijay Mallya, Ritika Avasty, Rishikesh Surendra Kardile, Kavaljit Singh Mahendra Singh Raijada and Arti Dhir, Chandan Sharma and Raj Kumar Patel.

India has not improved its case with respect to extradition of these fugitives from the UK.

As latest as on 14 March 2018, Minister of State for Home Affairs Shri Hansraj Gangaram Ahir while replying to Unstarred Question No. 21351 in Rajya Sabha stated that the National Human Rights Commission (NHRC) registered a total of 1,674 cases of custodial deaths including 1,530 deaths in judicial custody and 144 deaths in police custody between 1 April 2017 and 28 February 2018. This implies 1,674 deaths in 334 days (11 months) i.e. over five deaths in custody daily.

*“Prisoners cannot be kept in jail like animals”* is what a shocked Supreme Court of India reportedly stated on 18 March 2018 after it was informed that many of the over 1,300 prisons across the country were overcrowded, even to the extent of more than 600 per cent. The SC was hearing a PIL. The Supreme Court vide orders dated 6 May 2016 and 3 October 2016 had directed the States and Union Territories (UTs) to prepare plan of action to deal with the issue of overcrowding in prisons and submit the same by 31 March 2017. Not a single State or UT had submitted any plan to address over-crowding.

India surely cannot deny the statements of the Ministry of Home Affairs in the Parliament or observations/orders of the Supreme Court.

India signed UNCAT in 1997 and assured the parliament on 3 May 2000 that it would ratify the UNCAT. It did precious little to ratify it. The Lok Sabha passed highly flawed the Prevention of Torture Bill (PTB), 2010 on 6 May 2010 but the Rajya Sabha preferred to refer the Bill to a Select

Committee which had proposed amendments to the Bill to make it more compliant with the UNCAT. However, the Bill drafted by the Rajya Sabha Select Committee was allowed to lapse by then UPA government. The Parliamentary Committee on Government Assurances of the ongoing 16<sup>th</sup> Lok Sabha in its 30<sup>th</sup> Report dated 16 March 2016 while reviewing the assurance of the Ministry of External Affairs dated 3 May 2000 to ratify the UNCAT recommended that the ratification *“be taken to its logical end by amending the relevant status”*. In September 2016, the Supreme Court issued notice to the Union of India on a Writ Petition filed by former Chairman of the Rajya Sabha Select Committee on the PTB, 2010 Dr. Ashwini Kumar seeking directions for a legal framework in terms of the UNCAT. Pursuant to the petition filed by Dr Kumar, the Central Government vide its letter dated 8 July 2017 asked the Law Commission to examine the issue of ratification of the UNCAT and submit a report on the matter. On 30 October 2017, the Law Commission submitted the Prevention of Torture Bill of 2017. The Supreme Court disposed off the petition of Dr Kumar on 27 November 2017 in view of the submission of the Attorney General that the report of the Law Commission is being seriously considered by the government.

The non-ratification of the UNCAT is seriously hurting India’s counter-terror and anti-corruption measures, not to mention about its absolute need at domestic level. Even neighbouring Bangladesh, Nepal and Sri Lanka ratified the UNCAT and enacted national laws against torture. Unless India ratifies the UNCAT, it cannot expect foreign governments to extradite fugitives by simply putting pressure on the executive on sub-judice matters.

On the International Day in Support of Victims of Torture 2018 on 26 June, India must commit to ratify the UNCAT and place the PTB of 2017 during coming monsoon session of the Parliament.

## II. Torture in India: Five custodial deaths daily during 2017-2018

Nothing exemplifies torture in India than the deaths in police and prison custody and despicable detention conditions which are totally incompatible with human dignity and amount to torture and other cruel, inhuman or degrading treatment or punishment.

On 14 March 2018, Minister of State for Home Affairs Shri Hansraj Gangaram Ahir while replying to Unstarred Question No. 2135 informed the Rajya Sabha that the NHRC registered a total of 1,674 cases of custodial deaths including 1,530 deaths in judicial custody and 144 deaths in police custody from 1 April 2017 to 28 February 2018. This implies 1,674 deaths in 334 days (11 months) i.e. over five deaths in custody everyday.

During this period (1 April 2017- 28 February 2018), the highest number of custodial deaths took place in Uttar Pradesh (374) followed by Maharashtra (137), West Bengal (132), Punjab (128), Madhya Pradesh (113), Bihar (109), Rajasthan (89), Tamil Nadu (76), Gujarat (61), Odisha (56), Jharkhand (55), Chhattisgarh (54), Haryana (48), Delhi (47), Assam (37), Andhra Pradesh (35), Uttarakhand and Telangana (17 each), Karnataka (15), Himachal Pradesh (8), Arunachal Pradesh and Tripura (6 each), Jammu & Kashmir and Meghalaya (4 each), Mizoram (3), Manipur, Chandigarh, Sikkim and Nagaland (2 each). The States and Union Territories where no custodial death took place are Goa, Dadra & Nagar Haveli, Andaman & Nicobar, Daman & Diu, Lakshadweep, and Puducherry.

This constitutes a significant increase in the number of custodial deaths. As per *Torture in India 2011* published by Asian Centre for Human Rights a total of 14,231 persons i.e. about four persons per day died in police and judicial custody in India from 2001 to 2010.

### A. Emblematic cases of torture of women

**Uttar Pradesh: NHRC and Allahabad High Court act on rape of minor girl and custodial death of her father in Unnao district**

On 10 April 2018, the National Human Rights Commission issued notices to the Chief Secretary and the Director General of Police, Uttar Pradesh calling for a detailed report in the case of alleged custodial death of Devender, father of a minor rape victim, who was in custody at a jail in Unnao on 9 April. The NHRC took suo motu cognizance based on media reports.

On 8 April, the 18-year-old rape victim attempted suicide along with her family members outside Chief Minister Yogi Adityanath's residence alleging that she was raped by BJP Member of Legislative Assembly Kuldeep Singh Sengar and his brother last year but the police failed to take any action.

