

The Many Rapes Of India's Transgender Citizens

<https://www.outlookindia.com/national/the-many-rapes-of-indias-transgender-citizens>

Already vulnerable, India's transgender citizens are assaulted or ignored by the very institutions meant to serve and protect them

Avantika Mehta

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On the day of her arrest in Ariyamangalam, Kanmani (name changed) was wearing a black shiny sari with gold stars embroidered along its length. After the police cut her hair, they handed her a veshti, shirt and warned her to answer "male" when asked for her gender in court.

Three days after her remand to Trichy Central Jail, a warden raped Kanmani in her cell.

Yet Another Rape Story

An Enquiry Report, filed in a Trichy court by District Legal Services Authority (DLSA) Deputy Chief Counsel S Subburaj, says the prison authorities "checked the CCTV footage of the occurrence date... and found it (her allegations of rape) was true."

Kanmani's alleged rapist roams free. Her story is not an unusual one.

A 2015 report by the National Integrated Biological and Behavioural Surveillance (NIBBS), the National AIDS Control Organisation (NACO), and the Ministry of Health and Family Welfare states that 31.5 per cent of transwomen said their first sexual encounter with a man was non-consensual/forced.

Most of the women reported being minors at the time of the sexual assault—30 per cent were 15 to 17-years-old and 26 per cent were under 14-years-old.

"The warden said no one will believe me"

Kanmani's earliest memory is when she was four years in an orphanage in Chennai. Declared male at birth, she'd been given boys' clothes to wear. Most of her childhood experiences are of abandonment, alienation and abuse—emotional and violently physical.

She never met her parents. The orphanage told her to move out when she came out as transgender at 18. Rendered homeless, she sought refuge with the elder transgender people (naiks). She was soon forced into prostitution. Even the naiks beat her with iron rods if earnings fell short.

"Sometimes I think, what else could this world have in store for me? It's a scary thought," she says.

When a 24-year-old Kanmani arrived in Tiruchirappalli (Trichy) in March 2024, she was looking for a fresh start, friends, and a home to call her own. She alleges that, instead, police arrested her in a false theft case. When K Mareeswaran, a warden in charge of

her cell block expressed interest in her gender identity, Kanmani initially thought he was showing her kindness. However, when the next day, the warden let himself into her jail cell—without prior permission or notification to any other officer—she understood his motives.

“I asked him not to misbehave because he as an officer would get into trouble, but also because I too would be punished for doing such things inside the jail,” she said.

“The warden said no one will believe you; what I say is the final thing,” said Kanmani. Seeing her rapist’s self-assuredness, Kanmani said, “I stopped protesting and decided to accept what was happening to me.” She could not scream during the ordeal; Mareeswaran covered her mouth with his hand.

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After the assault, a distraught Kanmani grew increasingly depressed, and attempted suicide. Eventually, she confided in the jail’s counsellor about what had happened, and the counsellor told the Director General.

CCTV footage shows the warden entering Kanmani’s jail cell with no prior permission or reason, and leaving after an hour, thus corroborating the transwoman’s allegations.

When Kanmani engaged a lawyer to compel the authorities to file an FIR, the DG Prisons came to see her. “He asked me to say that this incident happened with my consent and sign on that,” she said. Kanmani refused.

The next day, a police inspector and an SI she did not know came to the jail and “threatened me that if I don’t sign the letter, they’ll file another case against me.” When she refused again, Kanmani was thrown into solitary confinement, a dark, windowless room.

Subburaj’s Enquiry Report dated July 15 says, “Nobody conducted any enquiry regarding the occurrence.”

Section 18 of the Transgender Persons (Protection of Rights) Act, 2019, says physical, sexual, verbal and emotional abuse of a transgender person is punishable by imprisonment of up to two years.

As a police officer accused of raping a person in his care—a crime which would have meant minimum 10 years jail time had Kanmani been a cisgender woman—Mareeswaran got a suspension. At the time of writing this story, Trichy jail authorities and police had not registered an FIR against the warden.

