

JAGTAR SINGH JOHAL: ARBITRARILY DETAINED BRITISH BLOGGER FACING DEATH PENALTY

Briefing by Reprieve and REDRESS for Backbench Business Committee debate on 19 January 2023

**OVERVIEW**

Jagtar Singh Johal is a British national arbitrarily detained in India since 2017, on political charges carrying the death penalty, based on a confession extracted under torture. He is a Sikh activist from Dumbarton who sought to draw attention to human rights abuses against India's Sikh population, including in a blog post calling for accountability for historic anti-Sikh pogroms.

In October 2017, Jagtar travelled to India to get married. The following month, just three weeks after his wedding, he was unlawfully abducted off the street by plain clothes police officers, in front of his wife. Jagtar was brutally tortured with electricity into giving a false 'confession' which was used to link him to an alleged conspiracy.

Jagtar currently has nine cases pending against him – all of which are based primarily on the torture-induced confession. A tenth case was brought against him in January 2021, relating to a killing that took place while he was incarcerated virtually in isolation under strict Covid-19 measures. Jagtar was illegally arrested and tortured yet again in that case, by the notorious Special Cell of the Delhi Police, who later did not proceed to level charges against Jagtar. Only one of these nine active cases has even commenced trial in five years.

The foremost international authority on unlawful deprivation of liberty, the UN Working Group on Arbitrary Detention (UN WGAD), found in May 2022 that under international law Jagtar's detention is arbitrary.ⁱ They found that Jagtar's detention lacks any legal basis and that his fair trial rights have been gravely violated, with him remaining in detention "apparently with no evidence" and "despite intelligence agencies having over three years to investigate". The UN body calls for him to be immediately released.

In August 2022, it was revealed that the British intelligence agencies, MI5 and MI6, may have contributed to Jagtar's detention and torture by sharing intelligence with the Indian authorities.ⁱⁱ Jagtar's legal team is arguing that he appears to be the individual described anonymously in a report by the UK's Investigatory Powers Commissioner's Office (IPCO), which sets out how MI5 and MI6 passed information about a British national to foreign authorities who then detained and tortured them.

The legal action argues that UK intelligence services unlawfully shared information with the Indian authorities when there was a real risk that Jagtar could be tortured, mistreated, or face the death

penalty. He is asking the Government to grant him redress for the harm he has suffered; recognise its actions were unlawful; and publicly apologise for its role in his suffering.

Reprieve and REDRESS provide this briefing in advance of the Backbench Business Committee debate on Jagtar's case on Thursday 19 January 2023 at 11.20.

Reprieve and REDRESS ask that MPs attend and press the FCDO to answer the following questions:

1. It is Foreign Office policy to call for the release of arbitrarily detained British nationals, as stated to the Foreign Affairs Committee in October 2020. In light of the Government's determination in June 2022 that Jagtar is arbitrarily detained, will the Minister now call for his release?
2. Why has the Government failed to implement its policy to seek the release of arbitrarily detained British citizens in Jagtar's case?
3. Jagtar's legal team has presented extensive evidence indicating Jagtar's detention and torture followed a tip-off by MI5 and MI6. Will the UK Government now take responsibility for securing his release and redress for the abuses he has suffered?
4. Jagtar's legal team has presented extensive evidence indicating Jagtar's detention and torture followed a tip-off by MI5 and MI6. In 2018, after years of litigation, the UK Government ended up apologizing for a MI6 tip-off that led to the rendition and torture of Libyan dissident Abdulhakim Belhaj. Does the Minister accept that Jagtar's case demonstrates that the Government has not learned from mistakes of the past?
5. Rather than forcing Jagtar and his family to go through a long court process, will the Government acknowledge its role in Jagtar's mistreatment, and provide an apology to Jagtar and his family for the harm he suffered as a result of the Government's tip-off to the Indian authorities?
6. Jagtar has now been detained for five years, and only one of the nine cases against him has proceeded in that time. Does the Minister accept that the Government's current approach simply is not working?
7. Does the apparent role of UK authorities' in Jagtar's torture and possible death sentence undermine its categorical opposition to such abuses? And is it not therefore in the Government's interest to take swift remedial action and seek Jagtar's immediate release?