In a statement released on 10 April, the Commission said, "*According to the media reports carried today on the 10th April, 2018 some miscreants forcefully entered into the house of the Devender and thrashed him brutally in front of his family members 3rd April, 2018. The family approached the Makhi police station to lodge an FIR against the younger brother of the BJP MLA and his aides. It was mentioned in their complaint that the brother of the MLA led the group and asked his accomplices to attack the family. The FIR has been reportedly lodged but it, allegedly, does not mention the name of the brother of the BJP MLA. On the other hand, the police booked Devender u/s 323, 504, 506 IPC and also added sections of the Arms Act against him. He was arrested and remanded to judicial custody for 14 days. The police, as mentioned in the news report, argued that the accused was a listed criminal. After medical examination of Devender he was sent to prison at 7.30 pm on 4th April, 2018. According to the media reports, on 8th April, 2018, in the evening, Devender complained of stomach ache and the next day he died in the hospital at around 3.30 am.*"<sup>1</sup>

The NHRC directed the Chief Secretary, Government of Uttar Pradesh to look into the matter personally and ensure that the aggrieved family is not subjected to further harassment and humiliation by the opponents who appear to be resourceful persons of the locality. He was also directed to monitor and expedite the magisterial inquiry which was underway.

On 11 April 2018, the Allahabad High Court took *suo-motu* cognizance of the incident of rape followed by the death of victim's father in Unnao district. The High Court rapped the government for not arresting the accused BJP legislator Kuldeep Singh Sengar even after the registration of an FIR. On 12 April, the police booked Mr. Sengar under Sections 363 (kidnapping), 366 (abducting and compelling a girl to marry), 376 (punishment for rape) and 506 (criminal intimidation) of the IPC as well as under the Protection of Children from Sexual Offences Act (POCSO). On the same day, the state government handed over the investigation to the Central Bureau of Investigation (CBI).<sup>2</sup> On 13 April, the CBI arrested BJP MLA Kuldeep Singh Sengar in the rape case.<sup>3</sup>

#### **Uttar Pradesh: NHRC issues notice on illegal detention and torture of minor girl<sup>4</sup>**

On 31 May 2018, the NHRC took *suo motu* cognizance of media reports that a 14-year-old girl was detained illegally and tortured at a police chowki and a police station in Noida for eight days. She was allegedly beaten, burnt with cigarettes and electrocuted there. Reportedly, the girl, a domestic help, was detained after her employer accused her of theft.

*“The Commission has observed that the contents of the media reports, if true, indicate cruelty of the police personnel for which they deserve exemplary punishment so that a message could be given that such inhuman acts by a public servant cannot be accepted at any cost.*

*The law does not empower the police personnel to humiliate and harm the innocent citizens”,* the NHRC said in a statement on 31 May.

The Commission issued a notice to the Director General of Police, Uttar Pradesh, calling for a detailed report in the matter within 4 weeks.

According to the media reports carried on 31 May, the family members of the victim girl stated that she was detained by the police on 14 May at Salarpur police Chowki, where she remained till 16 May. They were not allowed to meet her and she was released on 16 May. But the police again picked up the girl the next day and this time her 17-year-old brother was also taken into custody. Both of them were finally released in the night of 22 May following the intervention by an NGO, Bachpan Bachao Andolan and an order from the Child Welfare Committee (CWC).

On 23 May, the CWC ordered a medical examination of the girl. The medico legal case report revealed discoloured “brown-shaped circular discolorations” near her left and right wrists linking these to burnt marks. The report also mentioned abrasions on the right forearm near the elbow and three discoloured abrasions on both wrists. The report specifically clarified that all injuries were more than 10 days old, caused by hard and blunt object.

#### **Odisha: SHRC seeks report on custodial torture on two girls<sup>5</sup>**

On 14 May 2018, the Odisha Human Rights Commission (OHRC) directed the Director General of Police of Odisha and the Commissioner of Police of Bhubaneswar-Cuttack to inquire into the allegation of torture of two girls at Nayapally police station in Bhubaneswar. OHRC Acting Chairperson B.K. Mishra while hearing petitions filed by the victims and two other petitioners asked for the inquiry report to be submitted within a week.

The two girls appeared before the OHRC and filed a separate petition, in addition to the one filed by a NGO, alleging police brutalities on them. They alleged that inspector-in-charge of Nayapally police station tried to molest them. The inspector in-charge was thereafter shifted from Nayapally police station.

The police said the two sisters were arrested for allegedly assaulting two women constables when they went to inquire about a clash between two families over a property dispute on 6 May 2018.

#### **Uttar Pradesh: Death of Sarita due to alleged torture<sup>6</sup>**

On 14 May 2018, a 45-year-old woman identified as Sarita, an accused in a murder case, died at a government hospital in Delhi following alleged custodial torture at Tronica City police station in Ghaziabad, Uttar Pradesh. However, the police denied the allegations levelled by the family of Sarita, a resident of Nauraspur in Loni in Ghaziabad district.

According to a statement issued by the police, Sarita was arrested from her rented accommodation in Bantla on 13 May around 4 pm and sent for a medical examination at the community health centre at Loni one hour later. She was subsequently presented before a magistrate and sent to a 14-day judicial custody. Her health deteriorated at Dasna jail and rushed to MMG district hospital. From there she was referred to GTB Hospital in Delhi and then to GB Pant Hospital where she died early on 14 May.

However, the victim's 16-year-old daughter alleged that her mother was tortured by the police at the time of arrest.

*“The cops came in a private car and were accompanied by three locals. My grandmother called me up and informed me about the arrest. When I reached Tronica City police station around 5 pm, I saw her vomiting incessantly. I asked the cops there to take her to a doctor*

*but they ignored my request and said she was doing this to divert attention. When I insisted, cops later took her away with them, and I returned home,”* she told The Times of India on 15 May 2018.

#### **B. Other emblematic cases of torture**

##### **Kerala: Alleged torture of Anoop T<sup>7</sup>**

A 28-year-old man identified as Anoop T, an autorickshaw driver and a supporter of opposition Bharatiya Janata Party, who was arrested for allegedly throwing firecrackers into a policeman's bedroom, claimed that he was tortured in police custody after his arrest on 6 May 2018. Anoop T alleged that he was stripped and subjected to physical torture at the Atholi police station in Kozhikode in Kerala. Anoop T said he was wearing only a lungi and the police even did not allow him to dress properly at the time of arrest at around 9 am on 6 May. He was allegedly assaulted in the police jeep first and then stripped and assaulted in the lockup by Assistant Sub Inspector Raghu and others. The police, however, denied the allegations of torture.

Taking cognizance of the matter, the Kerala State Human Rights Commission (KSHRC) Acting Chairperson P Mohandas on 7 May 2018 ordered the suspension and strict action against the police officer who was responsible for alleged torture of Anoop T. In the order, the KSHRC directed the Kozhikode District Rural Police Chief to submit a report on the incident within three weeks.

