



# India Torture Update

## Special Focus: Odisha



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### 1. Editorial: Torture and fake encounters are intertwined in India

Asian Centre for Human Rights in its 388-page report, “*The State of Encounter Killings in India*”, shows that India’s law enforcement personnel have been following the policy of target, detain, torture and execute for fake encounter killings in India with virtual impunity. Torture for the purpose of obtaining information or a confession before extrajudicial execution also common.

One of the first laws enacted by Independent India on the day of independence on 15 August 1947 was promulgation of the Disturbed Areas (Special Powers of Armed Forces) Ordinance in Bengal, Assam, East Punjab and Delhi to authorize “any commissioned officer, warrant officer or non-commissioned officer to fire upon or otherwise use force, even to the causing of death” to quell the riots that took place during the partition. The phrase “to fire upon or otherwise use force, even to the causing of death” has come to mean giving licence to kill in insurgency affected States of North Eastern region, Punjab and Jammu & Kashmir where the Armed Forces Special Powers Act (AFSPA) has been imposed.

However, encounter killings are carried out not only in the areas declared to be “disturbed” under the AFSPA but in Naxal affected areas as well where the AFSPA has not been imposed. The response to the killing of police inspector Sonam Wang Di in Naxalbari under Darjeeling district of West Bengal during a raid in April 1967 was killing of 11 civilians by the Assam Rifles in fake encounters.<sup>1</sup> The West Bengal government used fake-encounters in 1960s and 1970s to counter the Naxalites and fake encounter killings became the undeclared policy of the State in conflict situations.

But there are no official statistics as the State always justified all encounters as genuine. Anecdotal evidence suggests that thousands have been killed in fake encounters in independent India. In the Naxal conflict in West Bengal in 1960s and 1970s, according to official figures, “65 constables were killed and over 3,500 youths, sympathizers, family members died in police firings, encounters, and political clashes”.<sup>2</sup> In a letter dated 22 July 1999, the Director General and Inspector General of Police of Andhra Pradesh wrote to the NHRC suggesting that the encounter death cases of Andhra Pradesh may be got investigated by the officers of the rank of Inspectors of other districts, instead of the CID as

“nearly 250 encounters take place each year in Andhra Pradesh and that the State CID would not be able to cope with this additional burden with the available staff”.<sup>3</sup> The NHRC examined “illegal killing and disappearances” which culminated in the cremation of 2,097 bodies in Amritsar, Majitha and Tarn Taran districts between 1984 and 1994 during insurgency in Punjab.<sup>4</sup> The Supreme Court has been hearing a PIL seeking probe and compensation in the alleged 1,528 extra-judicial killings in Manipur from 2000 to 2012 by security forces and police.<sup>5</sup> J&K also witnessed unprecedented number of extrajudicial executions since late 1980s. Even the Joint Special Task Force of State of Karnataka and Tamil Nadu formed for apprehending Veerappan, a sandalwood smuggler, killed “36 persons allegedly in “suspicious encounters” as per the NHRC.<sup>6</sup>

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Encounter killings have also become routine to deal with crimes in peacetime situations. The three writ petitions filed before the Bombay High Court by the People's Union for Civil Liberties questioned genuineness or otherwise of nearly 99 encounters between the Mumbai police and the alleged criminals resulting in death of about 135 persons between 1995 and 1997.<sup>7</sup>

### **Modus operandi of a fake encounter**

In overwhelming majority of cases, the victims of fake encounter deaths are first targeted either as insurgent/terrorist, sympathiser or supporter of insurgents/ terrorists or as wanted criminals with bounty on their heads. The targets are detained or taken into custody, interrogated and tortured to extract confession or leads, and thereafter, killed in a staged encounter, often by planting a weapon on the persons killed to show the firing in self defense or to prevent fleeing. Fake encounters are also carried out for revenge, settle rivalries or disputes, not giving bribe, promotion or gallantry awards or simply trigger happy nature of the law enforcement personnel.

