

JAGTAR SINGH JOHAL

Briefing on Legal Right to Medical Treatment, 4 April 2020

SUMMARY

In the light of reports of a possible outbreak of coronavirus in Tihar Prison, and fears that Jagtar Singh Johal may contract the virus, this briefing outlines India's legal obligations to provide Jagtar with appropriate and timely medical treatment. Under international law, India is required to provide medical treatment to Jagtar by the International Covenant on Civil and Political Rights, to which India is a party, and by the UN Standard Minimum Rules for the Treatment of Prisoners.

INTERNATIONAL LAW

International Covenant on Civil and Political Rights

India is a party to the International Covenant on Civil and Political Rights (ICCPR), which it ratified on 10 April 1979. The UN Human Rights Committee has made clear that failure to provide appropriate and timely medical care to detainees is a breach of the following rights under the ICCPR:

- the right to life under Article 6;
- the prohibition on torture or cruel, inhuman or degrading treatment or punishment under Article 7;
- the right to liberty and security of the person under Article 9;
- the right to humane treatment of prisoners under Article 10.¹

The Human Rights Committee has stated that “the State party by arresting and detaining individuals takes the responsibility to care for their life.”² The State has a duty to be proactive in providing adequate medical care. It is “incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection”.³ Specifically with regard to the spread of diseases in prisons, the Committee has made clear: “Danger to the health and lives of detainees as a result of the spread of contagious diseases and inadequate care amounts to a violation of article 10 of the Covenant and may also include a violation of articles 9 and 6.”⁴

UN Standard Minimum Rules for the Treatment of Prisoners

The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),⁵ adopted by consensus of the UN General Assembly in Resolution 70/175 of 2015, recognise that the provision of medical treatment for prisoners is a State responsibility. They state that:

¹ See e.g. Human Rights Committee ‘Concluding Observations: Georgia’ (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee ‘Concluding Observations: Portugal’ (2003) UN Doc A/58/40 vol I 56 para 83(11); Human Rights Committee ‘Concluding Observations: Cambodia’ (1999) UN Doc A/54/40 vol I 57 para 306.

² *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

³ *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

⁴ Human Rights Committee ‘Concluding Observations: Republic of Moldova’ (2002) UN Doc A/57/40 vol I 76 para 84(9).

⁵ Adopted by UN General Assembly Resolution 70/175 in 2015.

“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.”⁶

Conclusion on legal obligations

The above authorities are clear that international law requires India to provide appropriate and timely medical treatment to prisoners in detention. Given the highly contagious nature of coronavirus, and the fact that it poses particular risks for individuals with pre-existing health conditions, such as Jagtar, the Indian authorities are obliged to take action with the utmost haste.

BACKGROUND

Jagtar Singh Johal, a British national, was seized, hooded and abducted by plain-clothes police officers on 4 November 2017 while he was in India to get married. He alleges that he suffered severe torture during his early detention, including through electric shocks to his ears, nipples and genitals, forcing his limbs into painful positions, sleep deprivation and death threats. However, India has yet to provide him with an independent medical examination despite repeated requests by his lawyers. As far as REDRESS is aware, India has taken no steps to investigate the allegations.



Jagtar remains detained without conviction or any evidence brought against him, with no access to private consular assistance and limited access to his lawyer.

In January 2018, the UN Special Rapporteur on Torture, the UN Special Rapporteur on Freedom of Religion or Belief, and the Vice-Chair of the UN Working Group on Arbitrary Detention issued a joint urgent appeal calling on India to respond to the allegations of torture and to provide information about the measures taken to prevent any further torture or ill-treatment; the legal basis for Jagtar’s arrest and detention; and the results of any medical examination that may have been conducted. India has failed to respond to the urgent appeal as well as to a follow-up communication issued by the UN Special Rapporteur on Torture in December 2019.

ABOUT REDRESS

REDRESS is an international human rights organisation based in London and The Hague that represents victims of torture in obtaining justice and reparations. REDRESS brings legal cases on behalf of individual survivors and advocates for better laws to provide effective reparations. REDRESS has acted for Jagtar Singh Johal since 2017.

For more information please contact info@redress.org.

⁶ Nelson Mandela Rules, Rule 27(1).