Kanmani considered herself fortunate to have met her lawyer C Balakrishanan through another inmate. Through Balakrishanan, Kanmani moved a bail application on July 7. This was granted a few weeks later. “From the day I met this lawyer, people started watching out for me and I felt secure,” she said.

Authorities tend to ignore transgender persons' pleas for help, says Grace Banu, a transgender woman and Dalit activist.

Uncounted Citizens

As per the 2011 census, there are 4,88,000 Indian citizens who identify themselves as transgender. In 2020, the National Crime Records Bureau (NCRB) recorded only 236 crime victims who were transgender. The most recent NCRB report (2022) registered nine transgender murder victims, and no rapes involving transgender people.

The Transgender Protection Act, meant to protect transgender people, is rarely invoked. In 2020 and 2022, NCRB reports show all Indian states or union territories, except Tamil Nadu, registered zero cases under the Act. In Tamil Nadu, only one case was registered in 2020 and 2022. In 2021, NCRB registered seven cases across West Bengal, Assam, and Kerala.

The transgender community comprises 0.53 per cent of the country's population yet they constitute 0.006 per cent of all crime victims.

The transgender community is "facing a particular kind of discrimination in the public sector, by the government officials," says Banu.

These numbers are not a reflection of safety, but rather failure of law enforcement to register crimes against transgender folks. "Government officials are not always trans-friendly; rather everywhere we see transphobia," says Banu.

"What will it take for the cops to file an FIR: my death?"

For months, Banu has been the target of a violent hate campaign. Her dairy farm, which is also a work-shelter for transgender people in Thoothukudi district, has been repeatedly broken into and vandalised. She receives threatening calls daily.

The campaign against her began, she says, because she helped a gender non-conforming minor emancipate themselves from their abusive family.

"From November 2022 to November 2023, we found 33 trans people were killed by their own family."

CCTV footage shows a large group breaking into her home, roughing up residents. Recordings of the phone calls she received reveal threats to her life, in which the callers tell her that being a Dalit transwoman, her murder would "be easy."

Banu shared both video and audio evidence of these threats to her life with her local police, who didn't register an FIR under the Transgender Protection Act, the SC/ST Act, nor under Section 506 IPC/Section 110 of the Bharatiya Nyaya Sanhita (threat to injure or kill.)

“They told me they would call the numbers and speak to the people threatening me and give them a warning,” she said.

Only after approaching higher officials did the local SP of police acknowledge Banu and other residents of her farm could be in danger. “Now they’re saying we are patrolling around the trans-village (the local name for Banu’s farm), and they’ve told me to call them when I receive more threatening calls.” At the time of writing this story, Banu had received several such calls—the perpetrators had shown that they are monitoring her movements. The police had still not registered an FIR on her complaint.

“Doesn’t my case show why transgender people don’t go complain to police often?” she asks.

Her voice hoarse, Banu says, “I am relatively well-known in this city for my work, and these people are openly threatening my life while the cops have given me no support.”

After a brief pause, she adds, “Are they waiting for my death? I don’t know!”

“The stereotype is that a transgender person does only begging and sex work.”

G Kajol walks into her corner shop in the Trichy District Collector’s office wearing a flower motif dress and freshwater pearl jewellery. She’s particularly proud of the way she looks. “Everything I’m wearing I bought with my own money without doing begging or sex work.”

A member of the Tamil Nadu Transgender Welfare Board, Kajol also runs the Social Action for Emancipation (SAFE), an NGO working towards self-sufficiency in the transgender and other minority communities.

She notes that Kanmani had no transgender identification card, which is why the police could put her in the male prison.

Transgender ID cards are issued by the state governments after medical examinations. In Tamil Nadu, the examination was recently made oral. In other Indian states, transgender people report the examination itself is a form of humiliation. “There are male doctors only and one must strip in front of them. It is dehumanising,” said Kajol.

