



CHRI

Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights in
the countries of the Commonwealth

The Commonwealth Human Rights Initiative (CHRI) calls for a prompt and thorough investigation of the unlawful arrest and detention of a teenage boy who spent over five months in Buxar central jail before being declared a minor by the Juvenile Justice Board, and subsequently, released on bail on 17 August 2020. Taking into account the violation of the principles and procedures under the Juvenile Justice Act 2015 that prohibits arrest of a minor under any circumstance, CHRI in a letter dated 21 August 2020 addressed to the Bihar Police chief, has emphasized the departmental inquiry underway to address the failures at each level, take corrective measures, and institute appropriate proceedings against officers implicated for negligence and misconduct. The letter can be accessed below.



Commonwealth Human Rights Initiative

New Delhi, India. London, UK. Accra, Ghana

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NGO with Special Consultative Status with the Economic & Social Council of the United Nations

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21 August 2020

Shri Gupteshwar Pandey, IPS

Director General of Police
Bihar Police

Sadar Patel Bhawan, Jawaharlal Nehru Marg

Shastri Nagar, Bihar-800023

Email: dgp-bih@nic.in

Subject: Call for probe into the illegal detention of minor

Dear Shri Pandey:

The Commonwealth Human Rights Initiative (CHRI) writes with regard to the detention of a 14-year old boy (son of ██████████, r/o Buxar, Bihar); who spent over five months in Buxar central jail before being declared a minor by the Juvenile Justice Board, and subsequently, released on bail on 17th August.

The unlawful arrest and prolonged detention of a minor, that too amidst the heightened risk to prisoners caused by COVID-19, underlines the failure of the Bihar Police to abide by the principles and procedures laid down under the Juvenile Justice Act, 2015 (JJ Act). We note that the Buxar SP, Shri Upendra Nath Verma, has ordered a probe to look into the role of the local police in mistaking the boy as an adult.

We therefore urge the Bihar Police to complete the departmental inquiry underway as soon as possible in order to address the failures at each level, take corrective measures, and institute appropriate proceedings against officers implicated for negligence and misconduct.

On 29th February, the Rajpur police had arrested the boy along with two others for alleged possession of an illegal firearm. The documents shared by the family, including a letter from ██████████, the principal of the ██████████ and his school Transfer Certificate, verify his birth date as 12th April 2006. This shows clearly that the boy was less than 14 years at the time of arrest and also visibly looked like a minor.

The inquiry needs to reveal the following:

- How a 13-year-old child was 'mistakenly' identified as an adult and kept in police custody. As the first responder, the police is duty-bound to recognize if it is a child in conflict with law who has been apprehended and set in motion procedures of the JJ Act.
- Gaps, in particular, on the part of the concerned Child Welfare Police Officer and/or the Special Juvenile Police Unit constituted under the JJ Act that failed to recognize that he was a minor, and thereby failed to hand him over to the Juvenile Justice Board at the earliest. This serious lapse amounts to violation of Section 10 of the JJ Act that prohibits detaining a minor in police or judicial custody ***under any circumstance***. Even where a juvenile offender is required to be kept in custody, for reasons to be recorded, the person has to be kept only in an observation home in a manner prescribed by the Juvenile Justice Board.

- Veracity of the family's claim, that the police on the contrary had actually pressurized the minor to say he was an adult in front of the Judicial Magistrate during his first production.

While arrest of a minor by the police is not possible under the JJ Act, our conversations with the boy's father, [REDACTED], and his lawyer, Advocate Lalan Pandey further point to allegations of procedural violations on arrest. It is a matter of deep concern that this case highlights not only noncompliance with the JJ Act, but also of procedures on arrest. This requires urgent interventions in both these areas. It may be that if supervisory officers had properly reviewed the FIR, they would have been alerted to his being a minor and the immediate need for age determination and shifting him away from police custody.

That a minor was kept in police and judicial custody amounts to illegal detention and entitles the boy to compensation for groundless arrest. We hope that the inquiry accords appropriate punishment to all implicated police personnel for failure to comply with the JJ Act and illegally detaining a minor and sending him to prison for over five months.

This incident calls for a thorough review of Bihar Police's efforts to respond sensitively and effectively to children, both those in conflict with the law and those in need of care and protection (which can also include those in conflict with the law). In particular, it emphasizes the need for a review of the quality and impact of training and sensitization of Child Welfare Police Officers, the efficacy of the Special Juvenile Police Units in supervising compliance with the JJ Act, and processes in place for enforcing accountability.

It is crucial that police personnel and policing institutions imbibe and operate on the basis of a "child-friendly" environment.

We urge that this is treated urgently and look forward to hearing from you.

Sincerely,

Sanjoy Hazarika
Director of the India Office and International Director

CHRI is an independent, non-governmental, non-profit organisation headquartered in New Delhi. It has specialised in the areas of Access to Justice (Police and Prison Reforms) and Access to Information for over two decades, and is registered as a society in India.