ARBITRARILY DETAINED AND TORTURED

Jagtar was arrested on 4 November 2017 in Jalandhar, Punjab, three weeks after his wedding. Jagtar and his wife were out shopping when he was abducted off the street, hooded with a sack, and bundled into a police car. Jagtar was remanded in police custody immediately upon arrest. For 10 days he was held incommunicado and not allowed to see a lawyer, his family members, or a representative of the British High Commission.

Jagtar was severely tortured by the police. In a hand-written note to his defence advocate, Jaspal Singh Manjhpur, Jagtar described how electric shocks were administered by placing crocodile clips on his ear lobes, nipples, and private parts. Police also brought petrol into his cell and threatened to burn him alive. To make the pain stop, Jagtar recorded video statements and signed blank pieces of paper which were later presented by the authorities as a "confession".ⁱⁱⁱ The widespread use of torture by police in India has been documented by the UN, NGOs, and India's own Law Commission.^{iv}

The UN WGAD has determined that Jagtar's detention "lacks [a] legal basis", was based on "discriminatory grounds" owing to his Sikh faith and his "status as a human rights defender", and that Jagtar was "subjected to torture".^v

EVIDENCE THAT AN MI5 AND MI6 TIP-OFF LED TO JAGTAR'S TORTURE

On 5 March 2020, the Investigatory Powers Commissioner's Office, the UK's intelligence watchdog, published its 2018 annual report.^{vi} That report included a case study (see below) setting out how MI5, using MI6 as a go-between, had passed information about a British national to a partner country whose authorities then arrested and tortured the British national in question.^{vii}

Case study: allegations of mistreatment

In the course of an investigation, MI5 passed intelligence to a liaison partner via SIS. The subject of the intelligence was arrested by the liaison partner in their country. The individual told the British Consular Official that he had been tortured.

The FCO led the response to this allegation and lobbied for further access to the detainee. The FCO continue to regularly access the individual throughout his detention.

With the detainee's consent, the matter was raised with the local law enforcement and relevant government departments in country. The FCO requested an independent and impartial investigation. The issue was also raised at a bilateral meeting by the Prime Minister.

Following a suggestion from the local government, consular staff have also made the individual and his family and legal representatives aware of how they could initiate a formal human rights complaint.

Jagtar's legal team, supported by Reprieve and REDRESS, have assembled compelling evidence which strongly suggests the British national in the case study is Jagtar. This is based on a number of striking similarities between the two cases:

- a. In the case study, MI5 are reported to have passed intelligence to a liaison partner via the SIS prior to the subject's arrest. In Jagtar's case, on 15 November 2017, not long after his detention, an article in the Indian newspaper, the Hindustan Times, claimed that although Jagtar had been on the radar of the intelligence wing of the Punjab Police for over a year, he came "under the scanner" after "a source in the UK" provided the Punjab police with "vague information" about a key man "Johal".
- b. The subject of the case study is said to have informed a British consular official that he had been tortured. Jagtar informed the FCO about his torture, as confirmed in answers to Written Parliamentary Questions.^{viii}
- c. The case study refers to the FCO leading the response to this allegation and lobbying for further access to the detainee. Likewise, there were repeated attempts by the FCO's consular team between November and December 2017 to ensure access to Jagtar. The case study also refers to the FCO continuing to regularly access the detainee throughout his detention. The FCO has met with Jagtar several times during the course of his detention.
- d. The case study refers to the matter of the subject's mistreatment and torture being raised by the UK authorities with relevant government departments within the country; the Foreign Office has raised Jagtar's case with, at least, the Indian Minister of State for External Affairs, the outgoing Indian High Commissioner and the Indian Foreign Secretary.^{ix} The case study also refers to UK authorities raising the matter with local law enforcement; the Foreign Office has also regularly engaged with the Punjab Police.