However, an ID card can be a lifesaver for transgender people, literally. This is why, according to 2023 data made public by the Ministry of Social Justice, 24, 115 transgender people applied for the ID the previous year. However, data also shows that only 15,800 were granted their ID, and another 3,200 applications were pending for months as of December 2022.

“Without an ID card, it is a struggle to find work, or even move through society. Without this, it feels like you cannot assert your rights and you’re half a citizen,” said Kajol.

Kajol came out to her family in the 1990s. She says it took them time to accept her gender identity because “all they knew of transgender people was begging and sex work.” She adds that this is a default stereotype for the community in society, and “it’s hurting us as well.”

She still lives with them. This is unlike the 98 per cent of the transgender people in India, who according to a 2018 report by the **National Human Rights Commission**, leave their biological families.

Killed by Family

Banu’s collective conducts studies every year on crimes against transgender people. “From November 2022 to November 2023, we found 33 trans people were killed by their own family members, particularly in Tamil Nadu,” she said.

Among those murdered, Banu found that three of the transgender persons were above 30, and two of them were transgender men. “Just imagine in one year 33 transpersons are killed, and most of them are trans women and under 30 years old!” she added.

The study also found two suicides in the same time period. “Those incidents were also due to harassment from family members. All the others were killed by their own family members and relatives,” said Banu.

One way to harass transgender people, according to Banu, is a family or relatives taking them for conversion therapy— what she calls conversion torture. Though conversion therapy was banned in India in 2022, Banu contends the practice is alive and well in rural areas. “There are also priests— Hindu and Christian— who will perform exorcisms on these people, saying they will cure them, which is very traumatic,” she added. “If any other community was facing these kind of situations, there would be a hue and cry. But here, nothing has happened.”

Much cause for introspection: Independence Day musings

The concluding observations of the UN Human Rights Committee on India

Ravi Nair·August 15, 2024

On India's Independence Day, this analysis of the audit of India's human rights report after 28 years makes for a sad reading.

India celebrates the 78th anniversary of its Independence from colonial yoke. A recent United Nations audit of the human rights situation in the country, however, tells a sad tale.

Twenty-eight years after the last audit of India's human rights report by the United Nations makes for a sad reading.

Concluding observations on the fourth periodic report

On July 22, 2024, the UN Human Rights Committee (UNHRC) adopted concluding observations after consideration of the fourth periodic report of India at its meetings earlier.

For reasons of brevity, one is only focusing attention on a few issues.

At the outset, the UNHRC regretted that while the Supreme Court of India had given effect to the provisions of the International Covenant on Civil and Political Rights (ICCPR) in its Orders, in cases of disparity with domestic law, the ICCPR did not prevail.

Also, it regretted that India had maintained its declarations and reservations to Articles 1, 9, 12, 13, 19(3), 21 and 22 of the ICCPR; and that it does not intend to become a party to the two Optional Protocols.

Twenty-eight years after the last audit of India's human rights report by the United Nations makes for a sad reading.

The UNHRC noted that the provisions of Article 9 of the ICCPR on the right to liberty and security of person were only applied in India if consistent with Article 22 of the Indian Constitution, which focused on the "protection against arrest and detention in certain cases" and authorises preventive detentions.

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The UNHRC expressed its concern that, according to information received, Article 22, together with the declaration to Article 9 of the ICCPR, had led to serious human rights violations during pretrial and preventive detentions.

On the **National Human Rights Commission (NHRC)**, the UNHRC regretted the lack of implementation of the majority of the recommendations by the Global Alliance of

National Human Rights Institutions (GANHRI), which had deferred India's reaccreditation since 2023.

The UNHRC Committee was concerned by the impact on the independence of the commission of the involvement of police officers in investigations of human rights violations, by the NHRC's lack of authorisation to investigate human rights violations allegedly committed by the armed forces and by the one-year temporal limitation from the date of the alleged violation, applicable to complaints.

