



# Torture in India Update



A Publication of Asian Centre of Human Rights

October 2019

## 1. NCRB exposes torture and impunity in India

The National Crime Records Bureau (NCRB) released its latest annual crime data, 'Crime in India-2017' and it exposes torture and other human rights violations in India.

### Deaths in police custody

According to the latest annual crime data, 'Crime in India-2017', released by the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs, a total of 100 cases of deaths in police custody were reported across India in 2017. Andhra Pradesh reported the highest number of deaths in police custody with 27 cases; followed by Maharashtra (15); Gujarat (10); Tamil Nadu (8); Madhya Pradesh and Telangana (5 each); Manipur, Punjab and Uttar Pradesh (4 each); Chhattisgarh, Rajasthan and West Bengal (3 each); Haryana, Odisha and Mizoram (2 each); and Himachal Pradesh, Nagaland and Uttarakhand (1 each). No cases were reported from the remaining States/UTs.

Out of the 100 deaths in police custody in 2017, magisterial enquiries were conducted only in 38 cases, while judicial enquiries were ordered only in 13 cases. Andhra Pradesh which reported the highest 27 cases of deaths in police custody ordered magisterial enquiries only in 6 cases and no judicial enquiry was held in any of the cases. Maharashtra with 15 cases of deaths in police custody ordered 1 magisterial enquiry and 3 judicial enquiries. Gujarat which reported 10 cases of deaths in police custody ordered 4 magisterial enquiries and 4 judicial enquiries. Tamil Nadu which witnessed 8 deaths in police custody ordered 7 magisterial enquiries and 1 judicial enquiry. Madhya Pradesh which reported 5 deaths in police custody ordered 4 magisterial enquiries and no judicial inquiry. Telangana which also reported 5 deaths in police custody ordered 2 magisterial enquiries. Manipur with 4 cases conducted no enquiries at all. Punjab with 4 cases ordered 2 magisterial enquiries and 2 judicial enquiries. Uttar Pradesh with 4 cases ordered 4 magisterial enquiries. Rajasthan with 3 cases ordered 3 magisterial enquiries. Chhattisgarh with 3 deaths in police custody ordered 2 magisterial enquiries and 1 judicial enquiry. No enquiry was ordered by West Bengal in 3 cases it reported. Haryana also conducted no enquiries against 2 deaths it reported in police custody. Mizoram as well ordered no enquiries in two cases its reported. Odisha which reported

2 deaths in police custody ordered 2 magisterial enquiries and 1 judicial enquiry.

The figures of the NCRB on custodial deaths have to be taken with a pinch of salt. As per data of the National Human Rights Commission (NHRC) placed before the Lok Sabha in response to Unstarred Question No.218 answered on 11 December 2018, 146 cases of death in police custody were registered during 2017-2018. The top five States which reported the highest number of deaths in police custody were Maharashtra with 19 cases; followed by Gujarat with 14 cases; Assam and Tamil Nadu with 11 cases each; Punjab and Uttar Pradesh with 10 cases each; and Bihar, Haryana, Madhya Pradesh and Delhi with 5 cases each.

### Deaths in police operations

During 2017, a total of 786 civilians were killed during police operations across the country, as per the data provided by the NCRB in its Annual Report. Of these, 22 were killed in police firing, 12 in police lathi charge, 26 accidentally in police operations/encounters, among others. Jammu & Kashmir topped in civilian killings in police firing with 8 deaths, followed by West Bengal with 6 such deaths. While Haryana witnessed the highest number of 8 deaths resulting from police lathi charge.

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Similarly, a total of 3,990 persons were injured during police operations across the country during 2017. Of these, 45 were injured in police firing, 447 were injured in police lathi charge, 29 were injured accidentally in police operations/encounters, among others. Highest number of injuries in police firing was reported from Karnataka (24). With respect to injuries in police lathi charge, Maharashtra (230) topped the list followed by Haryana (79), Jammu & Kashmir (49), West Bengal (48) and Gujarat (16).

### Impunity to the police for human rights violations

According to the NCRB report, 56 cases were registered against police personnel for human rights violation across the country during 2017. Of the 56 cases, 6 relating to encounter killings, 7 relating deaths in custody, 17 cases relating torture/causing hurt/injury, 6 relating to extortion and 20 other cases. However, only 48 police personnel were charge-sheeted, of which only three police personnel were eventually convicted for torture/causing hurt/injury.

This is despite the fact that police were routinely involved in various crimes. As per the NCRB report, a total of 2005 criminal cases were registered against police personnel in the country during 2017. Maharashtra topped the States with 456 criminal cases against its police personnel; followed by Gujarat with 191 cases; Rajasthan with 169 cases; Andhra Pradesh with 164 cases; Puducherry with 199 cases; Tamil Nadu with 116 cases; Kerala and Punjab with 114 cases each; Uttar Pradesh with 106 cases; Telangana with 87 cases; and Madhya Pradesh with 50 cases. In these cases, 1,000 police personnel were charge-sheeted, while trials were completed against 735 police personnel and only 128 police personnel were eventually convicted.

## 2. Focus: The case for enactment of State specific anti-torture laws

Torture is endemic in India and has been a part of law enforcement and administration of justice. During 2017-2018, about five custodial deaths per day took place in India.

The prohibition of torture under international law is absolute and under no circumstances whatsoever can it be justified. As the Law Commission of India in its Report No.273 of October 2017 stated the prohibition of torture has “attained the status of ‘jus cogens’ or peremptory norm of general international law, also giving rise to the obligation ‘erga omnes’ (owed to and by all States) to take action against those who torture”.<sup>1</sup>

India has legally accepted a number of international treaty obligations which prohibit torture including the International Covenant on Civil and Political Rights (ICCPR) and the Geneva Conventions and its Additional Protocol II but it has failed to enact a national law to criminalise torture and further ratify the United Nations Convention against Torture and

other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT).

There has been many attempts to make India ratify UNCAT and enact a national law against torture.

### Dr Ashwini Kumar case

Dr Ashwini Kumar, former Law Minister of India and former Chairman of the Rajya Sabha Select Committee on the Prevention of Torture Bill, 2010 filed a petition<sup>2</sup> (hereinafter referred to Dr Ashwini Kumar case) before the Supreme Court requesting “appropriate directions to fill the gaps in the law by enacting a standalone anti-custodial legislation as recommended by the different organs of State and necessary for the advancement of fundamental human rights. Indeed, ....the only politico-moral idea of our time that has received universal acceptance is the idea of human rights.” The said petition was disposed off after the Attorney General for India assured the Court on 27 November 2017 that “the prayer made in the writ petition has been the subject matter of discussion in the Law Commission, the Law Commission has already made certain recommendations and the report is being seriously considered by the Government.”

As no action was taken on the assurance given on 27 November 2017, Dr Ashwini Kumar filed a Miscellaneous Application to his 2016 petition.

In its judgment dated 5th September 2019<sup>3</sup>, the Supreme Court rejected the Miscellaneous Application of Dr Ashwini Kumar, inter alia, on the grounds that torture is not an “exceptional case where there is a vacuum and non-existing position that the judiciary, in exercise of its constitutional power, steps in and provides a solution till the legislature comes forward to perform its role”. The apex court cited the D K Basu Guidelines and Sections 330 and 331 of the Indian Penal Code (IPC) and further stated that “when the matter (enactment of an anti-torture law) is already pending consideration and is being examined for the purpose of legislation” as “it would not be appropriate for this Court to enforce its opinion, be it in the form of a direction or even a request, for it would clearly undermine and conflict with the role assigned to the judiciary under the Constitution”.

The dismissal of Dr. Ashwini Kumar petition is a case of missed opportunity because of the following.

Firstly, the petition was dismissed on incorrect premise that prayer is to enact a suitable standalone comprehensive legislation based on the UN Convention against Torture. The Supreme Court while dismissing the petition stated, “We have no hesitation in observing that notwithstanding the aforesaid directions in D.K. Basu (supra) and the principles of law laid down in Prithipal Singh and Others v. State of Punjab and Another and S. Nambi Narayanan (supra), this Court can, in an appropriate matter and on the basis of pleadings and factual matrix before it, issue appropriate guidelines/directions

to elucidate, add and improve upon the directions issued in D.K. Basu (supra) and other cases when conditions stated in paragraph 27 supra are satisfied. However, this is not what is urged and prayed by the applicant. The contention of the applicant is that this Court must direct the legislature, that is, Parliament, to enact a suitable standalone comprehensive legislation based on the UN Convention and this direction, if issued, would be in consonance with the Constitution of India. This prayer must be rejected in light of the aforesaid discussion.”

