

December 24, 2019

To,
Justice (Retd.) H.L. Dattu,
Chairperson,
National Human Rights Commission,
New Delhi – 110 023
Email - chairnhrc@nic.in

Subject: Urgent – Uttar Pradesh: Deaths in police actions, custodial torture, brutal and excessive use of force by state forces, fabricated cases against HRDs, clampdowns and severe restrictions on peaceful protests, blatant misuse of Section 144 of the CrPC

Respected Justice Dattu,

We, the undersigned individuals and organisations, write to express our grave concern of deaths in police actions; brutal and excessive use of force by state forces; and fabricated cases against HRDs and cases of custodial torture, across the state of Uttar Pradesh (UP). We are also gravely concerned at the sudden shutdown of access to internet services for whole segments of the population in parts of UP. We seek the Hon'ble Commission's immediate intervention to conduct an exhaustive inquiry into these alleged violations.

These violations are taking place in the backdrop of widespread protests and demonstrations in UP against the recent Citizenship (Amendment) Act 2019 (CAA) and the proposed National Register of Citizens (NRC). There is a blanket application of Section 144 across the entire state – itself illegal – amounting to a complete suspension of the fundamental rights to freedom of speech and expression and to peacefully assemble guaranteed in Article 19 of the Constitution of India. Not only are these rights suppressed; there is eyewitness, video and media reporting of the Uttar Pradesh state government and police not following the required legal standards and operating procedures to manage assemblies. This is leading to excessive force by security forces on peaceful protestors, which has resulted in loss of lives and severe life-threatening injuries. Several human rights defenders (HRDs), vocal critics of the CAA, have been detained, on clearly trumped up charges and in a manner replete with procedural violations. There are also instances of torture in custody.

As the apex human rights body of India, having set the guidelines on deaths in police actions, arrests among others, with the mandate to protect human rights which as per Section 2 (d) of the Protection of Human Rights Act (PHRA) includes constitutionally guaranteed rights, rights in the international covenants and conventions ratified by India and rights upheld by the Supreme Court, we seek Hon'ble Commission's urgent interventions.

This petition brings forward the facts gathered from credible media sources and other reliable individual sources, mostly lawyers, journalists and activists, in Uttar Pradesh and follows the same with prayers to the Hon'ble Commission.

Background

Uttar Pradesh witnessed widespread protests on December 16, 2019, across the entire state. From Aligarh to Lucknow to Varanasi and even in Mau, students, citizens, civil society organisation came out on the streets, expressing solidarity and protesting against brutal police force against fellow students in New Delhi's Jamia Millia Islamia (JMI) and Aligarh Muslim University (AMU).

Violence of unprecedented nature was seen at the AMU campus, where local police and the Rapid Action Force (RAF) entered the campus and fired rubber bullets, pellet guns and teargas shells at the peacefully protesting students. Even after the students retreated inside campus buildings, the police and RAF entered these and released teargas shells which led to students becoming unconscious due to suffocation. They also entered the hostels and fired tear gas shells at students who were not even participating in protests. Several students are reportedly missing, while others have suffered grievous injuries. While no action has been taken against the erring officials, FIRs have been filed against 21 named and 500 unnamed students.

The Uttar Pradesh state administration, completely undermining the constitutionally guaranteed rights under Article 19, invoked Sec 144 CrPC in a blanket sweep to impose 'curfew' across the entire state, rather than localised areas which is how Section 144 is legally intended to be used. This heavy-handed response of the state administration, against citizens expressing their disagreement to the CAA, seems to have the approval of the highest offices in the state - the Uttar Pradesh Chief Minister having himself called for 'revenge' against those protesting and this has had chilling consequences.

On December 16, Internet access on mobile phones was suspended in 21 districts of UP, including Lucknow, Kanpur, Allahabad, Agra, Aligarh, Ghaziabad, Varanasi, Mathura, Meerut, Moradabad, Muzaffarnagar, Bareilly, Firozabad, Pilibhit, Rampur, Saharanpur, Shamli, Sambhal, Amroha, Mau, Azamgarh and Sultanpur. In Muzaffarnagar, it was reported that mobile service was suspended only in Muslim localities, whilst they were restored in the rest of the district. Broadband internet services were also terminated in some cities including Lucknow and Ghaziabad. Yesterday, December 23, internet services seemed to be restored. The state government has not given any reasons or justification for the suspension.

Below is a brief account of excesses committed by the Uttar Pradesh Police since the protests commenced.

Deaths in Police Actions

There have been reports of 19 cases of deaths in police actions across the state. In the absence of reporting by state authorities, the information emerging is that most of the deceased are of protestors.