Counter-terrorism and security measures and accountability for serious human rights violations

India reported that certain "disturbed areas" suffer from terrorism and insurgency, leading to an acute "law and order situation" necessitating the involvement of the armed forces, which operate under the Armed Forces (Special Powers) Act, 1958 and the Jammu and Kashmir Armed Forces (Special Powers) Act, 1990.

The UNHRC noted that while these measures could constitute emergency measures, India had not officially declared a public emergency, as provided in Article 4 of the ICCPR and General Comment no. 29 on 'states of emergency'.

The UNHRC was concerned that provisions of such Acts and related counter-terrorism legislation were not in compliance with the ICCPR. The UNHRC was particularly concerned by the provisions of counter-terrorism legislation regarding the: a) extensive powers to use lethal force; b) preventive detention without charge or judicial review for exceptionally long periods; and c) extensive power granted to executive bodies under broadly and vaguely defined terms, including designating individuals responsible for acts that are "likely to threaten" or "likely to strike terror in people", which could infringe the presumption of innocence and be misused against dissidents and activists.

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As a result of this legislative framework and its application, the UNHRC remained concerned that the application of counter-terrorism legislation for decades in "disturbed areas" such as districts in Manipur, Jammu and Kashmir and Assam and other territories, had led to widespread and grave human rights violations, including excessive use of force leading to unlawful killings, arbitrary detention without formal charges for years, habeas corpus petitions that are not dealt with expeditiously, sexual violence, forced displacement and torture and ill-treatment.

The UNHRC noted that the provisions of Article 9 of the ICCPR on the right to liberty and security of person were only applied in India if consistent with Article 22 of the Indian Constitution.

It was stated that India review existing counter-terrorism legislation, including the Armed Forces (Special Powers) Act, 1958, the Jammu and Kashmir Armed Forces (Special

Powers) Act, 1990, the National Security Act, 1980, the Unlawful Activities (Prevention) Act, 1967, the Jammu and Kashmir Public Safety Act, 1978 and the Chhattisgarh Special Public Security Act, 2005, that does not comply with the ICCPR and ensure its compliance with its obligations under the ICCPR, as well as the principles of legal certainty, predictability, necessity and proportionality.

It was underlined that India: (a) Ensure that counter-terrorism legislation is not invoked or applied to unjustifiably limit any right enshrined in the covenant, including the rights to life, liberty and security of person, procedural guarantees, such as the presumption of innocence, and freedom of expression and association and to crack down on human rights defenders, journalists, peaceful protesters and political opponents, among others.

(b) Ensure that persons suspected of or charged with terrorist acts or related offences are provided, in law and practice, with all appropriate legal and procedural safeguards, including against arbitrary detention; that their detention be reviewed in a prompt, thorough and impartial manner by relevant judicial authorities, including through effective habeas corpus; and that anyone arbitrarily detained is released without conditions and adequately compensated.

(c) Ensure that counter-terrorism and other security or counter-insurgency-related measures in disturbed areas are temporary, proportionate, strictly necessary and subject to judicial review.

(d) Establish a mechanism with guarantees of independence, transparency and genuine investigation power to initiate a process to acknowledge responsibility, ascertain the truth and foster and preserve memory regarding human rights violations in disturbed areas.

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The UNHRC was concerned that the requirement of mandatory prior authorisation of the government for the prosecution of the members of the security and armed forces in the context of counter-terrorism and security and military operations creates a climate of widespread impunity regarding allegations of human rights violations.

In this regard, the Supreme Court of India in 2016 stated that allegations of extrajudicial killings "must be thoroughly enquired into"; however according to reports, out of the 1,528 documented instances of extrajudicial killings in Manipur from 1979 to 2012, only 39 first information reports (FIRs) were registered, of which not all have been scheduled for trial, due among other reasons refusal of sanction for prosecution.