Dr Ashwini Kumar however had not prayed ‘to enact a suitable standalone comprehensive legislation based on the UN Convention’ and he only prayed for a stand-alone law. In the introductory para of its judgment in the Dr Ashwini Kumar case, the Supreme Court produced the prayer made in the I.A. 2560 of 2018 in writ petition 728 of 2016 which read as “it is therefore respectfully prayed that since no action has been taken by the Government pursuant to the statement of the Hon’ble Attorney General, the stand taken by the National Human Rights Commission and the Law Commission of India in its report of October 2017 and because the merit of the prayer is virtually admitted and conceded before this Hon’ble Court, the National Human Rights Commission, the Law Commission of India and by Select Committee of Parliament, as an integral constituent of the right to life with dignity under Article 21, this Hon’ble Court may be pleased to direct the Central Government to enact a suitable stand-alone, comprehensive legislation against custodial torture as it has directed in the case of mob violence/lynching vide its judgment 17th July 2018.”

Secondly, the Supreme Court dismissed the petition on the ground that it does not fall under “exceptional cases where there is a vacuum and non-existing position that the judiciary” could step in given the existence of D K Basu Guidelines and Sections 330 and 331 of the Indian Penal Code. The said observation is questionable.

The Supreme Court Guidelines in D.K. Basu case does not criminalise torture as it only recommends measures which are intended to prevent torture. As the Supreme Court itself has stated “failure to comply with the requirements shall apart from rendering the concerned official liable for departmental action, also render his liable to be punished for contempt of court”. The offences under the Contempt of Court are highly inadequate to deal with torture often leading to deaths and therefore, contempt of courts cannot be equated with the punishment necessary for cases of torture.

Further, Sections 330 and 331 of the IPC do not particularly criminalize torture but it penalizes only “hurt”, one of the elements of torture. The Prevention of Torture Bill, 2010 as drafted by the Rajya Sabha Select Committee and the Prevention of Torture Bill, 2017 as drafted by the Law Commission of India show that Sections 330 and 331 of the IPC do not address the legal vacuum pertaining to the crime

of torture, and other cruel, inhuman and degrading treatment or punishment. Section 330 and 331 of the IPC does not address (i) torture not leading to injuries such as sleep deprivation, submersion of the head in water or water polluted with excrement, urine, vomit or blood; food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten; (ii) severe mental pain, agony, trauma or suffering caused to any person by cruel, inhuman and degrading treatment is said to inflict torture; (iii) command responsibility; (iv) inhumane or degrading treatment including inflicting shame upon the victim or any one by such act as stripping the person naked, parading him in public places, shaving the victims head or putting marks on his body against his will; (v) sexual offences etc; (vi) the use of psychoactive drugs to change the perception, memory, alertness or will of a person including the administration of drugs to induce confession or reduce mental competency and the use of drugs to induce extreme pain or symptoms of a disease; (vii) burden of proof etc.

Indeed, Sections 330 and 331 of the IPC have always existed and yet the Government of India felt the need to draft Prevention of Torture Bill, 2010 by itself and further Prevention of Torture Bill, 2010 by the Rajya Sabha and the PTB, 2017 by the Law Commission of India which are nothing but acknowledgement of the inadequacy of these provisions – a fact blatantly ignored by the Supreme Court.

The inadequacy of existing national laws including Sections 330 and 331 of the IPC is the admitted position of the Government of India and therefore, it passed the Prevention of Torture Bill, 2010 in the Lok Sabha. This admitted position of the Government of India and substantiated by the Law commission of India, NHRC and the Rajya Sabha Select Committee has been undermined and/or grossly ignored by the Supreme Court.

Thirdly, the Supreme Court in its judgment dated 5 September 2019 in Dr Ashwini Kumar case<sup>4</sup> appears to have failed to fully appreciate its ruling on enactment of special law relating to mob lynching in *Tehseen S. Poonawalla v. Union of India and others*<sup>5</sup> even though there are direct and adequate penal provisions in India to criminalise mob lynching.

In the case of *Tehseen S. Poonawalla v. Union of India and Others*,<sup>6</sup> the Supreme Court in its judgment dated 17 July 2018 looked at mob lynching as a sweeping phenomenon with a far-reaching impact and recognized its Constitutional duty to take a call to protect lives and human rights<sup>7</sup> observing thereby that: “There cannot be a right higher than the right to live with dignity and further to be treated with humanness that the law provides”.

The Supreme Court issued a slew of directions for preventive, remedial and punitive action in the form of Guidelines for the purposes of preventing such heinous activities. The Court went a step further and recommended



“to the legislature, that is, the Parliament, to create a separate offence for lynching and provide adequate punishment for the same” “as a special law in this field would instill a sense of fear for law amongst the people who involve themselves in such kinds of activities”. The critical question remains whether in the case of mob lynching it met the test of “exceptional cases where there is a vacuum and non-existing position that the judiciary, in exercise of its constitutional power, steps in and provides a solution till the legislature comes forward to perform its role.”

As the Supreme Court in its directions under “B. Remedial Measures” stated “(vi) To set a stern example in cases of mob violence and lynching, upon conviction of the accused person(s), the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.” Therefore, it is clear that there are enough provisions in the Indian Penal Code to deal with offences of mob-lynching yet the Supreme Court found it necessary to issue directions to enact a special law.

Indeed, in the prominent mob-lynching cases such as murder of Pehlu Khan after being beaten by cow vigilantes in Alwar in Rajasthan for transporting cattle on 1 April 2017, the accused were arrested and chargesheeted under sections 147, 323, 341, 302, 308, 379 and 427 of the IPC.<sup>8</sup> The Jharkhand Police invoked provisions of the Indian Penal Code such as Sections 302 with respect to the murder of Muslim man, Tabrez Ansari on 17 June 2019 in Jharkhand after he was allegedly caught for trying to steal a motorcycle, tied to a pole and assaulted by a mob with sticks and iron rods who forced him to chant ‘Jai Shri Ram’ and ‘Jai Hanuman’.<sup>9</sup>

Finally, while dismissing the Dr. Ashwini Kumar petition, the Supreme Court had not adjudicated on its previous directions issued in the petition. The premise for filing M.A. NO.2560/2018 in W.P.(C) NO.738/2016 was to seek implementation of the assurance given by the Attorney General for India on 27 November 2017 that “the prayer made in the writ petition has been the subject matter of discussion in the Law Commission and the Law Commission has already made certain recommendations. He would further submit the report is being seriously considered by the Government.”

During the hearing on 22.01.2019, the Supreme Court noted that as per the affidavit filed by the Joint Secretary, Ministry of Home Affairs, Government of India wherein it has, inter alia, been stated that to implement the ‘United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment’, the Prevention of Torture Bill, 2017 was referred to all the States for their inputs and comments on 28th February, 2018, followed by reminders on 27th June, 2018, 27th November, 2018 and 20th December, 2018. Only, Himachal Pradesh, Jharkhand, Meghalaya, Sikkim, Tripura, Uttarakhand, Andaman and Nicobar Islands, and Chandigarh submitted their replies.

The Supreme Court further directed “the Chief Secretaries of the remaining States/Union Territories to send their comments/inputs on the Prevention of Torture Bill, 2017 within three weeks from today i.e. on or before 11th February, 2019 and thereafter, the Union of India will file a status report with regard to further steps that would be taken and the time frame within which the same will be completed.” It also directed the Chief Secretary/ies of the State(s)/Union Territory(ies) to be personally present before the Court on 13th February, 2019 in the event there is any failure to comply with the directions contained in the present order.

Pursuant to the directions of the Supreme Court, the Union of India in an affidavit dated 12 February 2019 informed that “all States and Union Territories have filed their inputs/suggestions and that the question of enacting a legislation is under consideration.”

The Supreme Court had not adjudicated on the replies and merely stated that “it would not be appropriate for this Court to enforce its opinion, be it in the form of a direction or even a request” “when the matter is already pending consideration and is being examined for the purpose of legislation”. By the same logic, the Supreme Court should not have issued the directions to submit the replies in the first place.