Fake encounters are staged at odd hours, in the most desolate places without any witness and where witnesses exist they are subjected to threat and intimidation. It is the law enforcement personnel who are executioners, witnesses and complainants in the FIRs filed against the persons executed. Proper and impartial investigation seldom takes place and in a number of cases cited in the report, the State is willing to provide compensation instead of allowing impartial investigation by the CBI such as the rejection of NHRC's recommendation for CBI inquiry into fake encounter death of four persons in Dehradun, Uttarakhand on 24 August 2006<sup>8</sup> and in the fake encounter death of Ayub, Aslam, Manoj, Sanjay and Shehzad Babu in Delhi on 5 May 2006.<sup>9</sup> Where proper and impartial investigation takes place, the State protects the culprits by denying permission under Section 197 of the Criminal Procedure Code or Section 6 of the AFSPA to prosecute the accused law enforcement personnel.

### **Supreme reluctance to decisively address fake encounter killings**

The NHRC way back in 1996-1997 stated that it "*considers the practice of "fake encounters" to be unconscionable*". The NHRC also stated, "*It cannot permit the right to private defense, spelt out in Chapter IV of the Indian Penal Code, to be manipulated to justify "fake encounters", or the procedures of Section 46(3) of the Code of Criminal Procedure to be subverted to, serve such an end.*"<sup>10</sup>

The Supreme Court in a judgment on 13 May 2011 while upholding the cancellation of bail to police officers arrested for fake encounter killing stated, "*in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should*

*be given to them because they do an act totally contrary to their duties.*" The apex court held that those who execute in fake encounter based on illegal orders must also be charged for murder, and if found guilty be sentenced to death. The apex court also held that "*The 'encounter' philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them*".<sup>11</sup>

Despite such observations, the fake encounters continue unabated because of the failure of the NHRC and the Supreme Court to act decisively.

In hundreds of cases of fake encounters, the NHRC recommended to the authorities for payment of compensation to the next kin of the victims<sup>12</sup> but it failed to intervene with the courts for prosecution of the accused either on its own motion or with permission of the court.<sup>13</sup> While the State governments regularly challenged the orders of the NHRC before the High Courts and the Supreme Court, the NHRC failed to challenge the decision of the governments to reject inquiry by the CBI in proven cases of fake encounters such as the fake encounter death of four persons in Dehradun, Uttarakhand on 24 August 2006<sup>14</sup> and the killing of Ayub, Aslam, Manoj, Sanjay and Shehzad Babu in alleged fake encounters by the Delhi Police on 5 May 2006.<sup>15</sup> The NHRC's measures have therefore been half-hearted.

Similarly, the Supreme Court despite declaring its 16-point requirements / norms to be followed in "all cases of death and grievous injury in police encounters in *People's Union for Civil Liberties & Anr Vs State of Maharashtra & Ors*"<sup>16</sup> as the law under Article 141 of the Constitution of India had actually failed to decisively tackle the menace of killing in fake encounters and has delivered regressive judgments.

First, the full bench of the Andhra Pradesh High Court delivered its historic judgment<sup>17</sup> on 6th February 2009 making it mandatory for registration of an FIR "where a police officer causes death of a person, acting or purporting to act in discharge of official duties or in self-defense as the case may be". However, a three-judge Bench of the Supreme Court stayed the judgment on 4 March 2009 on an appeal<sup>18</sup> filed by the Andhra Pradesh Police Officers' Association. The appeal was part heard on 08.04.2016 and thereafter it has not been listed for hearing. The appeal is yet to be adjudicated almost one decade after filing.<sup>19</sup>