Right to life

The UNHRC expressed concern that India continues to impose a high number of death penalty sentences, including on offences not involving intentional killing; and that according to information received, persons belonging to socio-economically marginalised communities and religious minorities are disproportionately affected.

UNHRC called for de facto moratorium on the death penalty

Given the UNHRC's General Comment no. 36 (2018) on the right to life, India should refrain from carrying out executions by keeping a de facto moratorium and take concrete steps towards adopting a de jure moratorium and the abolition of the death penalty.

UNHRC has asked India to ensure that anyone arbitrarily detained is released without conditions and adequately compensated.

The UNHRC remained concerned by reports about 324 custodial deaths between 2019 and 2022; threats and intimidation to families of victims inquiring about such deaths; cases of rape by police officers of female and male detainees, particularly members of minorities and the refusals of the police to register rape complaints; and torture.

The committee was concerned by the absence of an offence of torture in the new criminal code, the Bharatiya Nyaya Samhita, 2023. The UNHRC regretted that while India had already indicated a commitment to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the previous dialogue in 1997, ratification is still pending.

India should eradicate torture and ill-treatment

It should in particular:

Also read: "Sorry state of affairs", says SC while quashing Delhi HC interim Orders staying bail for more than a year

(a) Amend the new criminal code, the Bharatiya Nyaya Samhita, 2023 to establish a specific crime of torture, in accordance with Article 7 of the ICCPR with sanctions commensurate with the gravity of such offence.

(b) Conduct thorough, independent and impartial investigations into all allegations of torture and ill-treatment and deaths in custody in accordance with the Istanbul Protocol and the Minnesota Protocol; prosecute perpetrators, including of law enforcement officers; and, if they are convicted, punish them with sanctions commensurate with the gravity of the crime; provide victims with full remedy and redress, including rehabilitation.

(c) Take all measures necessary to prevent torture and other cruel, inhuman or degrading treatment or punishment, including by strengthening the human rights training provided to judges, prosecutors, law enforcement officials and forensic medicine personnel, and including training on international human rights standards, such as the Méndez Principles.

(d) Ensure that all persons deprived of their liberty have access to an independent, secure and effective complaints mechanism for the investigation of allegations of torture and ill-treatment; and guarantee the protection of complainants against reprisals.

(e) Consider ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.

Liberty and security of person, administration of justice and fair trial

The UNHRC regretted that decisions of the Supreme Court relevant to the implementation of provisions of the ICCPR have not been effectively or fully executed. The UNHRC is also concerned about information received regarding cases of police arbitrarily arresting persons or detaining individuals for custodial interrogation without identifying themselves or providing arrest warrants.

The Supreme Court of India in 2016 stated that allegations of extrajudicial killings “must be thoroughly enquired into”.

While the Supreme Court has provided extensive guidelines to grant compensation for violations of human rights, victims of unlawful arrest or detention rarely receive it.

The committee is also concerned by the fact that despite the efforts made by India to strengthen the legal aid framework, individuals accused of criminal offences have limited access to legal aid, particularly in police stations; by initiatives for non-lawyers to provide legal aid; and by reports of poor-quality legal aid.

Also read: Incarceration of Khurram Parvez and Irfan Mehraj has made human rights work in Kashmir extremely difficult, FIDH’s Juliette Rousselot

The UNHRC was also concerned by information about foreign nationals confined in prison after having completed their terms of sentence while waiting for repatriation.

Furthermore, the UNHRC regretted the application of the Unlawful Activities Prevention Act, 1967 to Arundhati Roy in response to her comments on Kashmir made at a conference in 2010, and to Sheikh Showkat Hussain accusing him of aiding secessionist movements in Kashmir.

In accordance with the committee’s General Comment no. 35 (2014), the State party should:

(a) Take necessary measures to ensure that the decisions of the Supreme Court related to the implementation of the provisions of the covenant are duly and promptly executed.

(b) Investigate promptly, thoroughly and impartially cases of arbitrary detention, prosecute perpetrators and punish them with penalties commensurate with the gravity of the offence, if convicted. Victims should have access to effective remedies and adequate compensation.