It was within the power of the Supreme Court to act on its own directions to direct the government of India to decide as per the replies from the States/UTs on the issue.

#### **The case for State specific laws:**

The dismissal of the petition of Dr Ashwini Kumar will embolden the Government of India to further delay and it is unlikely that the Government of India will enact an anti-torture law or ratify the UNCAT in the near future.

The dismissal of Dr. Ashwini Kumar petition is a case of missed opportunity. In the case of Tehseen S. Poonawalla v. Union of India and Others,<sup>10</sup> the Supreme Court in its judgment dated 17 July 2018 looked at mob lynching as a sweeping phenomenon with a far-reaching impact and recognized its Constitutional duty to take a call to protect lives and human rights<sup>11</sup> and recommended “to the legislature, that is, the Parliament, to create a separate offence for lynching and provide adequate punishment for the same as a special law in this field would instill a sense of fear for law amongst the people who involve themselves in such kinds of activities”.

Following the directions of the Supreme Court, Union of India has not enacted any law against mob lynching but three State governments have so far enacted State specific laws to deal with mob lynching i.e. the Manipur Anti-Mob Violence Act of 2018, West Bengal (Prevention of Lynching) Act of 2019 and the Rajasthan Protection from Lynching Act of 2019.

Custodial violence is more serious as it is the public servants who are legally bound to protect the law and ensure respect for human rights commit the offence of torture while exercising the sovereign powers of the State.

Since law and order is a State subject and the ‘Criminal Laws’ and the ‘Criminal Procedure’ fall in the Concurrent List of the Seventh Schedule to the Constitution of India, it is time that the State governments enact State specific anti-torture laws to criminalise torture just the way the State specific laws against mob lynching have been enacted.

### 3. Special focus: Custodial torture in Tripura

As per the latest report of the National Crime Records Bureau (NCRB), four cases of complaints were registered against police for custodial violence in Tripura during 2017. Of these, two police personnel were arrested and chargesheeted in court.<sup>12</sup>

#### 3.1 Torture in police custody

According to the National Human Rights Commission (NHRC), 6 deaths in police custody were reported during 2009-2010 to 2018-19 (as on 20.11.2018) in Tripura. These included nil in 2009-10; 1 in 2010-11; nil in 2011-12; 1 in 2012-13; 1 in 2013-14; nil in 2014-15; 2 in 2015-16, nil in 2016-17; 1 in 2017-18; and nil in 2018-19 (as on 20.11.2018).<sup>13</sup>

Though custodial torture is not rampant in Tripura, it continues to be reported in the State.



Mangal Das  
Tripura Custodial death

On 31 October 2019, Mangal Das (19 years) died due to alleged torture in police custody at Radhakishorepur police station in Gomati district of Tripura. The deceased Mangal Das, son of Arati Das, hailing from Amarnagar village of Matabari sub-division in the district, was arrested by police on the charges of theft on 23 October 2019. Police claimed Mangal Das was taken to hospital for routine medical checkup, where he complained of an illness, and died during treatment. However, Mangal Das’ mother Arati Das alleged that her son was tortured by police in custody, leading to his death. She also alleged that police did not hand over the body to them and forcefully cremated the body without conducting post-mortem examination.<sup>14</sup>

The court has to intervene due to lack of action against police personnel accused of torture. For example, on 19 January 2019, the Tripura High Court directed the police to file an FIR against four police personnel accused of custodial torture of Pritam Debbarma (23 years) at Baijolbari police station in Khowai district on 23 December 2018. Pritam Debbarma, son of Nirad Debbarma, committed suicide at his home unable to bear the physical torture and humiliation at the hands of the police personnel upon his release. Pritam Debbarma was arrested along with some of his friends from his house for alleged consumption of drugs. He was brutally beaten up in custody by four police

personnel identified as Officer-in-Charge Sukanta Debbarma, Sub Inspector Subir Debbarma, Head Constable Shyamal Debbarma, and constable Nilkamal Debbarma for about five hours from 4 pm to 9 pm. He was released following the torture in injured condition. Pritam’s uncle Sudhir Debbarma alleged that he had tried to lodge an FIR against the police officials, but nothing was done in this regard. As a result, Sudhir Debbarma had to approach the Tripura High Court for action against the accused police officials.<sup>15</sup>

The law enforcement personnel were also accused of using excessive force in dispersing crowd.

On 8 January 2019, at least seven persons were injured in police firing and lathi-charge during the protest against the Citizenship Amendment Bill (CAB) in Khumulwng in West Tripura district. The protest was organised by the Twipra Students’ Federation (TSF), a constituent of the North East Students’ Organization (NESO). According to NESO, an ambulance carrying the injured protesters was stopped by Tripura State Rifles (TSR) personnel, who damaged the vehicle and beat up the injured.<sup>16</sup>

#### 3.2 Torture and deaths in judicial custody

According to the Directorate of Prisons, Tripura, there are 13 jails, including 1 central jail, 2 district jails and 10 sub-jails in the State.<sup>17</sup>

As per NHRC data, a total of 38 prisoners died in jails of Tripura during 2008-2009 to 2017-18. This included 6 deaths in 2008-2009; 2 in 2009-10; 1 in 2010-11; 2 in 2011-12; 5 in 2012-13; 5 in 2013-14; 4 in 2014-15; 3 in 2015-16; 5 in 2016-17, and 5 in 2017-18.<sup>18</sup> According to the latest (2017) report of the NCRB, no case of death in judicial custody was reported from the State during 2017.<sup>19</sup> This is contrast with the NHRC data, which registered five cases of death in judicial custody during 2017-2018.

On 11 September 2019, undertrial Bahuram Reang died at Kendriya Sansodhanagar, Bishalgarh (central jail) in Sepahijala district. On 24 September, the National Human Rights Commission (NHRC) took cognizance of the matter and directed various authorities namely District Magistrate, Sepahijala; Superintendent of Police, Sepahijala and Superintendent, Kendriya Sansodhanagar, Bishalgarh to submit the various reports including magisterial enquiry, post mortem, etc in connectin with the custodial death.<sup>20</sup>

On 22 August 2019, undertrial Baishyanath Reang (35 years) died under mysterious circumstances at Sub-jail Dharmanagar in North Tripura district. According to police, the undertrial, who was arrested for having links with drug peddling on 4 May 2019, was found unconscious inside the jail. He was declared brought dead in a hospital.<sup>21</sup>

On 25 June 2019, undertrial prisoner Madan Nama died at Kendriya Sansodhanagar, Bishalgarh. On 2 July 2019, the NHRC taking cognizance of the matter directed its Director General (Investigation) to collect the requisite report from the



concerned authority, examine it and submit report within six weeks.<sup>22</sup>

On 3 April 2019, Ayub Ali, a Bangladeshi national, died at Sonamura Sub-jail in Sepahijala district. This case is also currently being investigated by the NHRC.<sup>23</sup>

On 3 October 2018, Gopal Malakar, son of Sunil Malakar, died at Sub-jail Belonia in South Tripura district. In this case, the NHRC issued conditional summons to the state officials for personal appearance for failure to submit requisite reports despite reminders.<sup>24</sup>

On 29 September 2018, Anil Debbarma, son of Radha Kumar Debbarma, died at Kendriya Sansodhanagar, Bishalgarh. The case is pending with NHRC for final adjudication.<sup>25</sup>

On 23 September 2018, Anil Debbarma, son of Radha Kumar Debbarma, died at Kendriya Sansodhanagar, Bishalgarh. In this case, the State authorities failed to submit all the requisite reports despite repeated letters and reminders. Vide proceedings dated 20 September 2019, the NHRC issued conditional summons to the District Magistrate and Collector, Sepahijala District and Superintendent of Police, Sepahijala District and Superintendent, Kendriya Sansodhanagar, Tripura Bishalgarh to appear in person on 31 October 2019 to produce the requisite reports.<sup>26</sup>

On 22 September 2018, Baishnath Reang alias Biswanath died at Sub-jail Dharmangar in North Tripura district. On 6 September, the NHRC taking cognizance of the matter asked its Deputy Inspector General (Investigation) to collect facts and submit a report for the consideration by the NHRC.<sup>27</sup>