According to a media report¹, a senior police official confirmed that the death of 14 of 16 people who died were from 'firearm injuries'. Until this report in the Indian Express was published today, 24th December², the UP Police denied to state how many deaths have been caused by police firing. This report accounts only for one death. It is urgent for an independent investigation to immediately ascertain the deaths caused by police firing. In several videos, a policeman is seen with a revolver and baton, aiming and shooting directly at protestors.

Detentions and Custodial Torture

Clamping down on peaceful protestors against the CAA, the police in Uttar Pradesh has arbitrarily arresting HRDs, political activists, journalists, lawyers and others, without any evidence or without following the due process of law across the state. The state police had on December 18, 2019 issued notices to more than 3,000 people across the state, cautioning them not to participate in protests against the CAA on December 19, 2019. What followed from December 19, 2019, is no less than a brutal crackdown that amounts to negating fundamental rights under the Indian Constitution.

In a statement, Uttar Pradesh Police said that over 5,300 people were taken into preventive custody for alleged involvement in violent protests and later released³. Of this 879 are arrested and 154 FIRs have been filed in UP. The police have registered 76 cases and arrested 108 people for sharing and posting objectionable and misleading posts on social media in connection with the law. "Action has been taken against 15,344 social media posts including 6,612 of Twitter, 8,577 of Facebook and 155 videos on YouTube. Below is a compilation of some of the incidents:

On December 17, 2019, Meerut-based Dalit rights activist Sushil Gautam⁴, along with 20 others, were detained at the Nauchandi police station in Meerut district for protesting against CAA and brutal assault of police on Jamia and AMU students. Sushil Gautam was allegedly arrested for his Facebook post. He was planning to organise 'peaceful march' in Meerut under the banner of Blue Panther — an organisation that works for the welfare of the people from the Dalit community. Before he could organise the demonstration, police landed up at his house and took him to the police station.

¹ <https://www.freepressjournal.in/india/caa-protest-14-of-16-upprotesters-died-of-bullet-injury>

² <https://indianexpress.com/article/india/caa-protests-up-bijoor-protester-killed-police-firing-6181930/>

³ <https://www.livemint.com/news/india/anti-kaa-stir-164-firs-lodged-879-arrested-and-288-cops-injured-since-10-dec-says-up-police-11577043242255.html>

⁴ <https://www.newsclick.in/113-People-Arrested-UP-over-Anti-CAA-Protests-NSA-Invoked>

On December 19, 2019, several HRDs, including senior lawyer Mohammad Shoaib⁵, former IPS officer S.R. Darapuri and Magsaysay Award winner Sandeep Pandey among others, were put under preventive detention through notices u/s 149 CrPC served on them the previous day, i.e. December 18, 2019. Former IPS officer S.R. Darapuri (75 years old) is now under arrest. Senior lawyer Mohammad Shoaib (76 years old) is also under judicial arrest and he has been charged under Sections 147, 148, 149, 152, 307, 323, 504, 506, 332, 353, 188, 534, 436, 120-B, 427 I.P.C, Section 3, 4 of the Prevention of Damage to Public Property Act, 1984 and Section 7 of the Criminal Law (Amendment) Act, 1932. It is to be noted that on December 19, 2019, when violence during the protests were reported, both of them were under house arrest - despite that they are arrested under fabricated charges. Also, it is important to mention here that their family members were not informed about their whereabouts or about the charges under which they had been arrested or detained.

Sadaf Jafar,⁶ an educationist was arrested in Lucknow on December 19, 2019, was brutally beaten in custody by the police leading to internal bleeding. She was arrested from Lucknow's Parivartan Chawk while she was standing at a place and recording the police actions during the protests. She also live streamed her arrest. From what can be gathered from various media sources, she has been charged under Sections 147, 148, 152, 307, 323, 506, 435, 436, 120-B of the IPC. Some news reports confirm detention and arrest of over 200 people from the same spot in Lucknow.

Robin Verma, an HRD associated with Rihai Manch, was brutally tortured in the Hazratganj police station in Lucknow on the evening of December 20, 2019, and later arrested. Robin Verma was picked up along with The Hindu's Lucknow correspondent Omar Rashid⁷. Omar was taken to other police stations from the Hazratganj police station, threatened, harassed and abused. The Hazratganj police refused to acknowledge his journalist identity card when he showed the same at the Hazratganj police station and on several other instances.

State police also detained women activists Arundhati Dhuru, Meera Sangamitra and Madhavi on December 20, 2019, when they went to the Hazratganj police station to inquire about the whereabouts of senior lawyer Mohammad Shoaib and former IPS SR Darapuri. They went with Darapuri's son, who wanted to handover his cancer medications.

