

## [Joint Statement] India: End police impunity for custodial torture and deaths

(Bangkok/Kathmandu, 6 July 2020) – The arrest of six police officers after a father-and-son duo died in police custody is just the first step towards addressing impunity in India, said rights groups.

In a joint statement, the Asian Forum for Human Rights and Development (FORUM-ASIA) and eight of its member organisations in India urged the Government to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) to prevent future incidences like that which befell P Jayaraj and his son Bennix.

The rights groups also called on the Government of India to enact a domestic anti-torture law to end custodial torture to prevent future deaths of detainees.

Jayaraj and Bennix died in custody after allegedly being tortured in the Sathankulam police station in Thoothukudi district on 23 June 2020<sup>1</sup> – three days before the International Day in Support of Victims of Torture. In 2019 alone, India has recorded at least 1,731 custodial deaths, and 74.4 per cent died during police custody as a result of alleged torture where convictions were rarely made against perpetrators.<sup>2</sup>

The two were arrested on 19 June for allegedly keeping their shop open past permitted hours in Tamil Nadu, an Indian state which is still observing a lockdown to curb the spread of COVID-19.

It was reported that Jayaraj and Bennix were brutally beaten and tortured in police custody, including being subjected to sexual assault.<sup>3</sup> On 20 June, the pair was sent to be remanded without adequate medical treatment despite showing visible signs of assault. Both succumbed to their injuries.<sup>4</sup>

The deaths of Jayaraj and Bennix, which sparked outrage within civil society, had uncovered a record of custodial brutality from the same officers.<sup>5</sup> These incidents illustrate the growing number of custodial violence and impunity for those responsible.

There is a growing need for immediate police reforms to build a rights-respecting police force and to put an end to the culture of connivance among relevant authorities including prisons officials and judicial officers.

In India, police officers involved in cases of custodial torture, violence and deaths are rarely brought to justice due to a prevalent culture of impunity. At the most, departmental action such as temporary suspensions or transfers is imposed.

The National Human Rights Commission (NHRC) of India had issued guidelines requiring police to report every case of custodial death to the commission within two months of the incident, complete with the magisterial inquiry. However, FORUM-ASIA and its member organisations in India express concern that the investigation division of the NHRC tasked to review cases of custodial deaths is composed of serving police officials who do not receive additional human rights training and who have demonstrated a tendency to

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<sup>1</sup> <https://www.bbc.com/news/world-asia-india-53202707>

<sup>2</sup> <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>

<sup>3</sup> <https://thefederal.com/states/south/tamil-nadu/sexual-torture-inflicted-on-father-son-duo-before-death-in-tn-eyewitnesses/>

<sup>4</sup> [https://www.aljazeera.com/news/2020/06/thoothukudi-outrage-father-son-die-police-custody-200627093900227.html?\\_\\_twitter\\_impression=true](https://www.aljazeera.com/news/2020/06/thoothukudi-outrage-father-son-die-police-custody-200627093900227.html?__twitter_impression=true)

<sup>5</sup> <https://indianexpress.com/article/india/two-weeks-ago-several-alleged-torture-by-same-tamil-nadu-police-officers-1-died-6480862/>

protect their colleagues. Further, a major weakness of the NHRC has been its unwillingness to recommend the prosecution of police personnel.

The rights groups also express concern over delays in the delivery of justice, particularly for cases where police were involved. In the same town of Thoothukudi, 13 people were killed in police shooting incidents and several others were injured following protests against a copper smelting plant in May 2018.<sup>6</sup> Although the case was transferred to the Central Bureau of Investigation, no action has been taken against any police officer involved.<sup>7</sup>

The chain of events leading to Jayaraj and Bennix' deaths and the growing number of custodial deaths in India highlights the need to overhaul structures and practices that enable abuse by police and security forces. Impunity should not be tolerated and the perpetrators should be brought to justice in accordance with international law and standards.

It is also important to reiterate and emphasise on the long-standing demand to repeal the Armed Forces (Special Powers) Act 1958 (AFSPA) that grants impunity to security forces involved in custodial torture and deaths. Although the Supreme Court had ruled that there shall be no immunity for army personnel under AFSPA, fear remains in the minds of people who live in 'disturbed areas' under this law.<sup>8</sup>

FORUM-ASIA and its member organisations call on the Government of India to put an end to police impunity in cases of custodial torture and deaths and to ratify the UNCAT, which it signed in 1997.

FORUM-ASIA and its member organisations call on the Government of India to:

- Introduce an anti-torture law to prevent torture, in line with UNCAT and other international human rights standards, and with due public and civil society consultation;
- Ratify UNCAT with immediate effect;
- Repeal the Armed Forces (Special Powers) Act 1958;
- Implement major police reforms under the guidelines of the Supreme Court of India to separate the investigations and law and order functions of the police, and ensure that all states establish a police complaints authority.

FORUM-ASIA and its member organisations call on NHRC India to:

- Develop guidelines and procedures that apply to police and security forces to meet international human rights standards, particularly in relation to procedures of arrest and investigation;
- Take suo-motu cognisance in the custodial deaths of Jayaraj and Bennix and order the NHRC's Investigation Division to conduct a thorough investigation;
- Codify the NHRC's guidelines on custodial torture and deaths in police rules, implement the prescribed procedures and train police personnel accordingly;
- Facilitate the Government of India to expedite the process of ratifying UNCAT and to legislate domestic laws that prevent torture.

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<sup>6</sup> <https://www.forum-asia.org/?p=26404>

<sup>7</sup> <https://www.thenewsminute.com/article/two-years-justice-evades-victims-thoothukudi-police-shooting-125105>

**The joint statement is endorsed by:**

1. The Asian Forum for Human Rights and Development (FORUM-ASIA)
2. Association of Parents of Disappeared Persons (APDP)
3. Banglar Manabdhikar Suraksha Mancha (MASUM)
4. Centre for the Sustainable Use of Natural and Social Resources (CSNR)
5. Dalit Foundation
6. Human Rights Alert (HRA)
7. People's Watch (PW)
8. Rights Education And Development Centre (READ) – Associate Member
9. South India Cell for Human Rights Education and Monitoring (SICHREM)

***The Asian Forum for Human Rights and Development (FORUM-ASIA)*** is a Bangkok-based regional network of 81 member organisations across 21 Asian countries, with consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity-development and solidarity actions in Asia and beyond. It has sub-regional offices in Geneva, Jakarta, and Kathmandu. [www.forum-asia.org](http://www.forum-asia.org)

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