##### **Uttar Pradesh: Death of Sunil Kushwaha due to alleged custodial torture<sup>8</sup>**

On 6 May 2018, Sunil Kushwaha (28), a scrap dealer and father of three died soon after he was discharged from hospital in Agra in Uttar Pradesh where he had been admitted due to alleged torture by police. He was detained by the police in a motorcycle theft case at Firozabad's Uttari police station. Soon

after his death, angry residents staged a protest and blocked a road in Firozabad demanding Rs 10 lakh compensation for Kushwaha's family and action against the policemen allegedly responsible for his death.

The police said no internal or external injury was found on the body and the autopsy report cited "shock and internal haemorrhage in the stomach due to liver cirrhosis and septicemia" as the causes of the death.

On 7 May, the government ordered an inquiry into his death after his family alleged his death in police custody.

#### **Tamil Nadu: SHRC issues notice in custodial death case of Sitrarasu**

On 3 May 2018, the Tamil Nadu State Human Rights Commission (SHRC) directed the Tamil Nadu Home Secretary to submit a detailed report within four weeks into the death of one Sitrarasu in the custody of the Chunambedu police station in Kancheepuram district in the early hours of 2 May. SHRC chairman Justice T Meenakumari also directed the Director General of Police of Tamil Nadu to order an investigation into the matter and submit a report within six weeks.<sup>9</sup> He was detained for allegedly assaulting his neighbour.

The police ridiculously claimed that Sitrarasu, 45-year-old junior assistant in the education department and a resident of Chunambedu, had hanged himself using his innerwear in a washroom in the police station.

But Sitrarasu's wife, Vennila, stated in a complaint that policemen in the station had beaten her husband to death and then staged a suicide. Vennila's uncle, Prashanth, said Sitrarasu had gone to the Police Station on his own accord to cooperate with the investigation on the evening of 1 May after he attacked his neighbour, Jagan.<sup>10</sup>

#### **Kerala: Custodial death of S R Sreejith**

The death of 26-year-old man identified as S R Sreejith due to custodial torture on 9 April 2018 triggered widespread protests in Kerala. SR Sreejith, a painter by profession and resident of Varapuzha in Ernakulam district, was arrested in a case of mistaken identity for the attack on the house in Varappuzha 56-year-old K M Vasudevan who hanged himself on 6 April. A special squad took Sreejith, father of a two-year-old, and nine others into custody and charged them with abetment of suicide and rioting. S R Sreejith was mistaken for accused Thulasidas alias Sreejith.<sup>11</sup>

Around 4 am on 8 April 2018, Sreejith was brought to the emergency department of Aster Medcity Hospital in Kochi on referral from Ernakulam Medical College in a critical condition. On arrival, he complained of abdominal pain, vomiting and inability to pass urine.<sup>12</sup>

After coming to know about the case, Kerala State Human Rights Commission (KSHRC) Acting Chairman P Mohandas visited Sreejith in the hospital on 9 April afternoon and found that no police personnel was present at the hospital though Sreejith was under police custody at that time. The KSHRC ordered a probe into the death. Sreejith's wife told Mr Mohandas that her husband was tortured by police and when they met him at the police station on 7 April morning he had complained of stomach ache and despite request to take him to hospital, he was denied medical aid and even water.

The police even failed to follow the basic procedures required while taking a person into custody as laid down by the Supreme Court. KSHRC Acting Chairperson P Mohandas told the media, "*Police officers have neither recorded the arrest of Sreejith nor issued the arrest memo. Besides, the relatives of the person*

*taken into custody were not informed. The preliminary inquiry suggested the police failed to produce the person before a Magistrate.*<sup>13</sup>

On 12 April 2018, KSHRC Acting Chairperson P Mohandas who conducted the inquiry proceedings found that Sreejith sustained injuries in police custody. *“It is evident from the medical certificate issued by the medical officer of the Government Hospital, North Paravur, that Sreejith had not been injured or tortured when he was produced for medical examination after the police took him into custody on Friday. However, Sreejith was later admitted at Aster Medcity in a serious condition. He had been in police custody during the time and the cops had brought him to the hospital. Hence, it is clear Sreejith sustained the injuries while in police custody. The SIT should identify the police officers who assaulted him,”* the KSHRC said in statement on 12 April. The KSHRC also said Sreejith was not involved in the house attack of Vasudevan, who later committed suicide.<sup>14</sup>

While the police have all along denied any torture, the post-mortem report established brutal torture upon Sreejith, including blunt trauma and 18 injuries. The post-mortem report established that the injuries on Sreejith’s body had been inflicted two days before his death, indicating that he was tortured in custody as he had been picked up by the police on the night of April 6. The post-mortem revealed that Sreejith died of septicaemia after most of his small intestine was ruptured and the food he had eaten had spilled into other organs.<sup>15</sup>

The state government of Kerala set up a Special Investigation Team headed by Inspector General of Police, Crime Branch. But the KSHRC chief expressed dissatisfaction over the ongoing investigation and demanded that the investigation be handed over to the CBI.

Though Chief Minister Pinarayi Vijayan assured that *“the government will take strict action against*

*those found guilty”*<sup>16</sup> in the custodial death of Sreejith, he however accused P. Mohandas of *“overstepping his mandate and making politically motivated statements”* by demanding a CBI inquiry into the custodial death of Sreejith.<sup>17</sup>

The deceased’s wife Akhila filed a petition in the Kerala High Court seeking CBI probe into Sreejith’s custodial death. But on 5 June 2018, the state government opposed the demand in the court. The state government told the court that as many as 11 police officers, including former Ernakulam rural police chief A V George, were suspended and was proceeded against departmentally in connection with the custodial death of Sreejith of Varappuzha. Nine police officers have been arraigned in the case and three are still in judicial custody.<sup>19</sup>

On 2 May, the Kerala government decided to give compensation of Rs 10 lakh and a government job to the wife of Sreejith.<sup>20</sup> On 5 May, Chief Minister Pinarayi Vijayan said the custodial death of Sreejith was a shame to the entire state.<sup>21</sup>

On 6 June, Speaker of the Kerala Assembly rejected a notice for an adjournment motion over lapses in the police investigation on the ground that the matter is sub-judice.<sup>22</sup>

## C. Judiciary’s action against torture

### Gujarat: IPS officer convicted of torture<sup>23</sup>

On 2 May 2018, a magisterial court of Bhuj in Gujarat sentenced Indian Police Service officer Manoj Ninama to one year imprisonment after it found him guilty in a 17-year-old custodial torture case. Additional judicial magistrate V D Modh convicted Ninama under Section 323 (voluntary causing hurt) of the Indian Penal Code. Court also ordered Ninama to pay Rs 10,000 compensation to the complainant.