On 31 March 2018, Bijan Nath, son of Jamini Mohan Nath, died at Kendriya Sansodhanagar, Bishalgarh in Sepahijala district. In this case too, the State authorities failed to submit all the requisite reports despite repeated letters and reminders. Vide proceedings dated 20 September 2019, the NHRC issued conditional summons to the District Magistrate and Collector, Sepahijala District and Superintendent of Police, Sepahijala District and Superintendent, Kendriya Sansodhanagar, Tripura Bishalgarh to appear in person on 31 October 2019 to produce the requisite reports.<sup>28</sup>

On 17 January 2018, Dipak Ranjan, Son of Dharendra Chandra Deb, died at Kendriya Sansodhanagar, Bishalgarh in Sepahijala district. The NHRC after receiving an intimation from the Superintendent, Kendriya Sansodhanagar, Bishalgarh, vide previous proceedings dated 28.02.2019 directed the Director General of Investigation of the NHRC to collect facts and submit a report. A report dated 28.09.2019 was submitted by the Investigation Division in which it was stated that despite repeated letters and reminders, the opinion of Medical Board on final cause of death of the deceased based on FSL Report and complete treatment records of the deceased from the day of admission

in jail till death have not been received from the concerned authorities. Therefore, the NHRC on 15 October 2019 summoned the Collector and District Magistrate, Sepahijala, to appear in person on 25.11.2019 to produce the requisite reports.<sup>29</sup>

### 3.3. Emblematic cases of custodial violence and award of compensation by NHRC

The curbing of custodial violence has been a major objective of the National Human Rights Commission ever since it was established. It has been awarding compensation to victims/relatives in numerous cases. The NHRC has awarded compensation in the following emblematic cases of custodial violence reported from Tripura.

#### Case 1: Torture of Shankar Dev

In this case (NHRC Case No. 40/23/4/2014-AD), Shankar Dev (46 years) died in police custody at Arundati Nagar police station in West Tripura district on 11 June 2014. He was picked up a day earlier and tortured in custody. He succumbed to his injuries sustained due to the torture upon his release on bail next day (11 June). The NHRC took cognizance of the case pursuant to a complaint by ACHR and called for various reports. Initially, the Investigation Division of the NHRC suggested for closure of the case on the basis of the statement of an independent witness namely Paritosh Chakraborty who was arrested by the police along with the deceased to the effect that the Shankar Dev fell down in the courtyard after reaching his house and sustained head injuries to which he succumbed.

However, the NHRC after careful consideration of various reports held that the so-called statement of the independent witness was an 'after thought' by the police. As per the inquest report, there was one reddish spot at the middle of the chest. While the post-mortem report noted the following injuries which are all ante mortem in nature:

- i) Bruise measuring 6 cm x 5 cm is present on the right parietal region of the scalp just above the parietal eminence and 7 cm right to midline.
- ii) Abraded-bruise measuring 4 cm x 3 cm is present on the centre of the chest, 4 cm above the xiphoid process. On dissection, extravasation of blood is present in the layers of muscle extending from 2nd to 7th ribs over an area of 11 cm x 7 cm on left side of chest.
- iii) Bruise measuring 6 cm x 4 cm is present on the back of left arm, 8 cm above the elbow joint.
- iv) Bruise measuring 1.5 cm x 1 cm is present on the back of left arm, 3.5 cm above the elbow joint.
- v) Multiple abrasions are present over the back of left elbow joint in an area of 3 cm x 2 cm. Total number of abrasions is three, sizes are 0.5 cm x 0.2 cm, 0.6 cm x 0.3 cm and 2 cm x 1 cm.
- vi) Abrasion measuring 1.5 cm x 0.5 cm is present on the outer aspect of right forearm, 1.3 cm above the wrist joint.

The NHRC observed that various injuries mentioned in the postmortem examination report sustained by the deceased said to have been caused one day prior to the postmortem which correspondences with the arrest of the complainant and letting off from the custody of the police. From the records, it is confirmed that at the time of his arrest the deceased had no injuries on his body.

Stating that the next of kin of the deceased are entitled to compensation, the NHRC observed “Going by the records like Inquest and postmortem report coupled with the statement of the wife of the deceased that the complainant had been tortured in the Police Station which had led to the death of the deceased and the stand taken by the police by examining the independent witness appears to be after thought and more so the said statement is not in any way supports fully to the question of police.”

Vide its proceedings dated 14 February 2019, the NHRC recommended to the Government of Tripura to pay an amount of Rs. 500,000 to next of kin of the deceased, Shankar Dev. In response to the recommendation, Additional Secretary, Government of Tripura vide e-mail dated 18 July 2019 forwarded the compliance report and proof of payment of the compensation to Rina Deb, wife of deceased. Accordingly, the case was closed.

#### **Case 2: Killing of Ismile Miah in disproportionate firing by BSF personnel**

This case (NHRC Case No. 19/23/4/2015-PF) is related to the killing of Ismile Miah and injuries to over 12 others due to disproportionate firing by a personnel of Border Security Force (BSF) at Ramnagar village in West Tripura district on 7 June 2014. Pursuant to the directions of the NHRC, the Director-General of Police, Tripura in his report stated that on 6 June 2014 some villagers were passing their time in the open air near the Naka point when Constable Sandeep Kumar suddenly came and started arguing with the villagers. One of the villagers identified as Kanu Miah protested against the behaviour of the BSF personnel. In response, the BSF personnel beat Kanu Miah and left. When an alarm was raised in this regard many villagers instantly gathered at the spot. During the said time constable Sandeep Kumar immediately advance from Naka Point towards the villagers and began firing indiscriminately from his service weapon without any caution to the villagers. As a result, Ismile Miah died on the spot and more than 12 civilians received injuries. A staff of enquiry by the BSF established

that a total of 37 rounds were fired by constable Sandeep. Thereafter, a large number of people also assembled there and seeing the scenario the BSF constable committed suicide using his service rifle.

The State government sanctioned an amount of Rs. 1,20,000 for cost of medicine in connection with treatment of the injured persons and an amount of Rs. 15,000 was paid to the wife of deceased. However, the NHRC noted that compensation of Rs. 15,000 was highly inadequate and directed the Government of Tripura to pay a compensation of Rs. 300,000 to next of kin of the deceased. On 3 July 2018, the case was closed in view of compliance of the recommendation.

#### **Case 3: Custodial death of Kanulal Ghosh**

The NHRC had taken cognizance of this case (Case No. 1670/23/4/2013-JCD) regarding the custodial death of undertrial prisoner Kanulal Ghosh (30 years) at Central jail Agartala on 10 May 2013 on receipt of an intimation from Superintendent of the jail. The prisoner was taken to a hospital where he died.

The expert on the panel of the Commission opined that the medical officers in prison did not monitor the vital parameters of the prisoner patient while being admitted to the prison hospital leading to his death. Had they monitored systematically and periodically, they could have detected

gastric perforation and life saving surgical intervention could have been sought in the nearest hospital. Based on the report of the expert, the NHRC held that there was negligence on the part of the prison medical officer in giving proper medical treatment to the deceased, which violated the human rights of the prisoner. Accordingly, the NHRC recommended the Government of Tripura to pay compensation of Rs. 25,000 to the family of the deceased. In response, the NHRC was informed that the compensation could not be paid to the family as none approached to receive the same despite repeated letters and publication in the newspaper. On 2 February 2018, the NHRC closed the case with the direction to the Chief Secretary to disburse the compensation to the family when they approach the authorities.

#### **Case 4: Killing of Raja Debbarma in a fake encounter**

This case (29/23/2005-2006) relates to the death of Raja Debbarma @ Sukanta in an encounter with police in a jungle in West Tripura district on 3 January 2006. The NHRC took cognizance of the death on an intimation received from the Superintendent of Police, West Tripura. As per the

### **IMPUNITY IN INDIA**

*According to the NCRB's 2017 Annual Report Crime in India, 56 cases were registered against police personnel for human rights violation across the country during 2017. Of the 56 cases, 6 cases relate to encounter killings, 7 relate deaths in custody, 17 cases relate to torture/ causing hurt/injury, 6 relate to extortion and 20 other cases. However, only 48 police personnel were charge-sheeted, of which only three police personnel were eventually convicted for torture/causing hurt/injury. This is despite the fact that NHRC itself has reported that about 100 cases of deaths in police custody were in 2017. It is clear that even in the cases of deaths in police custody, cases were not registered, highlighting impunity for the police. This has been the single most important factor encouraging custodial deaths in India.*



information, some armed extremists were seen in the area of Ramakrishnapara with the intention of collecting extortion money from the area. The police team cordoned the house of one Bishash Debbarma where the police had information of hiding of extremists. They were overpowered and during search, arms and ammunition were recovered from them. They were identified as Raja Debbarma @ Sukanta, Madan Debbarma and Boyar @ Jackie Debbarma.