- e. The case study states that the British Prime Minister raised the subject's case at a "bilateral meeting". On 18 April 2018, Jagtar's case was raised by the then British Prime Minister, Theresa May, during a bilateral meeting with the Indian Prime Minister, Narendra Modi.^x
- f. In the case study, the FCO is said to have requested an independent and impartial investigation into the allegations of torture. Its consular staff are also said to have made the individual, his family and legal representatives aware of how to initiate a formal human rights complaint. This mirrors Jagtar's case, where the FCO's consular team engaged with the Indian authorities in securing an independent investigation to be carried out by the National Human Rights Commission ("NHRC"). We understand that a complaint to the NHRC as a way forward was suggested by the Indian authorities to the FCO, who in turn advised Jagtar's family to write to the NHRC, which they proceeded to do. The NHRC ultimately refused to take forward the complaint because they said Jagtar's family filing a petition on his torture before the courts precluded them from doing so.

The involvement of UK intelligence actors is further evidenced by the following:

1. While being tortured and interrogated by the Punjab Police, Jagtar was shown photographs of individuals from the UK and was questioned about them.
2. In September 2018, counter-terrorism raids were conducted across the Midlands. Although West Midlands Police denied involvement by the Indian government or that the raids were connected to Jagtar's case, a number of Indian publications, such as the Hindustan Times and The Tribune, quoting Indian police and intelligence officials, reported that those raids were the result of intelligence sharing between the UK and Indian authorities and a result of "diplomatic pressure" being applied by India on the UK in relation to the targeted killing cases in which Jagtar is accused of being involved.^{xi}
3. In 2018, a Memorandum of Understanding was signed between the Minister of State for Home Affairs of India and the UK, the purpose of which is "co-operation and exchange of information for combating international criminality and tackling organised crime".^{xii} The article in the Tribune which first brought this agreement to light refers to a request by the Indian authorities for the British government to proscribe the Sikh Federation UK, which it sees as pro-Khalistan and anti-Indian.^{xiii}

Based on the above, there is compelling evidence that the subject of the case study cited in the IPCO report is Jagtar.

Jagtar's legal team conclude that "The Claimant is the "subject" referred to in the Case Study, and the Indian authorities are the "liaison partner" referred to in the Case Study"; and that "the Defendants shared intelligence relating to the Claimant with the Indian authorities which (directly and/or indirectly) caused or contributed to the Claimant's: (i) torture and/or inhuman or degrading treatment; and (ii) prosecution and/or further prosecution for offences carrying the death penalty."

RISK THAT JAGTAR WILL FACE THE DEATH PENALTY

Jagtar is at serious risk of a death sentence. At least two of the charges against Jagtar carry the death penalty as a maximum punishment. The risk of Jagtar being sentenced to death is very high given the politicised nature of his case and the current political climate. In August 2022 alone, an Indian court sentenced 38 people to death in a trial that took 14 years to complete.^{xiv}

In January 2021, the Delhi Police levelled additional capital murder charges against Jagtar in relation to a crime that occurred almost three years after Jagtar was unlawfully arrested. These charges are baseless, resting on the allegation Jagtar managed to communicate with individuals outside of his prison, despite the fact that his own family have not been able to visit or have official calls with Jagtar during his entire time in Tihar prison.

Following a 10-year moratorium, executions in India resumed in 2004. Since 2004, India has executed eight people in five cases in 2020, 2015, 2013, 2012 and 2004. Prior to this, the last execution took place in 1995. In three out of the five cases, the death penalty was imposed for convictions of terrorism.^{xv} The latest execution occurred in March 2020, when India executed four men together.^{xvi}

THE BRITISH GOVERNMENT'S INADEQUATE RESPONSE

Despite the appalling treatment Jagtar has suffered, the absence of credible evidence for these death penalty charges, and its potential role in his abduction and torture, the UK Government has failed to call for Jagtar's release and repatriation to the UK.