A complaint was filed against the IPS officer when he was Deputy Superintendent of Police in Bhuj and he is presently serving with the Intelligence Bureau in Ahmedabad.

According to the case details, Mohmmad Ismail Sama registered a private complaint in 2001 in Bhuj court against Ninama. As per the complaint, one Chaman Gaur and Pratapsinh had issued public notice in a newspaper to sell their land and had invited objections. In reply, Sama issued notice raising objections, saying that he was the rightful owner of the land.

After raising the objection, Sama was called to Bhuj city police station, where Ninama asked him to withdraw it. However, when Sama refused, he was charged under the Section 385 of IPC (putting person in fear of injury in order to commit extortion) and was tortured in police custody. The next day Sama lodged a complaint in Bhuj court that he was tortured in custody. Court ordered medical check up, which found physical injuries on the victim. The chargesheet was framed against Ninama in 2014 after which the trial commenced.

**Assam: Gauhati High Court directs State Govt to pay Rs 3 lakh each to families of 16 persons who died in judicial custody during 2012-2016**

On 4 June 2018, the Gauhati High Court directed the Assam government to pay compensation of Rs 3 lakh each to the next of kin of all the prisoners who died unnatural deaths while in jail since 2012 within 30 days.<sup>24</sup> The state government of Assam informed the High Court that there were 16 unnatural deaths between 2012 and 2016 in different jails across the state. Out of these, the state government paid compensation only to the next of kin of two prisoners as per the direction of the Assam Human Rights Commission as well as the High Court and in remaining 14 cases, no compensation has been paid yet.<sup>25</sup>

The order of the Gauhati High Court flowed from earlier order dated 15 September 2017 from the Supreme Court asking the Chief Justices of all 24 High Courts to suo motu register petitions to identify the kin of prisoners who died unnatural deaths from 2012 and order the States to award them compensation. The payment from the year 2012 was chosen because National Crimes Records Bureau (NCRB) under Ministry of Home Affairs has records of unnatural deaths from that year.<sup>26</sup>

The Supreme Court has been hearing a PIL relating to inhuman conditions prevailing in 1,382 prisons across the country. The SC took cognizance of a letter addressed to it in 2013 by its former Chief Justice R.C. Lahoti on the deplorable conditions of 1,382 prisons across the country and turned the letter into a PIL.

**Kerala: Lower court orders payment of Rs 2 lakh to lawyer, a victim of custodial torture<sup>27</sup>**

The Subordinate Judge in Ernakulam in Kerala ordered three police personnel to pay a compensation of over Rs 2 lakh to a lawyer in a case of alleged illegal detention and custodial torture in 2010.

The lawyer, Vimal K Charles submitted that he was brutally tortured at the police station in Kadavanthra in Kochi for having intervened in a case in which a person was manhandled by three others in front of his house on 3 April 2010. He had also alleged that he was illegally detained for about four hours and the policemen did not even inform his parents about his detention.

When the media reported the incident, the Sub Inspector and the head constable fabricated the official records and the general diary to protect themselves. The constable was suspended from service and departmental action was taken against him.

Additional Subordinate Judge Vishnu K also ordered the three police personnel to jointly pay the petitioner Rs 2 lakhs, with interest at the rate of six per cent per annum, from the date of filing of the suit till the amount was realised.

#### **Assam: Superintendent of Police of Goalpara district convicted of torture<sup>28</sup>**

On 21 June 2018, Kamrup Additional District and Sessions judge, Dipak Changkakati sentenced current Superintendent of Police of Goalpara district, Amitava Sinha to two years imprisonment for subjecting one Gurmeet Singh, a murder accused, to physical torture in 2013, when he was serving as the Additional SP with Guwahati Crime Branch. He was found guilty under Section 330 of IPC (Voluntarily causing hurt to extort confession, or to compel restoration of property). The court also imposed him a fine of Rs 50,000, in default of which he shall have to undergo imprisonment for another three months.

In 2013, Gurmeet Singh, a truck driver from Jammu and Kashmir, was arrested in connection with a murder case registered at Basistha police station case in Assam (Case No. 771/12 u/s 302/120 B IPC r/w section 25 (1A)/26 Arms Act). He was arrested by the J&K Police and handed over to Assam Police team headed by then Additional SP Amitava Sinha.

Thereafter, Inderpaul Kaur, the wife of Gurmeet Singh, had approached the NHRC alleging that her husband Gurmeet Singh was picked up by Assam Police headed by then Assistant Superintendent of Police (ASP) Amitabh Sinha on 14 June 2013 and that her husband was “illegally detained and tortured by the police” (NHRC Case No 243/3/9/2013). However, the NHRC dismissed her case after the Assam Police submitted that the accused was wanted in a murder case and the NHRC held that *“The allegations levelled by the complainant could not be substantiated”*.

In 2014, Sinha also filed a petition before Gauhati High Court for quashing the proceedings against him on the ground that the allegations against him were false and concocted by Gurmeet. Gurmeet alleged that Sinha had subjected him to third degree torture on 17 and 18 June 2013, during police custody, which included torture with a hockey stick that left him with a fractured upper arm and injecting petrol into his body through the rectum.

In June 2015, the Gauhati High Court dismissed Sinha’s petition and ordered him to appear before the trial court.

#### **D. ACHR’s action against torture**

##### **West Bengal: Rape of minor girl by police officer, NHRC issues notice to State Government over compensation**

In its latest proceedings held on 15 May 2018, the NHRC directed the State Government of West Bengal through its Chief Secretary to show cause as to why it should not recommend compensation to a minor girl, who was raped by a police officer at a police barrack in Cooch Behar district in September 2017.

Assistant Sub-Inspector of Police (ASI) Haridas Roy at the Dinhatata barrack in Cooch Behar district of West Bengal had raped 9-year-old girl on 6 September 2017. The victim, a Class IV student, was sexually assaulted when she went to deliver breakfast to the accused police officer in his room. Following the rape, the accused threatened the victim with dire consequences if she revealed the incident to anyone. Initially, the victim kept silent but later when her mother, who runs a small eatery in the area, asked her to deliver the food again to the accused, she disclosed the incident.