(c) Ensure that detained and arrested persons suspected of or charged with terrorist acts or related offences are provided, in law and in practice, with all appropriate legal and procedural safeguards in accordance with the ICCPR, including against arbitrary detention and provide effective access to skilled legal aid lawyers.

(d) Ensure that foreigners who have completed their sentences are released and repatriated, ensuring that the principle of non-refoulement is respected.

Undertrials

The UNHRC was concerned that more than 75 percent of the prison population was undertrial in 2022, with a disproportionate number of Muslims, Dalits and Adivasis and people living in poverty.

Of the 1,528 documented instances of extrajudicial killings in Manipur from 1979 to 2012, only 39 FIRs were registered, of which not all have been scheduled for trial.

The UNHRC took note of the measures adopted by India to facilitate timely judicial proceedings, but it is concerned about the extraordinarily lengthy pretrial detention periods, judicial delays and case backlogs, as well as the insufficient number of judges and magistrates.

The figures of the undertrial prison population are also exacerbated by the priority given to jail over bail, the difficulty of obtaining bail, as well as arbitrary arrests and illegal detentions.

The committee is also concerned about the reversal of the presumption of innocence with respect to bail applications by those accused of terrorism offences under the Unlawful Activities (Prevention) Act 1967.

Also read: Casual and mechanical staying of bail Orders disastrous for human liberty, says SC

In light of the UNHRC's General Comment no. 35 (2014), on liberty and security of person, the State party should significantly reduce the use of pretrial detention including through the wider application of non-custodial measures as an alternative to incarceration; and ensure that all detained persons are afforded in practice all the fundamental legal and procedural safeguards from the outset of their detention. In particular, it should:

(a) Ensure that persons being held in pretrial detention are informed of their rights, that they have prompt access to counsel, that criminal charges are promptly filed— when relevant— and that trials are held expeditiously and in public.

(b) Increase the availability of and recourse to alternatives to pretrial detention, in the light of the Tokyo and Bangkok rules, including by giving due consideration to such alternatives, particularly when delays in investigations or trials are unavoidable, and promote and ensure effective access to the right to bail.

(c) Ensure that pretrial detention is exceptional, only imposed when necessary and for a period that is as short as possible; that detention is imposed without any discrimination; and that statutory limits on detention are strictly enforced.

(d) Establish systematic and regular judicial monitoring of the duration of pretrial detention and provide effective access to judicial review of the legality of detention and to remedies for those unlawfully held in custody beyond statutory limits.

The UNHRC regretted the application of the Unlawful Activities Prevention Act, 1967 to Arundhati Roy in response to her comments on Kashmir made at a conference in 2010.

(e) Increase the financial, technical and human resources provided for the administration of justice and support its effective and timely functioning.

Treatment of persons deprived of liberty

While the UNHRC took note of the measures taken by India to improve conditions in prisons, it remained concerned about the extreme overcrowding of detention centers and deplorable conditions regarding, among other, access to adequate medical services, including for mental care; hygiene and sanitation; adequate nutrition and drinking water; and the possibility to contact family, counsel and diplomatic or consular officers (for foreign detainees).

Also read: Why Mahesh Raut needed an interim bail on top of regular bail to attend his grandmother's funeral

The UNHRC was also concerned by the lack of capacity to provide adequate conditions of confinement of pregnant and lactating women and children; and access to sanitation and hygiene. It was also concerned by reports about juveniles being detained with adults, especially in rural areas.

India should significantly and promptly reduce overcrowding in prisons, and other places of detention, including through the wider application of non-custodial measures as an alternative to imprisonment, as mentioned above. It should also:

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and liberty and security of person

(a) Intensify its efforts to ensure that conditions of detention fully comply with relevant international human rights standards, including the Mandela and Bangkok rules, the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice; assuring an adequate access to health services (including mental health), food, drinking water, hygiene and sanitation; as well as rehabilitation and reintegration support services.