The Foreign Secretary has previously confirmed that the FCDO calls for the release of British nationals where the FCDO believes they have been arbitrarily detained.^{xvii} This policy is, unfortunately, yet to be applied in Jagtar's case, despite recent recognition by then-Prime Minister Boris Johnson that Jagtar's detention is arbitrary.^{xviii}

The UK has also ignored calls by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to provide consular assistance in death penalty cases. The Special Rapporteur has made clear that in death penalty cases "where the detainee is detained on spurious grounds, as a political statement or in circumstances of clear human rights violations" the UK should be making "representations [to the detaining state] that the detainee should not be in detention or facing charges at all".^{xix} Despite this, the UK has so far failed to make representations calling for Jagtar's release.

The UK has also failed to secure Jagtar's right to be free from torture and have not done enough to secure an independent medical examination, despite Government policy stating that it will "raise [allegations of torture] with the local authorities, demanding an end to the mistreatment, and that the incident is investigated and the perpetrators brought to justice."^{xx} The UK has raised Jagtar's allegations of torture but has failed to escalate this to ensure it is taken seriously, as well as failing to secure an expert medical assessment.

The UK has also failed to secure a private consular visit with Jagtar for over 5 years. Private consular visits are crucial to providing adequate consular assistance. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has been clear that "[c]onsular officers must insist that the detainee's right to private consular communication is respected", reporting and escalating as necessary "[a]ny concerns about attempts to monitor or record conversations, deny consular access or otherwise violate the detainee's consular right".^{xxi}

QUESTIONS FOR THE FCDO

With a Westminster Hall debate on Jagtar's case scheduled for Thursday 19th January 2023, Reprieve and REDRESS therefore ask that MPs attend and press the FCDO to answer the following questions:

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determination in June 2022 that Jagtar is arbitrarily detained, will the Minister now call for his release?

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For further information, please contact Jack Steele at jack.steele@reprieve.org.uk ; or Alejandra Vicente at Alejandra@redress.org

ⁱ UN Working Group on Arbitrary Detention, 'Opinion No. 80/2021 concerning Jagtar Singh Johal (India)' (4 May 2022) UN Doc A/HRC/WGAD/2021/80, <https://www.ohchr.org/sites/default/files/2022-05/A-HRC-WGAD-2021-80-India-AEV.pdf>

ⁱⁱ Frank Gardner, Jagtar Sing Johal case: UK spy agencies accused of tip-off that led to torture, BBC News, 22 August 2022, <https://www.bbc.co.uk/news/uk-62639233/>.

ⁱⁱⁱ See, for example, Chiara Giordano, Jagtar Singh Johal: British man alleges Indian police threatened to shoot and set him on fire, The Independent, 9 June 2018, <https://www.independent.co.uk/news/world/asia/jagtar-singh-johal-british-man-allegedly-tortured-indian-police-threatened-burn-alive-punjab-a8390891.html>.

^{iv} See for example: UNHRC, Letter from the Special Rapporteurs on extrajudicial killings and on torture (10 January 2014) UN Doc AL G/SO 214 (33-27) G/SO 214 (53-24) IND 1/2014; UNCHR, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum: Observations on communications transmitted to Governments and replies received' (5 March 2015) UN Doc A/HRC/28/68, paras 199–201; Human Rights Watch, *Bound by Brotherhood: India's Failure to End Killings in Police Custody* (19 December 2016), https://www.hrw.org/sites/default/files/report_pdf/india1216_web_0.pdf; Law Commission of India, 'Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation' (October 2017) Report No. 273, paras 5.15–5.18, and generally, paras 5.1–5.45.

^v UN Working Group on Arbitrary Detention, 'Opinion No. 80/2021 concerning Jagtar Singh Johal (India)' (4 May 2022) UN Doc A/HRC/WGAD/2021/80, <https://www.ohchr.org/sites/default/files/2022-05/A-HRC-WGAD-2021-80-India-AEV.pdf>, paras 99, 122 and 125.

