



May 18, 2021

To,
Mr. Bimbadhar Pradhan, IAS,
Secretary General,
National Human Rights Commission,
Manav Adhikar Bhawan, Block-C, GPO Complex, INA,
New Delhi – 110023.
Email: sgnhrc@nic.in

Dear Sir,

Sub: HRD Alert-India – Urgent Appeal for Action – Maharashtra: Inhumane conditions in Taloja and Byculla jails and threat to lives of 15 undertrial HRDs in the Bhima Koregaon-Elgar Parishad case

Greetings from Human Rights Defenders Alert - India!

We are writing to express our grave concern regarding the shocking and inhumane treatment of the 15 Human Rights Defenders accused in the Bhima Koregaon-Elgar Parishad case, incarcerated in the Taloja and Byculla jails in Maharashtra.

The 15 HRDs arrested in the case were:

1. Prof. Anand Teltumbde (Academic)
2. Prof. Shoma Sen (Academic)
3. Prof. Hany Babu (Academic)
4. Fr. Stan Swamy (Adivasi rights activist)
5. Mr. Mahesh Raut (Adivasi rights activist)
6. Mr. Sudhir Dhawale (Poet)
7. Adv. Surendra Gadling (Lawyer)
8. Adv. Sudha Bharadwaj (Lawyer)
9. Mr. Gautam Navlakha (Writer-researcher)
10. Mr. Rona Wilson (Activist)
11. Mr. Arun Ferreira (Activist)
12. Mr. Vernon Gonsalves (Activist)
13. Mr. Sagar Gorkhe, (Cultural Artist, Kabir Kala Manch)
14. Mr. Ramesh Ghaichor (Cultural Artist, Kabir Kala Manch)
15. Ms. Jyoti Jagtap (Cultural Artist, Kabir Kala Manch)

While Mr. VV Rao has been released on medical bail by the Bombay High Court, the other 15 HRDs, prominent activists, lawyers and professors, are still in Taloja and Byculla prisons as undertrials. Many of them are over the age of 50 and suffer severe co-morbidities making them vulnerable to the highly infectious and fatal new variant of COVID 19 virus in India. Family members of the HRDs allege that inhumane conditions inside the Taloja and Byculla prisons and lack of medical facilities have led to their rapidly deteriorating health.

On basis of information shared directly by the HRDs to the family; the conditions inside the jail are abysmal with complete absence of social distancing, no ventilation, water shortage, lack of hygiene, no access to basic medicines, or a hospital. The majority of the staff including cleaners and cooks inside Taloja prison have tested positive for COVID-19 and over 60 inmates inside the Taloja jail and 40 in the Byculla jail have also tested positive.

There are no doctors, nurses, lab technicians, basic medicines or hospital in the prisons. In Taloja prison there are no MBBS doctors, only three ayurvedic doctors; with a room serving as a hospital where untrained prison inmates help other inmates who are patients. Testing is through the non-reliable rapid antigen test and random. Eight persons inside Mr. Sudhir Dhawale and Mr. Vernon Gonsalves' barrack have tested positive. Yet the prison staff have refused to test the two HRDs despite several requests.

Fr. Stan Swamy, an 84-year-old HRD suffering from Parkinsons, is in Taloja jail in a very frail condition suffering from fever, cough and diarrhoea, and suspected of being COVID positive by his congregation colleague with whom he communicated his fragile condition. He has received no medical care.

Adv. Sudha Bhardwaj, 59, who has been inside the Byculla prison for last three years suffers from previous co-morbidities including diabetes with pulmonary tuberculosis amongst other ailments. Having lived in unhygienic and poorly ventilated spaces within prison where access to clean water is difficult, she has developed a whole host of new problems including skin infections, urinary infections, weight loss, hair fall etc. Her health makes her extremely vulnerable and particularly now when over 40 people in Byculla Jail have tested positive for COVID-19. She was unwell for 3 weeks with diarrhoea, tastelessness and other symptoms indicating the new strain of the virus. Now her health has deteriorated further and she is unable to do her own work and needs aid to do her daily chores. She reached out to the jail authorities a number of times but to no avail.

Prof. Hany Babu is currently under treatment in JJ Hospital after testing positive for COVID-19 and has been suffering a serious infection in his left eye which has impaired his vision and threatens his life. He was not allowed to go to the hospital despite his lawyers and families repeated pleas to the prison authorities. It was only after pressure from the civil society that he was taken for treatment to the hospital, but his family and lawyers have been given no information about his ailment or treatment.

Adv. Surendra Gadling suffers from hypertension, diabetes and asthma and requires regular check-ups and consultation to ensure that his condition does not regress. He also required a new pair of spectacles and even this request was not considered. Spectacles sent by his family are also not given to him. He was not allowed to attend his mother's death rites either.

Mr. Mahesh Raut has been experiencing fever, body aches and cough and he has not been provided medicines, thermometer or oximeter in jail. The medicines his family tried to send were not accepted by the jail authorities.

Several HRDs have also been denied vaccinations for lack of Aadhar cards. In one of the case, HRD's relative allege that all the official documents were confiscated by the police in an earlier raid. Fr Stan Swamy and Mr. Sudhir Dhawale have been denied the vaccine as they do not have Aadhaar cards inside the prison.