Thereafter, the police took Raja Debbarma to the jungle as a guide to find out the whereabouts of the extremists hidden there. It was stated that while the team was climbing the small hillock they were fired upon by extremist group standing at some height. The police party retaliated in self-defence and while they were in the process of engaging the extremists, the detained Raja Debbarma managed to free himself and ran towards the extremist group on the hillock. After the incident, the bullet ridden dead body of Raja Debbarma was recovered from the area.

The NHRC after examining the reports received and the reports from the forensic expert observed that there was no circumstance to use excessive force and he could have been otherwise restrained by minimum use of force. It also noted the fact that there was no entry wounds in the front portion of the deceased which shows that there were no retaliatory firing from the extremists sitting on the hillock and the deceased Raja Debbarma did not die of bullets from the side of extremists. Accordingly, the NHRC held that the encounter was fake and directed the Government of Tripura to show cause why it should not recommend Rs. 500,000 to the next of kin of the deceased Raja Debbarma.

In response, the Chief Secretary, Government of Tripura submitted that it may not be prudent to award compensation of Rs. 500,000 to the NoK of the deceased when it is clearly known that he was a listed extremist of a banned organization, which had been actively engaged in wanton violence in the past in the State. It was also contended that empty cartridges of sophisticated weapons seized from the spot clearly indicated that the police party was fired upon and they had to retaliate in self defense.

However, the NHRC dismissed the State's contention saying that none of the submissions made by the State Government in reply to the show cause notice is able to surpass the positive findings of the Commission that deceased Raja Debbarma had been shot from a close range from back and it was a clear case of violation of human rights of the deceased. Accordingly, the NHRC recommended to the State Government to pay a sum of Rs. 500,000 to NoK of the deceased Raja Debbarma.

#### 4. Torture in India during October 2019

Across India, cases of torture in police and judicial custody continue to be reported on regular basis. ACHR documented 11 cases of torture in police custody during the month of October 2019.

#### 4.1 Emblematic cases of torture in police custody

The law enforcement personnel continued to resort to torture across the country.

On 29 October 2019, Satya Prakash Shukla (50 years) died due to alleged torture at Peeparpur police station in Amethi district, Uttar Pradesh. The deceased was detained along with his two sons by the police in the night of 28 October 2019 in connection with a case of looting of Rs 26 lakh from a bank employee in Peeparpur area in Amethi on 5 October 2019. Police claimed the deceased's consumed poison in custody and died at a hospital during treatment. However, the family members of the deceased alleged that he was tortured in police custody, resulting in his death.<sup>30</sup>

On 27 October 2019 at about 10 pm, Vijay Singh (26 years) along with his friend Ankit Mishra went to fill petrol at a petrol pump near RTO office in Wadala (East) in Mumbai city district, Maharashtra. At the petrol pump, Vijay Singh had a clash with a couple over some issue. The police was called and both Vijay Singh and Ankit Mishra were taken to Wadala truck terminal police station for inquiry in the assault case. According to Ankit Mishra, police beat up Vijay Singh on the spot and thereafter both of them were beaten inside a room at the police station. In between, Vijay Singh complained of chest pain and even asked for water but the police refused. Later at around 2 am, Vijay Singh fell unconscious, following which he was rushed to a hospital where he was declared dead before arrival. The family members alleged that Vijay Singh was beaten to death in police custody. However, police denied the allegation of torture and claimed Vijay Singh was released after he complained of chest pain and collapsed at the gate of the police station.<sup>31</sup>

On 25 October 2019, M. Balamurugan (22 years), son of P Muthukaruppan, died due to alleged torture in the custody of Avaniyapuram police station in Madurai district of Tamil Nadu. Balamurugan was arrested in connection with a case of kidnapping. Police claimed Balamurugan was admitted at the Government Rajaji Hospital, Madurai when he developed health complications. The deceased's father alleged that his son Balamurugan died due to custodial torture and moved the Madras High Court seeking proper investigation.<sup>32</sup>

On 22 October 2019, Fameeda, a 75-year-old woman, died under mysterious circumstances in police custody at Rayadurgam police station in Anantapur district of Andhra Pradesh. Police summoned Fameeda, a petty shopkeeper, after two packets of prohibited chewing tobacco products were found in his shop during raids. Fameeda was brought dead to a hospital. Family members of the deceased alleged that police acted inhumanely and police harassment led to her death. However, police denied the allegation of torture.<sup>33</sup>

On 18 October 2019, undertrial prisoner identified as Mitthu Patel (30 years) died due to alleged torture in police

custody Shikarpur police station in West Champaran district, Bihar. The deceased, a resident of Narkatiaganj in the district, was arrested by the police on 13 October 2019 on the charges of consuming alcohol. He was illegally detained at Shikarpur police station till he was sent to judicial custody at Bettiah jail on 15 October 2019. Jail officials claimed on 16 October 2019 the deceased's health suddenly deteriorated, after which he was taken to the Government Medical College, Bettiah where he died on 18 October 2019. The deceased's wife Sita Devi alleged that her husband was beaten at the time of arrest on 13 October 2019 and further tortured in police custody at Shikarpur police station during his illegal custody. She also alleged that her husband was not given proper medical treatment in the Bettiah jail.<sup>34</sup>

On 14 October 2019, Pradeep Tomar (35 years), a security guard, died due to alleged torture in police custody at Chijarsi police outpost in Hapur district, Uttar Pradesh. The deceased was picked up by police on 13 October 2019 for questioning in connection with a murder case. Deceased's family members alleged that Pradeep was tortured for over five hours, which led to his death. Pradeep's minor son, who accompanied him to the outpost alleged that his father was detained and brutally beaten by at least 8-10 police personnel during interrogation. The minor also claimed that the police stabbed his father using screwdrivers. There were several injury marks on his body including visible stab marks, blackening on lower hip area and hands. After his condition deteriorated, the police shifted him to a local hospital in Hapur and later to a higher centre in Meerut where he succumbed to the torture inflicted on him.<sup>35</sup>

On 14 October 2019, Aynul Khan (55 years) died due to alleged torture in the custody of English bazar police station in Malda district, West Bengal. The deceased was arrested on 13 October 2019 along with seven others during raids conducted by the police to crack down against gambling. Police claimed when the arrested persons were brought to the Milki police outpost, Aynul Khan started feeling unwell and was taken to the Malda Medical College and Hospital where he was declared dead on arrival. But the local residents alleged that the deceased died due to custodial torture.<sup>36</sup>

On 13 October 2019, Minliam Namet (50 years) died in the custody of the 16th Assam Rifles at Sinnu village under Lazu circle of Tirap district in Arunachal Pradesh. The deceased's body was found near a tea garden area (Tinlom) 3 km off Lazu after he was allegedly taken into custody by four Assam Rifles Jawans in civil dress. The family members and local residents alleged that the deceased was killed by jawans of the Assam Rifles.<sup>37</sup>

On 6 October 2019, Jagdish Goliyan (47 years), an RTI activist, died in the custody of Pachpadra police station in Barmer district, Rajasthan. The deceased was picked up along with his two cousins on 5 October 2019 in connection with a land dispute case. Police claimed Jagdish's health began to

deteriorate even before he could be produced before the executive magistrate at the tehsil office on 6 October. He was taken to a government hospital, where doctors declared him brought dead.<sup>38</sup>

On 3 October 2019, a farmer identified as Brijpal Maurya (40 years) died due to alleged torture in custody of a revenue lock-up in Sahaswan Tehsil under Baduan district, Uttar Pradesh. Brijpal was arrested on 23 September 2019 in a false case of power theft and non-payment of electricity dues. Brijpal was kept in the lock-up for 11 days. The revenue officials claimed that on 3 October night Brijlal complained of uneasiness and stomach pain, following which he was taken to a local government health centre. The doctors referred him to the district hospital in Baduan, but he died on the way. Mahesh, the deceased's brother alleged that his brother had visible signs of injuries on his head and private parts,<sup>39</sup> indicating torture in custody.