In what is the first admission of firing by Uttar Pradesh Police during the protests against the Citizenship Amendment Act in the state, senior police officers in Bijnor confirmed that a civilian Mohammad Suleman, 20, died after he was shot by constable Mohit Kumar in "self-defence". "One cartridge was retrieved from Suleman's body. The ballistic report confirms that this was shot from the service pistol of Mohit Kumar. Mohit Kumar also

⁵ <https://scroll.in/latest/947399/caa-protests-lucknow-advocate-mohammad-shoaib-detained-whereabouts-unknown-say-colleagues>

⁶ <https://www.ndtv.com/india-news/actress-activist-sadaf-jafar-arrested-during-facebook-live-at-citizenship-law-protests-lucknow-cops-2153042>

⁷ <https://www.thehindu.com/news/national/a-first-person-account-by-the-hindu-correspondent-omar-rashid-of-how-he-was-picked-up-threatened-and-released-by-cops/article30361909.ece>

suffered a bullet injury. The bullet taken from Mohit Kumar's stomach was found to be shot from a country-made weapon," Sanjeev Tyagi, Superintendent of Police, Bijnor, told The Indian Express⁸.

Individual sources have confirmed that Mohamed Faizal, a practicing lawyer at the Kota Bar Association of Rajasthan Bar Council, went to Shamli district of Uttar Pradesh on the call of local people to provide legal aid to the victims affected by the police in the anti-CAA Protest. Providing legal assistance to the victims who are the needy and poor is the part of the legal profession. While he was discharging the duty as a lawyer, in the evening of December 23, at Shamli, he was detained by the police and kept in Crime Branch.

Referencing to some of the available news -

- In Muzaffarnagar, 259 persons have been named and 6000 unnamed in FIRs filed against protesters
- In Meerut, 100 persons have been named and 5000 unnamed
- In Bulandshahr, 23 persons have been named and 1000 unnamed
- In Bijnor, 11 FIRs have been registered, with 200 persons named in them and 4000 unnamed. 101 persons have been arrested and charged under Section 307 of the IPC and other sections. 20 among the arrested happen to be juveniles.

There are several news of midnight raids by the police, picking up youth all across western and central Uttar Pradesh.

Other concerning developments pertains to discrimination and harassment based on religious lines. The police sealing hundreds of shops owned by Muslims, alleging that they were among the agitators and were involved in violence. This is especially in Muzaffarnagar and other western Uttar Pradesh districts. Owners of the meat shops in Muzaffarnagar, predominantly Muslims, have been asked by the district authorities and police to shut down. In Lucknow, authorities have claimed that they had identified 'miscreants' behind the violence - in all possibilities referring to the arrests mentioned in the above section, and allegedly started the process of confiscating their property, to pay for the loss caused to public property. This if true, is not only arbitrary but completely illegal, as the confiscation of property is beyond the jurisdiction of the police and administration and prerogative of the judiciary.

Appeal

There is a severe clampdown on fundamental freedoms in Uttar Pradesh. The brutal use of force against protestors, leading to deaths and severe life-threatening injuries are alleged to be deliberate to deter citizens from protesting. HRDs have been put under house arrest, detained and arrested under severe provisions of the IPC. Internet shutdowns have ensured much of the police action going unreported.

It is important that the NHRC urgently and immediately intervenes, as the apex human rights body of India, to ensure that in no circumstances fundamental freedoms are

⁸ <https://indianexpress.com/article/india/caa-protests-up-bijnor-protester-killed-police-firing-6181930/>

suspended in Uttar Pradesh and hold officials accountable for doing so, ensure that the guidelines laid down by the NHRC and Supreme Court of India are strictly adhered in all cases of deaths in police actions, arrests and torture, and HRDs don't face reprisals - especially in the form of fabricated charges - for criticising the CAA, brutal police actions in New Delhi and Uttar Pradesh.

In the light of the above, we pray to the NHRC to acknowledge this as an extraordinary situation and use the expertise of its investigation wing, special rapporteurs, special monitors and members of the NGO core group. We pray that the NHRC sets up an independent team for investigation – ensuring victims of police violence, HRDs who were detained and arrested, family members, relatives and colleagues of those killed in firing depose before this team. Given that it is an absolute case of police violence backed by the state administration, the case by no means be limited to response from Uttar Pradesh authorities or limited to investigation only by the investigation wing of the NHRC - composed solely of police officials but an independent team also including NHRC's special rapporteurs, special monitors and members of the NGO core group..

While investigating into these cases, we urge that the NHRC also focuses on adherence to all relevant laws, procedures and guidelines to be complied by the state police and administration.