The NHRC had intervened into the matter pursuant to a complaint filed by ACHR on 20 September

2017. In a report dated 19 January 2018, the Director General & Inspector General of Police, West Bengal informed the NHRC that a case was registered against ASI Haridas Roy at Dinhata police station vide Case No.886/17 dated 16.09.2017 u/s 376(2) (a)(ii) IPC r/w sec. 6 of POCSO Act. The report further stated that after completion of investigation, charge sheet was filed in the court vide Dinhata PS C.S. No. 1035/17 dated 25.12.2017 u/s 376 (2) (a) (ii) IPC r/w sec. 6 of POCSO Act.

However, NHRC found that the report did not mention about the administrative action taken by the West Bengal Police Directorate against accused ASI Haridas Roy, an employee under the West Bengal Police Directorate, Kolkata. Accordingly, the NHRC directed the Director General of Police, West Bengal to submit the administrative action taken as per service rules in respect of its employee ASI Haridas Roy within four weeks and issued notice as to why compensation not be paid to the victim.

#### **Custodial death of Pintu Chakma: NHRC issues notice to Arunachal Government on payment of compensation**

In the first-ever Camp Sitting in the State of Arunachal Pradesh held at Itanagar on 25 May 2018, the NHRC directed to pay compensation of Rs 200,000 to the next of kin of the custodial death victim, Pintu Chakma.

Pintu Chakma (26 years), s/o Golok Basi Chakma of Dumpani village under Diyun Circle in Changlang district of Arunachal Pradesh, was arrested along with four others by police from Dumpathar village in connection with Case FIR No. 18/2004 u/s 27(1) of the Narcotic Drugs and Psychotropic Substances Act registered at Diyun police station on 30 April 2014. The four other accused were released on bail within few days, but Pintu Chakma was denied bail. He remained in police custody for seven days at the

lock-up of Diyun police station. On 06 May 2014, he was sent to judicial custody but still lodged at the lock-up of the police station until his death under mysterious circumstances on 16 October 2014.

On 17 October 2014, ACHR filed a complaint with the NHRC stating that Pintu Chakma died in custody due to torture and denial of proper medical treatment. ACHR also informed the NHRC that despite his failing health the deceased was not shifted to jail but kept in prolong detention in sub-human conditions at the police lock-up.

The NHRC registered the complaint (157/2/4/2014-AD) and issued the direction to the State Government of Arunachal Pradesh to submit detail reports.

The Superintendent of Police, Changlang submitted information about the custodial death of Pintu Chakma along with other documents including enquiry report, inquest report, post mortem report, Forensic Science Laboratory report etc. A medical expert on the panel of NHRC also examined the clinical and other records of the deceased. However, definite cause of the death could not be determined.

The NHRC, however, observed *“The State is responsible to take care of the person in custody. The death of the deceased due to poison might be due to carelessness and lackadaisical attitude of the authorities. Thus, there was lapses/negligence on the part of Jail Administration to provide security and protection along with proper treatment to the prisoner in their custody. Due to this reason, human rights of the deceased prisoner has been violated and the State is vicariously liable to pay compensation to the NOK of the deceased UTP Pintu Chakma.”*

#### **E. Prison conditions in India**

It is with respect to extradition of Sanjiv Chawla, an alleged cricket bookie that District Judge Rebecca Crane of the UK held, *“[There are] strong*

*grounds for believing that the RP [Requested Person: Chawla] would be subjected to torture or inhuman or degrading treatment or punishment in the Bihar prison complex, due to the overcrowding, lack of medical provision, risk of being subjected to torture and violence either from other inmates or prison staff which is endemic in Bihar,”* and therefore his extradition would constitute violation of common Article 3 of the European Convention on Human Rights and UNCAT prohibiting refoulement or extradition.

Tihar, in the heart of Capital Delhi, is considered one of the best prisons in India.

*“Prisoners cannot be kept in jail like animals”*, a shocked Supreme Court said on 18 March 2018 while hearing Writ Petition (Civil) No. 406/2013 which arose from a letter dated 13 June 2013 addressed by former Chief Justice of India R.C. Lahoti to the Chief Justice of India relating to inhuman conditions prevailing in 1382 prisons in India.

On 5 February 2016, a Supreme Court bench comprising Justices Madan Lokur and R.K.Agrawal while hearing Writ Petition (Civil) No. 406/2013 stated that *“Prison reforms have been the subject matter of discussion and decisions rendered by this Court from time to time over the last 35 years. Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform”*.

The SC bench stated that as far back as in 1980, the SC had made it clear that prisoners are persons and are entitled to fundamental rights while in custody in *Sunil Batra (II) v. Delhi Administration*. Later, in *Rama Murthy v. State of Karnataka*, the SC identified as many as nine issues facing prisons and needing reforms. They are: over-crowding; (ii) Delay in trial; (iii) Torture and ill-treatment; (iv) Neglect of health and hygiene; (v) Insufficient

food and inadequate clothing; (vi) Prison vices; (vii) Deficiency in communication; (viii) Streamlining of jail visits; and (ix) Management of open air prisons. Justice R.C. Lahoti in his letter highlighted four issues: (i) Overcrowding of prisons; (ii) Unnatural death of prisoners; (iii) Gross inadequacy of staff, and (iv) Available staff being untrained or inadequately trained. The letter was turned into a Public Interest Litigation (PIL) by an order dated 5 July 2013 and notice was issued to all the appropriate authorities. *“However, a closer scrutiny of the responses received indicates that by and large the steps taken are facile and lack adequate sincerity in implementation”*, the SC bench stated in the order dated 5th February 2016.

In the said order dated 5 February 2016, the SC stated that *“prisoners, like all human beings, deserve to be treated with dignity”* and directed that the Under Trial Review Committee in every district should meet every quarter; the Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason; the Member Secretary of the State Legal Services Authority of every State will ensure competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent; and the Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016.

