



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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May 06, 2020

To,

Mr. Debindra Kundra

National Focal Point - Human Rights Defenders & Assistant Registrar
National Human Rights Commission Manav Adhikar Bhawan,

Block-C, GPO Complex, INA,

New Delhi – 110 023

Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Bihar- Right to Information (RTI) activist and human rights defender Mr. Girish Prasad Gupta falsely implicated and tortured by public authorities- Regarding

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are writing to express our grave concern regarding the false implications and torture of an RTI activist and Human Rights Defender Mr. Girish Prasad Gupta by public authorities for using RTI as a mechanism to defend human rights.

Source of Information:

- Regional Coordinator of HRDA for East of India
- Communication with the HRDs in the region
- Media Reports

Date of Incident:

April 15, 2020

Place of Incident:

Phulwariya Police Station & Residence of the victim in Shokhara Village, Begusarai District.

The Perpetrators:

1. Dr. Nishant (SDO, Teghra),
2. BDO, Mr. Parmanand Pandit , BDO, Teghra
3. Mr. Aditya Vikram , CO, Teghra
4. Mr. Lalan Kumar, Animal Husbandry officer
5. Mr. Sumant Chowdhary, SHO Phulwariya and other police personnels

About the Human Rights Defender

Mr. Girish Prasad Gupta, aged 75, is an RTI activist, and has filed various applications to defend human rights of the people.

Details of the incident

According to sources, on April 15, 2020, at around 8 pm, Dr. Nishant Kumar (SDO, Tehara) along with other officers and police personnel visited Mr. Girish Gupta's (aged 75 years) house in Shokhara village. The perpetrators abused Mr. Gupta and told him that "tumhe sabak sikhana hai" (we have to teach you a lesson). He was beaten up at his own house and then taken to the Phulwariya Police Station based on FIR filed under Section 188 (contempt of lawful authorities of public servants) and 353 (Assault or criminal force to deter public servant from discharge of his duty) of IPC. When the wife and children of Mr. Gupta tried to intrude, even they were beaten up with lathi by the officials.

At the police station, he was beaten up and tortured for two hours, and then late at night, he was forced to sign on blank papers. Later, on the same day, he was released on a personal bond. However, Mr. Kundan Kumar (Dy SP, Head Quarter) has given a false statement to the media that Mr. Gupta was not tortured in the police custody. However, right after his release from the police station, the HRD released pictures showing fresh bruises and multiple injuries on his body (attached as Annexure I).

We would like to bring this to your notice that Mr. Gupta is a senior citizen aged 75 years with several health complications. He is surviving on a single kidney and is suffering from various other diseases like prostate, hernia, diabetes, and low blood pressure. The medical report of Mr. Gupta is attached as Annexure-II. He was also threatened by the police and asked to withdraw all his recent RTI applications. FIR No. 49/2020 has been filed suo-motu against Mr. Gupta invoking offenses under IPC Sections 188 (Disobedience to order duly promulgated by public servant) and 353

(Assault or criminal force to deter public servant from discharge of his duty) , both having punishment less of than seven years.

In *Re Contagion of COVID-19 virus in prison* [W.P (C) No. 01/2020], a suo-motu case of the Supreme Court, the apex court has directed all states to establish systems to decongest prisons during the current pandemic. Furthermore, the court has also emphasized the guidelines in *Arnesh Kumar v State of Bihar* (AIR 2014 SC 2756) whereby it stated that it is not necessary to arrest a person for offenses which are punishable for less than 7 years of imprisonment. This case is an attempt to silence Mr. Gupta so that obstruction can be created in his activism. This is violative of his constitutional right of free speech and question the authorities. This is also against the spirit of the RTI Act which aims to ensure transparency and public accountability. Successfully

Since the RTI Act has been enacted in the year 2005, various cases of assaults and killings of RTI activists have been reported. The activists have been instrumental in exposing corruption and bringing transparency in the governance system. The only way to curb the menace is a well-established mechanism consisting of defined procedures and quick action by the police officials on complaints of RTI users.

Custodial Violence & Torture:

Article 21 of the Constitution of India ensures a 'fair, just and reasonable' procedure in all facets of Criminal Justice Administration. The worst violation of human rights and custodial justice guarantee takes place in the course of investigation, when the police act under the pressure to secure most clinching evidence often resort to third degree methods and torture. The Courts have not only exposed the seamy side of police investigation process but in several cases also dished out exemplary punishments to ensure human conditions of investigations.

Torture qualifies to be one of the gravest forms of human rights violations, at the behest of the state authorities. The preamble of Protection of Human rights Act 1993, passed by the parliament to meet the national and international demand to have a law to protect human rights and punish violations of the same. Section 2(1)(d) of the Protection of Human Rights Act, 1993 defined 'human rights' as follows: "means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." Therefore, the Hon'ble Commission constituted via the said act has direct mandate to intervene in cases of custodial violence and torture in a strict manner to provide redressal to the victim.

Furthermore, given the fact that Mr. Gupta is a human rights defender and a public-spirited individual, an attack on his dignity and liberty, is another attempt of the state

to curb the dissenting voices who are critical of the governmental schemes and activities. If the Hon'ble Commission allows for such an environment of threat against HRDs to constitute, it will eventually lead to a complete collapse of the human rights system in the country.

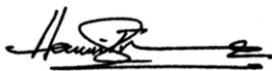
Appeal:

We therefore urge you to immediately take necessary steps to:

- Order an immediate, independent, thorough, transparent, effective and impartial investigation into the custodial torture, harassment, intimidation and false criminalization of the human rights defender Mr. Girish Gupta.
- Order immediate registration of FIR against officer in-charge of Phulwariya police station Dr. Nishant (SDO, Teghra), BDO, Mr. Parmanand Pandit, BDO, Teghra, Mr. Aditya Vikram, CO, Teghra, Mr. Lalan Kumar, Animal Husbandry officer, Mr. Sumant Chowdhary, SHO Phulwariya and other police personnels for, custodial torture, harassment intimidation and false criminalization of RTI activist Mr. Girish Gupta.
- Order for the CCTV footage of the Phulwariya police station and its lockup for April 15, 2020,
- Exercise Section 12 (b) of the Protection of Human Rights Act and intervene before the court through an experienced criminal lawyer and seeking quashing of the FIR against Mr. Girish Gupta
- Ensure provision of reparation and apology to Mr. Girish Gupta for the physical and psychological suffering he underwent because of the illegal police actions.

Looking forward to your immediate action in this regard,

Yours sincerely,



(Henri Tiphagne)

National Working Secretary