In cases of **Deaths in Police Actions** -

- Direct the Director General of Police of Uttar Pradesh to seal and preserve all the locations where firing took place
- Direct the Director General of Police of Uttar Pradesh that all victims' bodies are preserved to enable the video-graphing and conduct of post-mortems in full compliance with the NHRC guidelines; and the post-mortem reports are handed over directly to the NHRC
- Direct the Director General of Police of Uttar Pradesh that all forensic and other evidence is seized from every location and preserved
- Direct the Director General of Police of Uttar Pradesh that the names, duty records and registers relating to all police officials on duty on all the necessary dates are collected, listed, and secured and handed over directly to the NHRC
- Direct the Director General of Police of Uttar Pradesh that all the weapons, and all related evidence such as projectiles, bullets, and cartridge cases used by the police personnel are seized and secured and handed over directly to the NHRC
- Direct the Director General of Police of Uttar Pradesh that all wireless and vehicle log book records and entries between December 16 and December 23, 2019, are collated and handed over directly to the NHRC
- Direct the Director General of Police of Uttar Pradesh that all call detail records of all police personnel involved in supervising police actions at the time of the firings and all calls made between December 16 and December 23, 2019, are collated and handed over directly to the NHRC
- Direct the Director General of Police of Uttar Pradesh to seize all available CCTV footage in and around each area where firing took place and hand over directly to the NHRC

- Ensure that procedures laid down in Section 129, CrPC on dispersal of assembly were followed in full compliance, including the assurance that only an Executive Magistrate, or officer in charge of a police station or in the absence of the officer in charge, an officer not below the rank of a Sub-Inspector gave adequate and audible warnings first for the assembled to disperse and only after that that firing was to commence. The Commission's investigating team is urged to take the statements of every area Executive Magistrate and Station House Officer to ascertain who was present, whether force was used in a graded manner, whether warning before resorting to lethal force was issued audibly, and which official gave the warnings.
- Ascertain if the standard operating procedures to be followed by the police, also as may have been prescribed in the Uttar Pradesh Police Manual, in case of management of public assemblies was adhered by the Uttar Pradesh police in all cases

In cases of **detentions and custodial violence** -

- NHRC to compile all police stations and corresponding judicial Magistrates' courts under whose jurisdiction individual or mass detentions have taken place
- Ensure that the names, duty records and registers of all arresting/detaining officers and Station In-Charges on all the necessary dates are collected, listed, and secured
- Inspect the General Diaries, FIR and arrest registers of the police stations to scrutinise whether the needed entries recording arrests/detentions were made
- Inspect any register listing preventive arrests and detentions as above
- Seize and examine all relevant CCTV footage from the police station premises
- Ensure that all the mandatory procedures on arrest and detention laid down in Sections 41 of the CrPC, particularly with Sections 41B and 41D, and Sections 50, 50A, 51, 54, 55A, 56, 57, and 60A of the Code were followed by the police
- Ensure that the constitutional rights of all arrested persons guaranteed under Article 22 of the Constitution of India were fully adhered to (namely informing the arrested persons of the grounds for arrest, right to a lawyer/legal representation, and being produced within 24 hours in front of a judicial magistrate
- Ensure that the NHRC guidelines on arrest were complied with
- Demand and examine copies of Inspection Memos that are to be drafted by the police that are to list any injuries or marks on the bodies of any arrested/detained person (DK Basu guideline)
- Inquire whether the district Legal Services Authority was informed by the (each) police station of the arrests and detentions
- Ensure that every detained/arrested person was produced before a judicial Magistrate within 24 hours of arrest - case diary entries, GD entry
- Match time of arrest in police records with time of production in court roznamcha - and also in arrest memos
- Examine all orders given by Judicial Magistrates on remand/detention/release
- Examine that orders on preventive arrest or detention were issued in writing and laid out legal grounds for preventive arrest or detention

- Ensure that any person preventively arrested under Section 151 CrPC was not detained in custody beyond 24 hours
- Determine that no arrested person was subjected to excessive force or acts of torture
- Whether women police were at the place of arrest and in police stations

In cases of **police high-handedness and targeting** -

- NHRC to conduct spot inspections of all shops/businesses sealed by police to ascertain damage to property
- Seize and examine all available CCTV footage - any videos by credible media sources
- Call for lists of the names and designations of all police personnel on duty and involved
- Match up with vehicle and wireless log records
- Speak to independent eyewitnesses at the scenes
- Determine whether the police conducted preliminary investigative steps to list the shops/businesses to be sealed, and what these were, including all written orders or documents

In cases of **Internet shutdown** -

- NHRC to call for all orders or directions that required the competent authorities to prevent citizens and other entities from accessing internet services, particularly to ascertain the duration and locations pinpointed, if any, for which such prevention of access was ordered

Yours Sincerely

Wajahat Habibullah
Sajjad Hassan
Maja Daruwala
Henri Tiphagne

Copies to:
All Members of the NHRC
Secretary General
Registrar Law