

Violence Against Women and Children: Criminal trespass and sexual assault by the BSF

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To: NHRC <chairnhrc@nic.in>, NHRC1 <cr.nhrc@nic.in>, Surajit Dey <registrar-nhrc@nic.in>

Cc: Chief Secretary Gov of WB <cs-westbengal@nic.in>, Home Secy W B Govt <wb.secyhome@gmail.com>, Nodal Officer WBP NHRC <igpa@policewb.gov.in>, "DG & IGP, West Bengal Police." <dgpwestbengal@gmail.com>, dm-cbr@nic.in, SP Cooch Behar <spcbr@policewb.gov.in>, vaw@ohchr.org, UN SR Torture <sr-torture@ohchr.org>



Banglar

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The Chairman
National Human Rights Commission
ManavAdhikarBhawan
Block-C, GPO Complex, INA
New Delhi-110023

12.03.2020

Respected Sir,

Through this complaint, I seek to draw your attention to the torture and sexual assault on a Muslim woman and her minor daughter by the personnel of the Border Security Forces including the Commandant of C Company, Haldikura BOP, Battalion 47 and 6 BSF constables. The perpetrators criminally trespassed at the residence of the victims, vandalized their property, and verbally abused the victim. When she protested against the trespass of the perpetrators, the Commandant pushed her, shoved her breasts and tore her clothes. The victim's 12-year old daughter wrapped herself around her mother to prevent her from the violence but the Commandant tore her clothes too and attempted to sexually assault both the victim and her daughter. The perpetrators also physically assaulted the victim's 80-year old father-in-law, leading to his collapse. It should be noted that the perpetrators were all male and not accompanied by any female BSF personnel. Further, the Sitalkuchi Police Station refused to lodge a complaint against the perpetrators making the absurd statement that they would investigate the incident prior to registering a complaint. The details of the incident are given in the fact finding report attached below.

This incident violates Article 19 and 21 of the Constitution of India. The perpetrators are punishable under the following:

- Section 441 of Indian Penal Code (IPC) – Criminal Trespass
- Section 354 of IPC – Assault or criminal force to woman with intent to outrage her modesty
- Sections 9 and 11 of Protection of Children from Sexual offences Act (POCSO)—Aggravated Sexual Assault by a person in authority; Sexual Harassment

The BSF personnel have also violated provisions of the Criminal Procedure Code that require for the presence of female officers while searching or arresting a woman. The Police in the case are also guilty of violating the POCSO rules 2012 that list the duties of the police in case of crimes committed under the Act and for the refusal to file a FIR in a cognizable offence. The incident reflects the entrenched impunity in the criminal justice system and systemic attack on religious minorities, especially Muslims, and women by public officials. Therefore I seek your urgent intervention in the case by fulfilling the following demands:

- An independent and non-partisan investigation of the incident.
- Proceedings should be initiated against the perpetrators of the BSF and the police and strict punishment should be given if found guilty.
- Adequate compensation for the victims.
- Psychological aid to the victim and her daughter.
- Directions to the Sitalkuchi Police Station to file a complaint against the perpetrators and provide reasons for not registering the complaint earlier.

Thank you.

Yours Sincerely

DipyamanAdhikary
Assistant Secretary

Details of the victims: 1. ShahinaBibi* (Name changed), 34 years, w/o SanulMian, Address: Mahishmuri village, Sitalkuchi Block, Sitalkuchi Police Station, KhalishmariPanchayat, Cooch Behar District- 736172
2. ShabnamKhatun* (Name changed), 12 years

Details of Secondary victims: 1. SanulMian, 42, husband of ShahinaBibi*
2. SabnurKhatun, 14, daughter of the victim
3. JamidulMian, 8, son of the victim
4. MaqboolMian, 80, Father-in-law of the victim
5. SajiniBibi, 70, Mother-in-law of the victim

Details of the perpetrators: 1. Chandan Singh Saheb, Commandant of BSF battalion 47, Haldikura BOP, C Company
2. 6 BSF constables
3. Inspector-in-charge of Sitalkuchi Police Station, Cooch Behar

Details of eye-witnesses: 1. NurbanuBibi, 45, w/o SahidulHaque, neighbor
2. BenjuBibi, 38, w/o Abdul Khaled Mian, neighbor
3. HamidaMian, 55, s/o Suleiman Mian, neighbor