The apex court through orders dated 6 May 2016, and 3 October 2016 directed preparation of a plan of action by the States and UTs to deal with the issue of overcrowding in prisons and submit the same by 31 March 2017. However, not even one State or UT submitted its plan of action to the Supreme Court as of 30 March 2018.<sup>29</sup>

There indeed has been little improvement of the prison conditions. Shri Hansraj Gangaram Ahir, Minister of State for Home Affairs, Government of India informed the Lok Sabha on 8 August 2017 that as per the National Crime Records Bureau (NCRB) under Ministry of Home Affairs, out of 1,401 jails in the country, 149 jails have an overcrowding rate of more than 200% as on 31 December 2015. In the case of Sub Jail Sathyamangalam in Tamil Nadu the overcrowding rate was staggering 1,250% as 200 prisoners were kept in space sufficient for only 16 people. In another case, 35 prisoners were kept in space meant for 3 at Roha sub jail in Maharashtra resulting in 1,166.7% overcrowding.<sup>30</sup>

It is not surprising that on 15 September 2017, the Supreme Court had directed the Chief Justices of all 24 High Courts to *suo motu* register petitions to identify the kin of prisoners who died unnatural deaths from 2012 and order the States to award them compensation.<sup>31</sup>

During the hearing on 30 March 2018, the SC was informed that many of the prisons in the country were overcrowded, even to the extent of more than 600 per cent. The court lambasted the state governments and UTs for “complete lack of commitment” after no state or UT submitted a plan of action to deal with the issue of overcrowding in prisons. A bench of Justices M B Lokur and Deepak Gupta gave two weeks time to comply with the orders dated 6 May 2016 and 3 October 2016. The SC further threatened that it would issue notice of contempt against the Director General of Police (Prisons) of the State Governments/UTs for the failure to submit the same.<sup>32</sup>

As per the report of National Legal Services Authority (NALSA) to the Supreme Court, the combined sanctioned strength of prisons staff in all the prisons in the country is 77,230, out of which there are 24,588 vacancies as on 31 December 2017

which meant that over 30% posts are vacant. The apex court after perusing the status report of the NALSA directed the DGPs (Prisons) to specify “clearly and unequivocally” the steps taken to fill up the vacancies and progress made in two weeks.<sup>33</sup>

In its order dated 13 May 2018, the Supreme Court expressly stated that overcrowding in prisons is a violation of human rights and asked all the 24 High Courts to consider the issue “*independently with the assistance of the State Legal Services Authority/High Court Legal Services Committee so that there is some sanity in the overcrowding in prisons since it involves violation of human rights*”.<sup>34</sup>

### III. UN Action Against Torture

#### A. UN Committee Against Torture: Tajikistan

On 18 May 2018, the UN Committee against Torture (UNCAT) concluded its sixty-third session during which the Committee adopted concluding observations and recommendations on Belarus, Czech Republic, Norway, Qatar, Senegal and Tajikistan on the implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

After considering the third periodic report of Tajikistan (CAT/C/TJK/3) on 4 and 7 May 2018, the Committee Against Torture expressed concerns at allegations that torture and ill-treatment continue to be routinely practiced by law enforcement officials and at the data provided by Tajikistan indicating that while 89 complaints of torture had been received by the Office of the Procurator General since the Committee’s previous review in 2012, only four individuals were criminally convicted of torture under article 143(1) of the Criminal Code, and that none of the sentences received by these individuals exceeded three and a half years’ imprisonment.

The Committee also expressed deep concerns over cases of alleged torture that have not resulted in criminal prosecutions, including the death in police custody of Umar Bobojonov and the alleged torture of Djovijon Khakimov while being held in incommunicado detention at the Ministry of Internal Affairs Department on organized crime in January 2017. The Committee said the efforts of existing mechanisms have not led to satisfactory results in these and other cases.

The Committee expressed concerns that the Criminal Code continues to provide for inappropriately low penalties for torture; that as a result of these low sanctions, the Criminal Procedure Code allows officials to terminate investigations into torture allegations “on the basis of repentance, conciliation with the victim, [or] change of circumstances”.

The Committee was concerned at reports of several instances of death in custody, including suicides and the deaths that occurred due to high incidence of tuberculosis and HIV/AIDS among prisoners. The Committee also remained concerned about the outcomes of the investigation into the deaths of three persons: Kurbon Mannonov, Nozimdshon Tashirpov and Ismonboy Boboev.

Further, the Committee expressed deep concerns at allegations it has received that despite the fact that the State party’s legislation indicates that confessions obtained by torture are to be declared inadmissible as evidence of guilt, the courts do not implement this legislation in practice.

The Committee reiterated its earlier recommendation (CAT/C/TJK/CO/2, para. 9) that the State party should act urgently to combat a culture of impunity for torture and ill treatment, including by ensuring that high-level government officials publicly and unambiguously affirm that torture

will not be tolerated and that prosecutions will be initiated against anyone committing acts of torture or complicit or acquiescent in torture, including those with command responsibility.

The Committee further urged the State party, among others, to (1) undertake a review of court cases in which defendants alleged that a confession presented as evidence of their guilt was obtained through torture or other ill-treatment; (2) establish a separate investigative mechanism or unit that is capable of carrying out effective criminal investigations and prosecutions of allegations of torture and ill-treatment committed by public officials; (3) promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment, prosecute those who are found to be responsible and report publicly on the outcome of such prosecutions; (4) investigate promptly, thoroughly and impartially all incidents of death in custody, ensure independent forensic examinations; provide autopsy reports to the family members of the deceased and prosecute those responsible for violations of the Convention resulting in such deaths and, if they are convicted, punish them accordingly and provide compensation and redress to relatives of victims; (5) the State party should also take measures to ensure that officials are not permitted by the Code of Criminal Procedure to terminate investigations into the crime of torture because the perpetrator has repented or reconciled with the victim; and (6) the State party should enable the Commissioner for Human Rights (Ombudsman) to access all places of detention and to make his reports publicly available on a regular basis, including through a website, and the independence and efficiency of the Ombudsman’s office should be strengthened by ensuring adequate financial and staffing resources to enable it to carry out its mandate effectively and independently, in compliance with the Paris Principles.

## **B. UN Subcommittee on the Prevention of Torture urges Belize to establish national preventive body**

The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”) established under the Optional Protocol to the UNCAT (OPCAT) is the new mechanism with the preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment. The SPT started its work in February 2007.

During the visit to Belize on 22- 28 April 2018, the SPT delegation visited the central prison, various police stations throughout the country, as well as a juvenile institution, where members of the delegation freely interviewed staff as well as people deprived of their liberty. The SPT delegation also met with members of civil society and held meetings with government ministers, the Chief Justice, and the Ombudsman.

In a statement released on 4 May 2018, the SPT said Belize must establish an independent national preventive mechanism to avert and deter torture and ill-treatment of people deprived of their liberty.

*“Belize should strive to establish a national preventive body as soon as possible, ensuring that it is functionally independent, adequately resourced and mandated to carry out unannounced visits to places where people are deprived of liberty,”* stated Sir Malcolm Evans, who headed the SPT delegation. *“When the national preventive mechanism is established, it will help the authorities improve the conditions of detention and ensure an effective policy for preventing torture and ill-treatment in the country,”* he further added.