Second, the Supreme Court delivered its judgment in *People's Union for Civil Liberties & Anr Vs State of Maharashtra & Ors*<sup>20</sup> on 23 September 2014 and issued 16-point guidelines to deal with encounter death cases. Though in the said judgment, the Supreme Court held that fake encounter killings "amount to State-sponsored terrorism", it conceded to the argument of the State to direct merely registration of an FIR instead of directing to file the FIRs against policemen involved in the encounter. This meant justifying the current practice i.e. registration of the FIR against the dead person on

the charge of attempted murder of police officers and as the accused is already dead, s/he cannot defend and police exonerate themselves.<sup>21</sup> Further, the apex court directed that the encounter killings be investigated by the CID or a police team from another police station despite apex court itself in numerous decisions handing over the investigation to the CBI.<sup>22</sup> The order also restricted the authority and scope of the NHRC and empowered the police to choose to send the immediate information either to the NHRC or the State Human Rights Commission (SHRC) with most SHRCs being non-functional and having little capacity to adjudicate on such cases.<sup>23</sup> The Supreme Court further stated that the intervention of the NHRC is not necessary unless there is serious doubt about the independence and impartiality of the investigation. Having no alternative, the NHRC filed a Writ Petition<sup>24</sup> on 1 December 2014 before the Supreme Court challenging the judgment dated 23 September 2014 but the petition is yet to be heard.

The stay of the judgment of the Andhra Pradesh High Court<sup>25</sup> dated 6th February 2009 means effective stay on the mandatory registration of FIRs against police personnel causing the death of a person. The failure to adjudicate the Writ Petition filed by the NHRC in December 2014<sup>26</sup> also means limiting the mandate and role of the NHRC only to cases where there is serious doubt about the independence and impartiality of the investigation. Uttar Pradesh with no insurgency or national security threats had recorded the highest number of encounter killings in India in the last two decades with no impact on the crime rate but it has effectively adopted encounter killing as the State policy since March 2017. The result has been cold blooded murder of an executive of Apple, Mr Vivek Tiwari<sup>27</sup> in the early morning of 30th September 2018 and inviting media persons to witness the encounter between alleged criminals and the police at Aligarh's Harduaganj on 21 September 2018 in which two alleged criminals were shot dead<sup>28</sup> raising serious questions about the genuineness of the encounter.

### Recommendations

In order to effectively deal with the menace of fake encounter killings, Asian Centre for Human Rights recommended the following to the Government of India: amend the Code of Criminal Procedure to provide for mandatory registration of the First Information Report (FIR) where a public servant causes death of a person, acting or purporting to act in discharge of official duties or in self-defence as the case may be; ratify the UN Convention Against Torture and place the Prevention of Torture Bill of 2017 drafted by the Law Commission of India on 30 October 2017 on reference from the Ministry of Law & Justice, Government of India before the parliament for its immediate enactment; repeal and/or amend the Armed Forces Special Powers Act 1958 to delete "use force if necessary to the extent of causing death of a person", amend Section 197 of the Code of

Criminal Procedure and Section 6 of the Armed Forces Special Powers Act or its analogous provision applicable to Jammu and Kashmir to make denial of permission for criminal prosecution of a public servant subject to judicial review and place a mechanism of regular review and monitoring of the status of implementation of the directives of the Supreme Court and the NHRC on fake encounter deaths.

## 2. Special focus: Custodial torture in Odisha

Custodial torture and custodial deaths are regularly reported from Odisha. The NHRC recorded 37 deaths in police custody during 2008-2018 in Odisha. These included 2 in 2008-09; 3 in 2009-10; 7 in 2010-11; 4 in 2011-12; 5 in 2012-13; 4 in 2013-14; 2 in 2014-15; 6 in 2015-16 and 4 in 2017-18. The figure for 2016-17 was however not available.<sup>29</sup>

It is pertinent to mention that on 1 November 2018, the NHRC called for explanation from Odisha for under reporting figures of deaths caused by police action during 2016 to the National Crime Records Bureau (NCRB).<sup>30</sup> The State government agencies have reportedly made under-reporting of deaths caused by police action to the NCRB, the most authentic source of information on crime and criminals in India. According to NHRC data, a total of 18 persons were killed in police action such as deaths in police custody, fake encounters and police firing in Odisha during 2016. But when information was finally submitted to NCRB, the total deaths on account of police action came down to five. For example, according to NHRC a total of four persons had died in police custody in 2016 in Odisha. However, NCRB data show there were no deaths in police custody in Odisha that year. Similarly, as many as 11 encounter deaths were reported by NHRC during the same period. The NCRB table shows the number of deaths in police firing, including firing in self-defence, as only five. The Odisha Chief Secretary has been directed to provide explanation to the inconsistencies.