^{vi} Investigatory Powers Commissioner's Office, *Annual Report 2018*, 5 March 2020, <https://www.ipco.org.uk/publication/annual-report/ipco-annual-report-2018/>.

^{vii} Investigatory Powers Commissioner's Office, *Annual Report 2018*, 5 March 2020, <https://www.ipco.org.uk/publication/annual-report/ipco-annual-report-2018/>, p. 62.

^{viii} Parliamentary Question for FCO, UIN 117248, tabled on 4 December 2017, <https://questions-statements.parliament.uk/written-questions/detail/2017-12-04/117248>; Parliamentary Question for FCO, UIN 118289, tabled on 7 December 2017, <https://questions-statements.parliament.uk/written-questions/detail/2017-12-07/118289>.

^{ix} Parliamentary Question for FCO, UIN 247726, tabled on 25 April 2019, <https://questions-statements.parliament.uk/written-questions/detail/2019-04-25/247726>.

^x Parliamentary Question for Prime Minister Theresa May, UIN 140667, tabled on 2 May 2018, <https://questions-statements.parliament.uk/written-questions/detail/2018-05-02/140667>.

^{xi} Prasun Sonwalkar, UK anti-terror raids linked to Jagtar Singh Johal's arrest, claims group, Hindustan Times, 23 September 2018, <https://www.hindustantimes.com/punjab/uk-anti-terror-raids-linked-to-jagtar-singh-johal-s-arrest-claims-group/story-soC4Dvdw6NSZOMAWupMWP.html>;

Ruchika M Khanna, Intel shared by India led to raids on Sikh activists in UK, The Tribune, 25 September 2018, <https://www.tribuneindia.com/news/archive/punjab/intel-shared-by-india-led-to-raids-on-sikh-activists-in-uk-658857>.

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- ^{xii} FCO/FCDO, UK-India Memorandums of Understanding and agreements, 18 April 2018, <https://www.gov.uk/government/publications/uk-and-india-mous-and-agreements/uk-india-announcements>.
- ^{xiii} Ashis Ray, Consider banning Sikh Federation, India tells UK, The Tribune, 13 January 2018, <https://www.tribuneindia.com/news/archive/punjab/news-detail-528187>.
- ^{xiv} <https://www.bbc.co.uk/news/world-asia-india-60428341>
- ^{xv} There were no executions between 1995 and 2004, see Cornell Center on the Death Penalty Worldwide, Country Profile for the Republic of India, available at: <https://deathpenaltyworldwide.org/database/#/results/country?id=31>
- ^{xvi} The Print India, 'Rarest of rare' – history of death penalty in India and crimes that call for hanging' (19 March 2020), accessed here: <https://theprint.in/theprint-essential/rarest-of-rare-history-of-death-penalty-in-india-and-crimes-that-call-for-hanging/383658/>; NPR, '4 men hanged in India for 2012 gang rape and murder that sparked outrage' (4 March 2020), accessed here: <https://www.npr.org/2020/03/20/818953212/4-men-hanged-in-india-for-2012-gang-rape-and-murder-that-sparked-outrage?t=1617305514659>.
- ^{xvii} Report by Foreign Affairs Committee 'No prosperity without justice: the UK's relationship with Iran' at [52], https://publications.parliament.uk/pa/cm5801/cmselect/cmfaff/415/41506.htm#_idTextAnchor049.
- ^{xviii} <https://reprieve.org/uk/2022/06/30/pm-says-jagtar-singh-johals-detention-in-india-is-arbitrary/>
- ^{xix} Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions (20 August 2019) A/74/318, para 74, available at: <http://users.xplornet.com/~mwarren/SpecialRap.pdf>.
- ^{xx} FCDO, Support for British Nationals Abroad: A Guide (2021), pp. 17, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961671/Guide_Support_for_British_nationals_abroad_Feb_2021.pdf.
- ^{xxi} Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions (20 August 2019) A/74/318, para 72, available at: <http://users.xplornet.com/~mwarren/SpecialRap.pdf>.