Place of incident: Residence of ShahinaBibi*

Date and Time of Incident: 20.02.2020, around 7:30 pm

Details of the incident: On 20 February 2020, ShahinaBibi* was cooking at her residence. Her three children and her in-laws were also present at the residence while her husband, Sanul Mian had gone out at 5 pm to the market. It is alleged by the BSF that the victim's husband had been previously involved in smuggling across the Indo-Bangladesh border. Around 7:30 pm, Commandant Chandan Singh Saheb and 6 BSF constables of his battalion forcibly entered the house of the victim armed with guns, knives and lathis. They started to aggressively search the house, including the bedroom and also vandalized property of the victim. They asked ShahinaBibi* about the whereabouts of her husband and she replied that he had gone out. She tried to ask them why they were ransacking her house. At this, Chandan Singh Saheb became outraged and verbally abused her. He pushed her, shoved her breasts and tore her clothes. When the victim screamed in pain, her 12-year old daughter, ShabnamKhatun* wrapped herself around her to save her from the violence. However, the Commandant tore off the clothes of the minor girl and attempted to sexually assault her and ShahinaBibi*. The perpetrators tried to take them away forcibly and started dragging them outside the house. The victim's father-in-law, MaqboolMian, held on to the Commandant's feet and begged him to let the women go. But the Commandant kicked him on the chest and he fell to the ground and fainted. Hearing this ruckus, all the neighbors started gathering outside ShahinaBibi's* residence. Seeing the crowd, the perpetrators fled the property of the victim.

At 1 am in the night, SanulMian took ShahinaBibi*, ShabnamKhatun* and MaqboolMian to Sitalkuchi Block Health Centre for medical treatment. On 21.02.2020 at 11am, SanulMian went to submit a written complaint to the Sitalkuchi Police Station. The on-duty officer refused to accept his complaint and said that they will be able to accept it only after conducting preliminary investigation and sent him away. The following day, on 22.02.2020 SanulMian sent a complaint to the Superintendent of Police of Cooch Behar through post.

Our fact-finding team asked BSF Commandant Chandan Singh Saheb regarding the incident. He denied any involvement in the incident but also said that he would shoot SanulMian on sight because of his involvement in cross-border smuggling.

Attached Documents

Victim's testimony

<https://youtu.be/sVHrfpkdovU>

Medical Documents

Ticket for OPD/Emergency
Stalkuchi BPHC, Cooch Behar

Reg No: 1245
Date: 21/12/2020

Name: Mohammad Rifaqat Hossain Miya
Vill: Mohammadpur P.O. - D.D. - P.S. - C.B. Dist - Cab Brought by: Chauhan Miya

Age: 20 Sex: M Religion: Muslim

Presenting Complaint: Reddish brown discharge from nose

History: 10 days

Investigations: None

Diagnosis: Acute rhinitis

Treatment: 1. B.C. opx Cont. 2. Pantocid ophax sleep 3. E.C.

Signature: [Signature] Date: 21/12/2020

Ticket for OPD/Emergency
Stalkuchi BPHC, Cooch Behar

Reg No: 1244
Date: 21/12/2020

Name: Mohammad Hossain B Choudhury Miya
Vill: Mohammadpur P.O. - D.D. - P.S. - C.B. Dist - Cab Brought by: Chauhan Miya

Age: 20 Sex: M Religion: Muslim

Presenting Complaint: Reddish brown discharge from nose

History: 10 days

Investigations: None

Diagnosis: Acute rhinitis

Treatment: 1. B.C. opx Cont. 2. Pantocid ophax sleep 3. E.C.

Signature: [Signature] Date: 21/12/2020

Ticket for OPD/Emergency
Stalkuchi BPHC, Cooch Behar

Reg No: 1242
Date: 21/12/2020 12:56pm

Name: Mohammad Rifaqat Hossain Miya
Vill: Mohammadpur P.O. - D.D. - P.S. - C.B. Dist - Cab Brought by: Chauhan Miya

Age: 20 Sex: M Religion: Muslim

Presenting Complaint: Reddish brown discharge from nose

History: 10 days

Investigations: None

Diagnosis: Acute rhinitis

Treatment: 1. B.C. opx Cont. 2. Pantocid ophax sleep 3. E.C.

Signature: [Signature] Date: 21/12/2020