While video calls of 10 min and audio calls with the family are permissible every week to the undertrials, not a single video call has been allowed to the HRDs. The phone calls too are barely allowed for 5 minutes, often with a lot of disturbance in the audio. Letters sent by the undertrials reach the family after a delay of more than a month. When the HRDs complain to the jail authorities, they are being threatened with changing their barracks or stoppage of calls and letters to the family.

These inhumane conditions in the prisons violate national and international human rights of a prisoner. As the Supreme Court said while granting medical bail to Mr. Varavara Rao, that prison only curtails the Right to Movement, and all other rights must remain.

It is the responsibility of the state to provide the best of health services which are not being fulfilled. Moreover, the criminal justice system in India is not equipped to deal with a global pandemic which has nearly collapsed the entire nation's medical health system. We consider it a gross violation of the fundamental right to life of the HRDs to keep them in overcrowded prison in such conditions where they are denied basic medicines and hospitals.

Prisoners are entitled to basic medical facilities, however, it is clear that the basic medical necessities of trained MBBS doctors, qualified nurses, medicines, COVID testing are not provided in Taloja or Byculla prison during this time of catastrophic national medical emergency to the HRDs. Nor do the HRDs have access to any proper hospitals. The repeated pleas of the undertrials to take them to doctors are ignored by the prison authorities or worse they are threatened with punishment.

We would like to recall for NHRC's reference here to provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular Rule 27 which states that –

- 1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.*
- 2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.*

Abuses against patients and individuals under medical supervision is considered cruel, inhuman and an act of torture. The UN Human Rights Committee emphasizes that article 7 "protects, in particular patients in teaching and medical institutions."

The UN Manual on Reporting also notes: "Article 7 (No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment) protects not only detainees from ill-treatment by public authorities or by persons acting outside or without any official authority but also in general any person. This point is of particular relevance in situations concerning patients in medical institutions, whether public or private. In the current situation the prison authorities seem both clueless dealing with the medical emergency and callous enough to deny the HRDs their basic right to life and health.

To deny proper RTPCR testing of the 15 HRDs or to deny them vaccination is an act of cruelty and torture towards the prisoners.

Access to regular contact with family: The UN Standard Minimum Rules for Treatment of Prisoners 1955 and the Nelson Mandela Rules 2015, lay down facilitating contact with the family and the outside world as one of the basic rights of prisoners. Studies prove that stable relationships of the prisoner with the family is very crucial for their well-being while in prison and it is important that there are frequent, ongoing and successful contact between prisoners and their families.

In India, family contact of prisoners is maintained through writing letters to family members, visits of family to prison to have face-to-face meetings (called *mulakat*), telephone calls and meetings through video conferencing facility. The denial of access to the family members of the HRDs through video calls or irregular and late letters are a severe violation of national and international human rights laws.

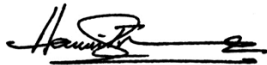
Appeal:

We urge the Hon'ble Commission to URGENTLY intervene in this matter relating to violation of multiple human rights of well-respected HRDs and to act urgently on the immediate threats to their fundamental right to life and liberty. We therefore urge you to immediately take necessary steps and:

- Urgently constitute an independent committee with medical doctors from reputed hospitals of Mumbai, led by a senior member of the NHRC, to visit the Talaja and Byculla jails to assess the medical condition of the 15 political prisoners in the Bhima Koregaon-Elgar Parishad case. The committee should directly meet and talk to the HRDs and submit a report on the correct and clear picture of the two prisons and the medical situation of HRDs to the Hon'ble Commission within two weeks.
- Direct the Inspector General of Prisons and Correctional Services, Maharashtra, to take URGENT and appropriate measures for getting RTPCR tests done for all prisoners in Talaja and Byculla jails. Those testing positive or requiring medical facilities should be immediately shifted into hospitals of their family's choice.
- Initiate an independent inquiry on why adequate medical care was not provided to all the HRDs by the jail authorities of the Talaja and Byculla jail, despite repeated pleas by the undertrial HRDs and their families and the threats that were made by the prison authorities to them.

- Direct the Inspector General of Prisons and Correctional Services, Maharashtra to direct the prisons to provide for video calls between inmates and their family members, which is a right of all inmates.
- Direct the Inspector General of Prisons and Correctional Services, Maharashtra, to provide a point of contact who can share daily updates with the families of all 15 HRDs on the health and well-being during this period of pandemic and submit a report on the same to the NHRC within a week.
- Direct the State government of Maharashtra to acknowledge if they are unable to guarantee the right to life of the HRDs in the Bhima Koregaon case and to take measures to release them immediately in the custody of their families who can take care of their medical needs till the pandemic conditions improve.
- Initiate an independent inquiry, exercising Section 12 (c) of the Protection of Human Rights (Amendment) Act, 2019, into the existing conditions in Taloja and Byculla Jails.
- Refer to Hon'ble Commission's Point 5 of Advisory 1 on the Rights of Prisoners and Police Personnel and direct the Chief Secretary of Maharashtra and Inspector General of Prisons and Correctional Services, Maharashtra, who are part of the High Powered Committee (HPC), set up under the directions of the Supreme Court, to release all HRDs in Taloja and Byculla jails.

Yours sincerely,



Henri Tiphagne
National Working Secretary