(b) Ensure adequate access to counsel and diplomatic or consular officers when required, as well as regular family visits.

(c) Guarantee that women deprived of their liberty, particularly those who are pregnant and those with dependent children, receive adequate care and services that meet their specific needs and take account of the best interests of their children.

The Quantum Of Compensation Should Be Based On Facts And Circumstances Of Each Case: NCDRC

<https://www.livelaw.in/consumer-cases/ncdrc-quantum-of-compensation-based-on-facts-and-circumstances-of-each-case-266834>

Ayushi Rani

15 Aug 2024 3:30 AM

The National Consumer Disputes Redressal Commission, presided by Dr. Inder Jit Singh, held that the quantum of compensation and punitive damages depends on the facts and circumstances of each case.

Brief Facts of the Case

The complainant, a nurse in Hyderabad and a member of ESIC sought financial assistance from ESIC for her daughter's blood cancer treatment, which required a costly Bone Marrow Transplantation (BMT) at Tata Memorial Centre. Although the Senior State Medical Commissioner (OP-1) issued a letter of credit, Tata Memorial Centre required the full amount to be deposited before proceeding. Despite repeated requests, the Medical Commissioner of ESIC failed to approve the deposit in time, leading to delays. The complainant, in desperation, approached higher authorities, including the Prime Minister and the **National Human Rights Commission**. As her daughter's condition worsened, she filed a petition in the High Court, which ordered ESIC to release the funds. However, the ESIC ignored the court's directive, forcing her daughter to undergo chemotherapy at Apollo Hospital, where she eventually passed away. The complainant then filed a contempt case against ESIC for defying the court order. The State Commission allowed the complaint and directed the ESIC to pay Rs. 5,00,000 to the complainant, together with costs of Rs. 10,000. Dissatisfied with the State Commission's order, the complainant appealed before the National Commission.

Contentions of the Opposite Party

The ESIC argued that although the treatment was approved, delays occurred due to an investigation into the complainant's eligibility. After confirming the eligibility, the advance payment was sanctioned, but procedural delays, including ongoing investigations, prevented timely action. Despite efforts to expedite the process, the complainant's daughter passed away before the funds were released. The ESIC had already spent a significant amount on her treatment at various hospitals. It was contended that apologies were offered for the delays attributed to procedural complexities involving multiple states.

Observations by the National Commission

The National Commission observed that the eligibility of the complainant to receive Rs.50.75 lakhs from the ESIC, which was eventually sanctioned and prepared for

disbursement, was not in dispute. The commission affirmed the findings of the State Commission regarding the deficiency in service by the ESIC and its officials, entitling the complainant to compensation. However, the Rs.5 lakhs awarded by the State Commission was deemed inadequate, considering the circumstances and the significant mental agony suffered by the complainant. The commission referred to several case laws to support the decision to enhance compensation. In *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana vs DLF Southern Homes Pvt. Ltd. & Ors.*, the Hon'ble Supreme Court held that the term "compensation" has a broad connotation, encompassing actual or expected loss as well as compensation for physical, mental, or emotional suffering. The Consumer Protection Act (CPA) empowers the commission to award compensation to redress any injustice done. Similarly, in *Charan Singh v. Healing Touch Hospital*, the Supreme Court emphasized that Consumer Forums must award damages that compensate the individual and aim to change the service provider's attitude. The commission also cited *Suneja Towers (P) Ltd. v. Anita Merchant*, where the Supreme Court held that the quantum of compensation and punitive damages depends on the facts and circumstances of each case. The court noted that awarding compound interest is neither envisaged by the statute nor supported by any contractual terms or usage between the parties.

The National Commission allowed the appeal and modified the State Commission's order. Taking into account the facts and the delay that led to the untimely death of the complainant's daughter, the commission enhanced the compensation to Rs.50.75 lakhs, the amount initially sanctioned for the daughter's treatment.