On 1 October 2019, Ranjith Kumar died due to alleged torture in custody of officials of Excise Department in Guruvayur town in Thrissur district of Kerala. The deceased, a resident of Malappuram Tirur Triprangode in the district, was arrested on 1 October by a special team of Excise Department in connection with an alleged possession of ganja. The excise officials claimed that Kumar was taken to a hospital after he fell unconscious and showed symptoms of seizure. However, the hospital authorities stated that Kumar was brought dead to the hospital. Postmortem report revealed the presence of multiple internal injuries,<sup>40</sup> indicating torture.

## 4.2 Torturous prison conditions and deaths in judicial custody

Conditions of jails remain torturous across the country. In its latest prison report of 2017, the National Crime Record Bureau (NCRB) under the Ministry of Home Affairs revealed how prisons have fallen off the state governments' priority list as many jails remain over crowded, and understaffed. According to the report "Prison Statistics India 2017", as on 31 December 2017 there were 1,361 jails in the country in which a total of 4,50,696 prisoners were lodged against the sanctioned capacity of 3,91,574 prisoners,<sup>41</sup> thereby having overcrowding rate of 115.1%.<sup>42</sup> Of the total prisoners, 68.50% are undertrials.<sup>43</sup> The NCRB stated that as on 31 December 2017 "the prison population was manageable" only in 14 States and 6 UTs as the occupancy rate in these States/UTs remained less than 100% while the rest 15 states and one UT (Delhi) were unmanageable given their high overcrowding. Among States, Uttar Pradesh has reported the highest overcrowding (165 %) followed by Chhattisgarh (157.2 %), Sikkim (140.7 %), Uttarakhand (140.6%), Madhya Pradesh (137.1%), Maharashtra (136.2%), Meghalaya (134.5%), Kerala (126%), Jharkhand (115.1%), Himachal Pradesh (111.4%), West Bengal & Karnataka (each 106.1%), Haryana (105.4%), Punjab (103.6%) and Bihar(100.7%). The Union



Territory of Delhi reported the highest overcrowding (151.2%).<sup>44</sup> The NCRB stated that “Overcrowding refers to the situation in which more inmates are staying than the sanctioned strength. In recent years, it is one of the biggest problems faced by prison inmates. Overcrowding results in poor hygiene, lack of sleep etc. Keeping in view the human rights of the prisoners, it is essential that they are given reasonable space and facilities in jails.”<sup>45</sup>

According to the NCRB, a total of 1,671 prisoners died in judicial custody during 2017 across the country, out of which 1,494 (89.41%) were natural deaths and 133 (7.96%) were due to “un-natural causes” and 44 deaths were reported as “causes not known yet”. Among the un-natural causes of deaths in prisons (133), Suicide (109) was the pre-dominant cause followed by Accidental Deaths (9), Murder by Fellow Inmates (5), Deaths due to Assault by Outside Elements (5) and Others (3). Out of 109 suicides, the pre dominant mode was Hanging (103). Punjab has reported the highest number (14) of such unnatural deaths followed by West Bengal (12) and Karnataka & Tamil Nadu (10 each). Out of 109 suicides, Punjab has reported the highest number of suicides (13) in prisons followed by West Bengal (11) and Karnataka (10) during 2017.<sup>46</sup>

Death of prisoners as a result of torture, ill treatment, lack of medical facilities, etc in the jails continued to be reported across the country during October 2019, and some of them are given below.

During the month of October 2019, ACHR documented nine cases of deaths due to alleged torture and 11 cases of deaths due to alleged medical negligence in prison custody. In the case of alleged deaths due to torture, four inmates allegedly committed suicide by hanging including Siddharth Dilip Kamble who the jail officials have claimed hanged himself using the elastic (lace of his undergarment at Yerwada Central jail in Pune district, Maharashtra.<sup>47</sup> One victim died on the spot by falling off the boundary wall while trying to flee (Victim: Sunil Kumar Singh at Birsa Munda Central Jail in Ranchi, Jharkhand<sup>48</sup>) while reason of death remained unknown in one case (victim: Baban Upadhyay Tiyari at Dibrugarh Central jail in Assam<sup>49</sup>). The other controversial deaths were caused by sudden medical complication when the relatives of the deceased claimed that they were healthy (victims: Sonu Sengar at Hamirpur district jail, Uttar Pradesh;<sup>50</sup> Rakesh Valmiki at Aligarh district jail, Uttar Pradesh;<sup>51</sup> and Gagan Nayak at Birsa Munda Central Jail in Ranchi, Jharkhand).<sup>52</sup>

#### **Deaths under mysterious circumstances/due to alleged torture**

On 19 October 2019, undertrial prisoner identified as Amandeep Singh alias Laddi (36 years) died under mysterious circumstances at Ropar Central Jail in Rupnagar district of Punjab. The deceased was sent to judicial custody in September 2019 in connection with a drug case. Jail officials

claimed the deceased committed suicide by hanging himself with a rope from the ceiling fan.<sup>53</sup>

On 15 October 2019, undertrial prisoner identified as Anil Raj (55 years) died under mysterious circumstances at Central Jail, Parappana Agrahara in Bengaluru district of Karnataka. The deceased, who was the editor and publisher of Kannada tabloid ‘Yelahanka Voice’ was sent to judicial custody in connection with an alleged rape case. Jail officials claimed the deceased committed suicide inside the prison complex by using a rope. However, the family members rejected this claim and alleged foul play.<sup>54</sup>

On 15 October 2019, undertrial prisoner identified as Mahendera Singh alias Kalla (23 years), son of Vijay Jogi died under mysterious circumstances at Hindaun sub-jail in Karauli district, Rajasthan. The deceased was sent to judicial custody on 29 August 2019 in connection with a theft case. Jail officials claimed the undertrial committed suicide by hanging himself using a towel in a store room in the morning at the time of breakfast.<sup>55</sup>

On 9 October 2019, Baban Upadhyay Tiyari (36 years), a convict, died under mysterious circumstances at Dibrugarh Central jail in Assam. The deceased was serving life imprisonment in a murder case. Jail officials claimed the convict was found dead inside the jail on 9 October.<sup>56</sup>

On 9 October 2019, an undertrial identified as Sonu Sengar (34 years) died under suspicious circumstances in custody at Hamirpur district jail in Uttar Pradesh. The deceased, a resident of Kanpur district in the State, was sent to judicial custody in December 2018 in connection with a theft case. Jail officials claimed the undertrial complained of chest pain, following which he was taken to a government hospital where he died. There was injury marks on the head of the deceased,<sup>57</sup> suggesting torture.

On 8 October 2019, undertrial prisoner identified as Siddharth Dilip Kamble (34 years) died under mysterious circumstances in the custody of Yerwada Central jail in Pune district, Maharashtra. The deceased was sent to judicial custody in June 2019 in connection with an attempt to murder case. Jail officials claimed the undertrial committed suicide by using the elastic (lace) of his undergarment inside the jail.<sup>58</sup>

On 5 October 2019, Rakesh Valmiki (28 years), a convict lodged at Aligarh district jail, Uttar Pradesh, died under mysterious circumstances. According to the jail officials, the prisoner’s health suddenly deteriorated, after which he was taken to hospital. However, the family members alleged that Rakesh was killed in the jail. The deceased’s brother Suresh claimed that Rakesh was absolutely fine and healthy when he went to meet him on 3 October 2019.<sup>59</sup>

On 5 October 2019, undertrial prisoner identified as Sunil Kumar Singh (27 years) died under mysterious circumstances in custody at Birsa Munda Central Jail in Ranchi, Jharkhand. The deceased was sent to judicial custody in April 2019 in

connection with a robbery case. Jail officials claimed the undertrial, who was mentally challenged, fell down while trying to escape from the jail by jumping off the boundary wall of the jail and died on the spot.<sup>60</sup>

On 2 October 2019, undertrial prisoner Gagan Nayak (40 years) died due to alleged torture in judicial custody at Birsu Munda Central Jail in Ranchi, Jharkhand. The deceased was arrested in connection with a robbery case. Jail officials claimed that on 1 October 2019 the deceased's health suddenly deteriorated after which he was taken to the hospital, where he died the next day. However, the family members alleged that deceased died due to torture in the jail. They claimed that they found several injury marks on his body. They further claimed that he was quite healthy when they met him in the jail few days before his death.<sup>61</sup>