A National Preventive Mechanism is an independent national body with power to regularly examine the treatment of persons deprived of their liberty in places of detention, and to subsequently make

recommendations to the authorities. States parties to the Optional Protocol to the UNCAT (OPCAT) which Belize acceded to in 2015, must establish such a mechanism within a year of ratification. Belize has not yet done so.

The SPT will submit a confidential report to the Government of Belize containing its observations and recommendations and will encourage the government to make the report public.

The SPT Delegation was composed of the following members: Sir Malcolm Evans, Head of Delegation (United Kingdom of Great Britain and Northern Ireland), Mr. Arman Danielyan (Armenia), Ms. June Lopez (Philippines), Ms. Aisha Shujune Muhammad (Maldives) and Mr. Victor Zaharia (Republic of Moldova).

## **C. UN Special Rapporteur on Torture concludes visit to Argentina**

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nils Melzer, and his team visited Argentina from 9-20 April 2018 to assess the prevailing situation and challenges in the country concerning the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The delegation visited the City of Buenos Aires as well as the provinces of Buenos Aires, Córdoba and Formosa. The delegation enjoyed “unrestricted freedom of movement and access to all places where people are deprived of their liberty and were able to meet with and interview male, female and juvenile inmates in private, in full compliance with the terms of reference of my mandate”.

Following the visit, the UNSR presented preliminary observations and recommendations some of which are briefly described below:

The UNSR on Torture reiterated the concerns

expressed by the Committee against Torture regarding the lack of conformity of the definition of torture as provided under Article 144 of the Criminal Code with the provisions of Article 1 of the UNCAT. The UNSR urged the authorities to take the necessary measures to ensure the comprehensive criminalisation of torture in full compliance with Argentina's obligations under UNCAT.

The UNSR said that Argentina was one of the first States to ratify the OPCAT in 2004 but it took until 2012 for the National Preventive Mechanism (NPM) to be established at the federal level, its members were designated only in December 2017, and the funds allocated to it still have not been fully made available. Moreover, of the 24 local mechanisms which are to assume the NPM's function at the level of the provinces and the capital city, only five have been established so far, and there seems to be no realistic prospect of the remaining ones to become operational in the near future.

Therefore, the UNSR noted with serious concern that 14 years after the ratification of the OPCAT, the NPM required by that treaty still does not exist in practice for the vast majority of persons deprived of their liberty throughout Argentina.

The UNSR's report noted that *"Institutional violence by security forces and prison officials seems to be widespread, and impunity rampant. The forensic expert who accompanied my visit conducted a number of medical examinations of inmates, some of which confirmed physical injuries consistent with the testimonies received"*.

The UNSR received numerous consistent allegations of police violence during peaceful demonstrations against forced evictions during his meetings with members of indigenous communities and inhabitants of marginalized neighbourhoods or temporary housings in the provinces of Formosa

and Cordoba and the city of Buenos Aires.

In some detention facilities, the UNSR heard consistent accounts of physical and psychological abuse being inflicted on detainees as a means of punishment for misbehaviour or even as a reprisal for having complained about their conditions of detention. Most notably, numerous detainees in Cruz del Eje provincial prison reported having been severely beaten while being shackled to metal beds for several days, or having been held in stress positions in isolation cells for prolonged periods of time. Similarly, in Bouverie prison, detainees reported to have been shackled or handcuffed by their feet and/or hands for periods between several hours and three days. Many of the alleged victims of torture and ill-treatment told the UNSR that the complaints they filed were rarely investigated.

The UNSR reported that in many provincial police stations and penitentiaries, detention conditions *"are totally incompatible with human dignity and may amount to torture and other cruel, inhuman or degrading treatment or punishment"*. Apart from overcrowding and unhygienic conditions, many inmates complained about insufficient quantity and poor quality food, particularly in police custody, where the meals provided were clearly insufficient to maintain an adequate level of nutrition.

The UNSR made a number of recommendations to the Argentinean authorities to take all necessary measures to combat torture in the country.

#### **D. Other UN rapporteurs' action against torture**

**UN human rights experts urge Spain to halt extraditions to China fearing risk of torture or death penalty<sup>35</sup>**

On 18 May 2018, UN human rights experts criticised Spain's decision to extradite Chinese individuals to the People's Republic of China where

they face fraud charges and may be exposed to the risk of torture, other ill-treatment, or the death penalty. In December 2016, Spanish authorities arrested 269 Chinese individuals, including 219 from Taiwan, province of China, over their alleged involvement in telecom scams to defraud Chinese citizens. Two individuals were extradited to China on 17 May 2018, and the experts fear that others will be deported soon.

The UN experts urged Spain to halt the process of deporting these individuals, and to immediately review the extradition decision with a view to ensuring the full respect of its international human rights obligations including under the ICCPR and the UNCAT.

#### **Bahrain: UN rights experts condemn military court convictions, cite torture allegations<sup>36</sup>**

On 30 April 2018, several UN human rights experts in a joint statement condemned the death sentences awarded by a military court in Bahrain to four men and demanded their retrial on the ground that they were denied fair trial and confessions were obtained under torture.

The men, Mohamed AbdulHasan AlMutaghawi, Fadhel Sayed Radhi, Sayed Alawi Husain and Mubarak Adel Mubarak Mahanna, were sentenced to death by the Bahraini High Military Court on 25 December 2017 on charges of participating in a terrorist cell and attempting to assassinate Bahrain's Defence Forces Commander-in-Chief. Two others facing the same charges were sentenced in absentia. All of them in addition had their citizenship revoked. Their appeals were rejected by the Bahraini Military Court of Cassation on 25 April 2018.

Prior to their conviction, the men were allegedly held in solitary confinement in small cells for a prolonged period and subjected to torture and ill-treatment to obtain confessions which were then

used against them in court. They did not have access to legal representation until late in the trial proceedings and the court reportedly refused to investigate the defendants' allegations of torture in custody.

Later the King of Bahrain commuted the death sentences to life imprisonment which the UN experts welcomed but they demanded a retrial and thorough investigations into allegations of enforced disappearance and torture with a view to holding those responsible to account and preventing future similar occurrences. The UN experts called on the King of Bahrain to reverse the amendment.

#### **IV. Lessons for India from neighbourhood: Sri Lanka's anti-torture law**

Article 11 of the Constitution of Sri Lanka specifically prohibits torture by stating that "no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This prohibition is made absolute by Article 15, which prohibits any limitation on Article 11 under any circumstance, even for reasons of national security and public order.

To give effect to the country's obligations under the UNCAT, due to its dualist legal system, the Government enacted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act). The Act criminalized torture.

Under Section 2 of the CAT Act, acts of torture, as well as participation, complicity, aiding and abetting, incitement and attempt to torture are criminal offences punishable with 7-10 years in prison and a fine of 10,000-50,000 rupees. However, while the Act is generally in conformity with the definition of torture in the Convention, it does not include "suffering" but only "severe pain, whether physical or mental".

The prohibition of torture under the CAT Act is absolute. Section 3 of the CAT Act states that “*For the avoidance of doubts it is hereby declared that the fact that any act constituting an offence under this Act was committed (a) at a time when there was a state of war, threat of war, internal political instability or any public emergency; (b) on an order of a superior officer or a public authority, shall not be a defence to such offence.*”

Under the CAT Act, the High Court of Sri Lanka has jurisdiction over acts of torture committed outside Sri Lanka if the perpetrator is within Sri Lankan Territory, irrespective of his or her nationality or the nationality of the victim.

However, torture continued to be a “common practice” in Sri Lanka and lack of proper investigations into allegations of torture and ill-treatment as found out by the UN Special Rapporteur on torture Mr Juan E.

Méndez during his visit to Sri Lanka from 29 April to 7 May 2016 and the Committee against Torture which considered the fifth periodic report of Sri Lanka and adopted the concluding observations on 30 November 2016.

The Committee against Torture in its concluding observations on the fifth periodic report of Sri Lanka (CAT/C/LKA/5), adopted on 30 November

2016, expressed serious concerns about consistent reports from national and United Nations sources, including the Special Rapporteur on torture, indicating that torture is a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department of the police, regardless of the nature of the suspected offence and the broad police powers to arrest suspects without a court warrant

has led to the practice of detaining persons while conducting the investigations as a means to obtain information under duress. Police investigators often fail to register detainees during the initial hours of deprivation of liberty or to bring them before a magistrate within the time limit prescribed by law, during which time torture is particularly likely to occur. Neither the Attorney General nor the judiciary exert sufficient supervision over the legality of the detention or the conduct of police investigations

to prevent this practice.

In his report (A/HRC/34/54/Add.2), the Special Rapporteur on torture stated, “*While the practice of torture is less prevalent today than during the conflict and the methods used are at times less severe, the Special Rapporteur concludes that a “culture of torture” persists; physical and mental coercion is used against suspects being interviewed, by both the Criminal Investigations Department in regular criminal investigations and by*

### **If Sri Lanka can, India too can!**

*No other country in the world has witnessed the assassination of its national political leaders and foreign leaders as Sri Lanka. The Liberation Tigers of Tamil Eelam (LTTE) had assassinated former Prime Minister of India, Rajiv Gandhi on 21 May 1991, President of Sri Lanka Ranasinghe Premadasa on 1 May 1993, Member of Parliament Dr Neelan Tiruchelvam on 29 July 1999 and Foreign Minister Lakshman Kadirgamar on 12 August 2005 while it made attempts to assassinate then sitting President Chandrika Bandaranaike Kumaratunga in a suicide attack on 18 December 1999 and then Minister and current President of Sri Lanka, Maithripala Sirisena on 9 October 2008. These did not stop Sri Lanka from enacting the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994.*

*the Terrorism Investigation Division in investigations under the Prevention of Terrorism Act.*” During his visit, the Special Rapporteur conducted numerous interviews with both male and female torture survivors, including former and current detainees, from various periods during and after the conflict, as well as recent cases (2015-2016). The forensic expert accompanying the Special Rapporteur conducted medical examinations in a number of these cases, which confirmed physical injuries consistent with the testimonies received.

The Special Rapporteur also stated *“suspects, particularly detainees under the Prevention of Terrorism Act, are often first detained for interrogation without being registered during the initial hours, days or sometimes weeks of investigation and not brought before a judge. This practice facilitates the use of torture and other ill-treatment and can in itself constitute such treatment”*.<sup>37</sup> The Special Rapporteur interviewed current and former suspects detained under the Prevention of Terrorism Act and received well-documented accounts of extremely brutal methods of torture, including burns; beatings with sticks or wires on the soles of the feet (falanga); stress positions, including suspension for hours while handcuffed; asphyxiation using plastic bags drenched in kerosene and hanging of the person upside down; application of chili powder to the face and eyes; and sexual torture, including rape and sexual molestation, and mutilation of the genital area and rubbing of chili paste or onions on the genital area. In some cases, these practices occurred over a period of days or even weeks, starting upon arrest and continuing throughout the investigation.

The UN Committee against Torture also found that *“under the Protection against Terrorism Act, confessions obtained by officials at or above the rank of Assistant Superintendent of Police are still admissible as sole evidence in court, even if they were taken without the presence of a lawyer and are later retracted by the*

*accused on the grounds of coercion.”* The Committee remained seriously concerned at information that 90 per cent of convictions are based on a confession alone or as the main evidence and that, in numerous documented cases of torture, the accused persons alleged that they were forced to sign blank sheets of paper or self-incriminatory statements written in a language they did not understand.

The Committee against Torture expressed concern at credible reports indicating that the practice of so-called “white van” abductions of Tamils and then subjecting them to brutal torture, often including sexual violence and rape of men and women which has continued in the years following the end of the armed conflict. Such practices were carried out by both military and police in unacknowledged places of detention, which have included law enforcement headquarters, army and internally displaced person camps and “rehabilitation centres”. The Special Rapporteur also said he received credible reports of “white van abductions” as recent as April 2016 by officers in plain clothes believed to belong to the Criminal Investigations Department or the Terrorism Investigation Division.

Further, the Committee against Torture expressed deep concerns about the lack of proper investigations into allegations of torture and ill-treatment. The Committee expressed concerns that only 17 cases of torture were filed under the Convention against Torture Act since 2012 and only 2 have resulted in convictions, suggesting that only a small number of allegations of torture have actually been investigated. The considerable discrepancy between the low number of complaints of torture reportedly received by the police since 2012 (150 cases) and the high number of allegations of torture received by the Human Rights Commission of Sri Lanka during the same period (2,259 cases) was noted. Obviously, Sri Lanka is yet to root out torture but legal framework remains in place.

The Special Rapporteur was also extremely alarmed that “investigations into allegations of torture and ill-treatment are not investigated”. He discerned a worrying lack of will within the Office of the Attorney-General and the judiciary to investigate and prosecute allegations.

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