#### Deaths due to alleged medical negligence

On 28 October 2019, undertrial prisoner identified as Dinesh Singh (30 years), son of Amrit Singh, died at Garhwa district Jail in Jharkhand. The deceased was sent to judicial custody in 2017. Jail officials claimed deceased's health deteriorated suddenly and was admitted to the Sadar hospital, Garhwa where he died on the same day. However, the family members alleged that the deceased died due to denial of timely treatment by the jail officials.<sup>62</sup>

On 24 October 2019, Wazid, a convict, died at Budaun district jail in Uttar Pradesh. The deceased was undergoing five years sentence since January 2019 in connection with a case. Jail officials claimed in the midnight of 23 October 2019 the deceased's health suddenly deteriorated and he was taken to the district hospital, Badaun where he died in the morning of 24 October 2019.<sup>63</sup>

In the intervening night of 23-24 October 2019, undertrial prisoner identified as Oghad Raibari (40 years) died at Chabda sub jail under Baran district of Rajasthan. The deceased was in judicial custody since 19 October 2019. Jail officials claimed on the night of 19 October 2019 the deceased complained of chest pain and was admitted to the local Community Health Centre (CHC), where he died. However, the family members alleged the deceased was not in good health from the day he was sent to the judicial custody and the jail officials failed to provide proper treatment.<sup>64</sup>

On 23 October 2019, undertrial prisoner identified as Rajesh Singh (33 years), son Shiva Singh, died at Balaghat jail in Balaghat district of Madhya Pradesh. The deceased was sent

to judicial custody in connection with a rape case. Jail officials claimed on 21 October 2019 the deceased's health suddenly deteriorated and he was taken to the district hospital where he died on 23 October.<sup>65</sup>

On 20 October 2019, undertrial prisoner identified as Vijay Sahu (50 years) died under suspicious circumstances at Gumla district Jail in Jharkhand. The deceased was arrested on 10 October 2019 for alleged gambling and sent to judicial custody on 11 October 2019. Jail officials claimed the deceased was admitted to the Sadar hospital, Gumla after his

health deteriorated. He died in the hospital on 20 October 2019 during treatment. However, the family members alleged that the deceased's health was not good from the day he was sent to the jail and he was not given proper treatment.<sup>66</sup>

On 20 October 2019, undertrial prisoner identified as Prakash Suna (27 years) died at Sambalpur circle jail in Sambalpur district of Odisha. The deceased was sent to judicial custody in connection with a dacoity/ extortion case. Jail officials claimed that on 19 October 2019 the deceased complained of vomiting and severe stomach pain, after which he was taken to the Veer Surendra Sai Institute of Medical Sciences and Research (VIMSAR) in Burla. He died at the hospital in the morning of 20 October 2019.<sup>67</sup>

On 18 October 2019, undertrial prisoner identified as Ajay alias Dharmendra (25 years) died at Mathura district jail, Mathura in Uttar Pradesh. The deceased was sent to

judicial custody six months ago in connection with a case of attempt to murder. Jail officials claimed the deceased, who was a HIV positive, complained of chest pain along with breathing problem and declared brought dead by the doctors at the district hospital.<sup>68</sup>

On 15 October 2019, undertrial prisoner identified as Praveen Kumar Sharma (40 years) died at Amphalla district jail in Jammu and Kashmir. The deceased was sent to judicial custody in July 2019 under the Narcotic Drugs and Psychotropic Substances Act. Jail officials claimed the deceased suddenly fell unconscious on 14 October 2019 and was declared brought dead in hospital.<sup>69</sup>

On 13 October 2019, Dulal Chandra Pal (65 years) died in the custody of foreigners detention centre at Tezpur in Assam. The deceased, a resident of Alisinga village in Sonitpur district in the State, was lodged in detention centre at Tezpur since 11 October 2017 as alleged foreigner. According to the

#### DATA COLLECTION

*The government of India cannot even collect the data on the violations of the right to life under its custody. The NCRB reported that 100 deaths in police custody took place in 2017 in its Crime in India 2017 report. However, the figures of the NCRB on custodial deaths have to be taken with a pinch of salt. As per data of the National Human Rights Commission (NHRC) placed before the Lok Sabha in response to Unstarred Question No.218 answered on 11 December 2018, 146 cases of death in police custody were registered during 2017-2018. The gap in the number of deaths in police custody between the NCRB and NHRC is too huge. There are serious problems with collection of data relating to human rights violations in India. If the data on deaths in the custody of the police cannot be collected and collated by the Government of India, obviously true facts on the scale and intensity of human rights violations shall never be found. Not surprisingly, the State never discusses the rights issues.*



police, the deceased was admitted at the Guwahati Medical College and Hospital (GMCH) on 28 September 2019 and he died on 13 October. The family members claimed Dulal was mentally unstable but the authorities failed to provide adequate and necessary treatment.<sup>70</sup>

On 12 October 2019, Ramadhar Satnami, a convict, died at Bilaspur Central Jail in Chhattisgarh. The deceased was serving life imprisonment in connection with a murder case. Jail officials claimed the prisoner's health suddenly deteriorated and he was taken to the Chhattisgarh Institute of Medical Sciences (CISM), Bilaspur where he died.<sup>71</sup>

On 9 October 2019, Ramladdhu Singh (45 years), a convict, died in custody of Nawada district jail in Bihar. The deceased was serving life imprisonment in connection with a murder case. Jail officials claimed the prisoner was treated at Patna Medical College and Hospital (PMCH) and was brought back to the jail on 21 September 2019 when his health improved. Later, the deceased's health suddenly deteriorated again and was admitted to the Sadar Hospital. On 3 October, he was referred to the Pawapuri Medical College where he died on 9 October during treatment.<sup>72</sup>

#### 4.3 Judiciary's action against torture

The judiciary regularly adjudicates cases of illegal, unjustified and unwarranted arrests, extracting confession from persons by way of custodial violence, which sometimes results in death.

Some of the emblematic cases of judicial action against torture during October 2019 are given below:

On 16 October 2019, the Meghalaya High Court ordered a judicial inquiry into the death of Hillary Momin after his release from police custody at Dagal police outpost in East Garo Hills district, Meghalaya. The deceased, a school teacher, was picked up by a police patrol team attached to Dagal outpost on the night of 4 August 2018. He was kept in detention inside the station the entire night and allegedly tortured. The police alleged that he was detained for creating nuisance in his drunken stupor at a public place. He was released the next morning, but complained of severe pain all over his body. He remained bed-ridden and died a week later. Following his death, Hillary's widow Lictisitha D Shira filed an FIR against the police officer and his team from Dagal station for the illegal arrest, detention and torture of her husband. The district police and administration ordered two separate investigations and removed the Dagal police officer in charge, N Nongkhlaw, but no further headway was made even though several student and social organizations had protested the alleged custodial assault causing the death of the teacher. Seeking justice, the teacher's widow moved the court seeking direction for investigation by a competent investigation agency and payment of compensation for the family of the deceased.<sup>73</sup>

On 14 October 2019, the Telangana High Court expressed concern over the way Telangana State Police were conducting investigation and directed the Director General of Police (DGP) to sensitise officers not just to rely on confession extracted through third-degree torture and instead rely on evidence. The court comprising a bench of Chief Justice Raghavendra Singh Chauhan and Justice A Abhishek Reddy was hearing a habeas corpus petition filed by two women seeking production of their husbands in court. The Bench noted "This is why several criminal cases are ending up in acquittals." The case pertains to Syed Sohail (19 years) and his brother Syed Mohammed (24 years) who were picked up by police in September 2019. They were produced before court on 23 September 2019 after filing of the petition. Police said they were arrested in connection with a series of thefts. The Court observing torture marks on their backs reprimanded the police and said "If you torture a person, he will admit to any crime just to escape from the unbearable pain of the torment. That cannot be a piece of evidence". The court also held that the police did not follow procedure in respect of identifying the stolen property.<sup>74</sup>

On 4 October 2019, the Madras high court ordered the police to conduct fresh investigation in the death of Sathiyamoorthy (19 years), who had committed suicide due to alleged police torture at Varusanadu police station in Theni district, Tamil Nadu on 2 August 2019. The court passed the direction while hearing a petition of the deceased's father seeking investigation by CB-CID. According to the petition, Sathiyamoorthy went to his brother house at Varusanadu in Theni district on 29 July 2019 to participate in a religious festival. On 1 August 2019, a police constable, who came to his brother's house, picked up Sathiyamoorthy to the Varusanadu police station in connection with a case of theft. When his brother Chelladurai came to know about the matter, he went to the police station and found that the police officials were brutally beating Sathiyamoorthy. Upon his release, Sathiyammorthy committed suicide by hanging himself at his house unable to bear the torture on 2 August 2019.<sup>75</sup>

#### 4.4 Interventions by the NHRC/SHRCs

The National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRCs) are mandated to address human rights violations and continue to intervene in cases of torture.

As per latest data available, the NHRC has registered a total of 6,059 fresh cases, including 12 cases of death in police custody and 101 cases of death in judicial custody, while it disposed of a total of 21,382 cases (Fresh + Old), which included 370 cases of death in police custody and 3,086 cases of death in judicial custody, during September 2019. A total of 5,611 cases (Fresh + Old), including 8 cases of death in police custody and 97 cases of death in judicial custody, were

under consideration of the Commission as in September 2019.<sup>76</sup>

During the same period, the NHRC has awarded a total of Rs 67,25,000 in 24 cases of human rights violations, including Rs 32,50,000 in 10 cases of death in judicial custody.<sup>77</sup>

The SHRCs intervened in the following cases during the month.

On 1 October 2019, the Bihar Human Rights Commission (BHRC) directed the State Government to pay Rs 12 lakh compensation to the families of Mohammad Tasleem Ansari and Mohammad Gufran Alam who died in police custody in Dumra police station in Sitamarhi, Bihar on 6 March 2019. The compensation included Rs 5 lakh to Ansari's parents and Rs 7 lakh to Alam's wife. Both deceased Ansari and Alam were picked up by a police team from their residences at Ramdiha village under Chakia police station in East Champaran district on 5 March 2019 for interrogation for their suspected involvement in a loot-cum-murder case, which took place on 21 February 2019. In its order, the BHRC observed that responsibility of the State becomes greater in present case as perpetrators of heinous crime were men in uniform upon whose shoulders rests the safety and security of society at large.<sup>78</sup>

The Tamil Nadu State Human Rights Commission (SHRC) directed the State Government to pay compensation of Rs 50,000 to two women (Rs 25,000 each) who were verbally abused and intimidated by police in Vellore district in 2016. The directions was issued based on separate petitions filed by J Usha and her sister G Anusuya alleging that the then Inspector of Taluk police station, Ramachandran trespassed into their house during the early hours on 18 March 2016 and threatened them. In her complaint, Usha stated that the police also prevented her from farming in her land the next day and took away items worth over Rs 30,000. While in her petition, Anusuya stated that the police barged into the house, enquiring about her son and then verbally abused her and confiscated her and her daughter's mobile phones and threatened them that he would not allow them to live in peace. In its order, the SHRC held that there was human rights violation on the part of the police and ordered the state government to pay compensation to each of the victim.<sup>79</sup>

In another case, the Tamil Nadu SHRC awarded Rs. 3 lakh compensation to a woman who was tortured and humiliated by three police personnel in 2015. The SHRC also recommended disciplinary proceedings against the three accused police personnel identified as Inspector Kanagaraj and Sub-Inspectors Arumugam and Sathishkumar, all attached to Kodungaiyur police station. In her complaint, the victim K Parvathy stated that on 24 June 2015 at least four Sub-Inspectors and three police constables, including a woman constable entered her house and dragged her out before

putting her forcibly into a police jeep. The victim was tortured in custody including severely hit with boots. Injuries on the victim were so severe that the metropolitan magistrate refused to remand her in judicial custody, and two government hospitals refused to treat her as outpatient as she required treatment as inpatient.<sup>80</sup>

## 5. International Action against Torture during October 2019

UN experts urge Israel to investigate torture of a Palestinian

On 18 October 2019, a group of four UN human rights experts, including Nils Melzer, Special Rapporteur on Torture urged Israel to immediately investigate allegations that a Palestinian man, Samer Al-Arbeed was tortured in custody by Israeli security forces. The experts stated that Israeli security forces arrested Al-Arbeed outside his workplace in Ramallah on 25 September 2019 and detained on suspicion of involvement in a bomb explosion that took place near the settlement of Dolev in the occupied West Bank in August 2019. A 17-year-old Israeli girl was killed and her brother and father were injured in the explosion. Al-Arbeed was allegedly subjected to torture and ill-treatment during interrogation. He was admitted to hospital in a critical condition two days after his arrest, with several broken ribs, marks on his body and acute kidney failure. He was also reportedly banned from meeting his lawyer.<sup>81</sup>

UN torture prevention committee concludes first visit to Cabo Verde

On 10 October 2019, UN Subcommittee on Prevention of Torture (SPT) concluded its first visit to Cabo Verde, which began on 29 September 2019. The objectives of the visit were to support the recently created National Preventive Mechanism and to examine the treatment of people deprived of their liberty and their safeguards against torture and ill-treatment. During the visit, the delegation inspected 17 places of deprivation of liberty in four islands. The Subcommittee will submit separate reports to the Government and to the Mechanism, containing observations and recommendations arising from this visit.<sup>82</sup>

### EU anti-torture committee publishes report on the United Kingdom

From 14 to 18 October 2019, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to the United Kingdom. The CPT's delegation carried out a targeted follow-up visit to examine certain issues of concern to the Committee that were raised in its report on the 2018 visit to Scotland<sup>83</sup>, which was published on 11 October 2019. In its report on Scotland, the CPT raised issues of allegations of excessive use of force upon apprehension by police officers, notably excessively tight handcuffing and/or of wider abuse partly resulting in injuries; the use of segregation



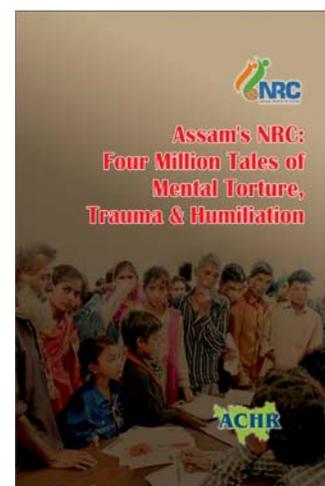
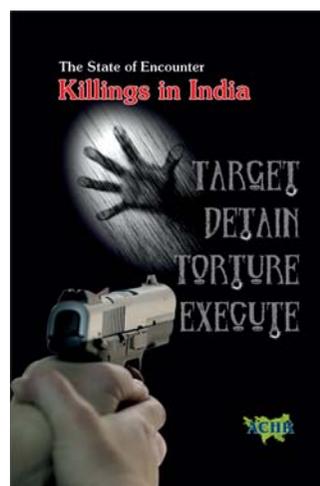
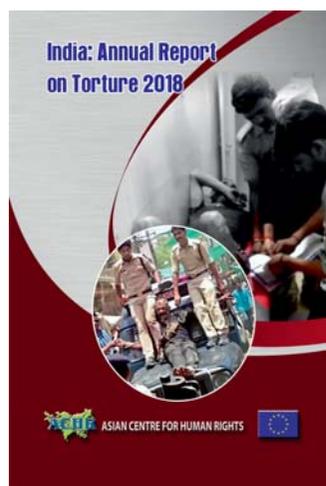
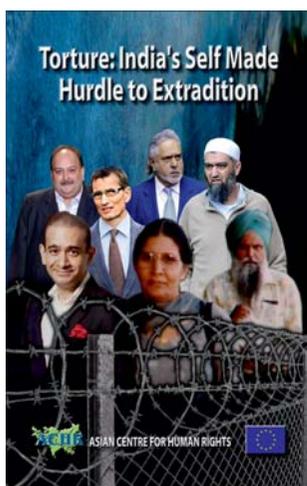
and mental health care for women prisoners, overcrowding and long-term segregation in the male custodial estate, among others.<sup>84</sup>

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## PUBLICATIONS RELATING TO TORTURE IN INDIA



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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[ACHR has Special Consultative Status with the United Nations Economic and Social Council]

C-3/441-C, Janakpuri, New Delhi-110058, India; Phone/Fax: +91-11-25620583, 45501889

Email: [director@achrweb.org](mailto:director@achrweb.org); Website: [www.achrweb.org](http://www.achrweb.org)