### 2.1 Torture in police custody

Torture in police custody is rampant in Odisha and regularly reported. The following emblematic cases establish the patterns of torture in the state.

#### Case 1: Tortured to death of Jogendra Das at Astaranga Police Station in Puri district

On 28 November 2018, Jogendra Das, 40 years, was allegedly tortured to death in the custody of Astaranga Police Station in Puri district of Odisha. Das, a resident of Talada under Kakatpur Tehsil in Puri district, was arrested from his friend's place pursuant to a complaint lodged by a villager named Urmila Nayak on 14 November 2018. The deceased died at Srirama Chandra Bhanja (SCB) Medical College and Hospital on 28 November 2018.<sup>31</sup>

Pratima Das, wife of the deceased, alleged that police had implicated her husband in a bogus case and thereafter, he was



arrested. In a complaint to the Superintendent of Police, Puri, she said her husband Jogendra was brutally tortured at the police station and sustained serious injuries. She alleged that despite his deteriorating health conditions, police produced her husband before the court instead of taking him to hospital. Later, he was rushed to SCB Medical College and Hospital, Cuttack where he succumbed to his injuries sustained during custodial torture.<sup>32</sup>

### **Case 2: Illegal detention and torture of Adivasi leaders of Niyamgiri, Odisha**

The leaders of the Niyamgiri Suraksha Samiti (NSS), a peaceful movement of the Dongaria Kondh Adivasi seeking to save the Niyamgiri hills from bauxite mining, have been at the receiving end of atrocities by the police. On 20 October 2018, policemen in civil dress picked up Lada Sikaka, the president of NSS when he went to Langigarh old market in Kalahandi district to sell oranges. He was blindfolded and taken to the local police station where he was severely beaten up. He was released on the next day after taking his signature on a blank paper. He said the police asked him to stop the protests his organisation had planned before the Ragayagada District Collector's office against police repression and Maoist movements in the Niyamgiri Hills.<sup>33</sup>

Earlier, on 8 October 2018, police picked up Dadhi Kadarka, another senior member of NSS from Munikhol Panchayat office under Muniguda block of Rayagada district and took him to the office of the Superintendent of Police where he was severely tortured. He was released on 9 October. On 18 October 2018, police abducted Jamu Gauda, another NSS member, from Langigarh Market and took him to Muniguda Police station and Raigarh SP office where he was tortured. He was released on the next day.<sup>34</sup>

### **Case 3: Unlawful arrest and torture of Rajendra Mahakud, Anandapur, Keonjhar district**

On 8 October 2018, police illegally arrested one Rajendra Mahakud, resident of Belda village of Anandapur town in Keonjhar district of Odisha, arbitrarily detained him at Bamebari police station and tortured him in a case of mistaken identity. Police also did not provide him food while in custody. The victim's wife Kalpalata claimed that on 8 October 2018 night a police team led by Sub-Inspector Pratibha Sahu belonging to Bamebari police station came to their house and picked up the victim stating that they have an arrest warrant against her husband Rajendra Mahakud. The victim and his wife had no clue as to why he was being arrested. The victim was released subsequently only after the policemen realized their fault and arrested the actual culprit by the same name as the victim.<sup>35</sup>

### **Case 4: Custodial torture of Lingaraj Das at Jagatsinghpur police station, Jagatsinghpur district**

On 12 September 2018, Assistant sub-inspector Rabindra Senapati and Constable Shiba Jani attached to Jagatsinghpur police station in Jagatsinghpur district illegally detained one

Lingaraj Das of Odisso village and his friend on the allegation of misbehaving with a Sarpanch's wife in an inebriated condition. The cops beat them up brutally despite Lingaraj pleading innocence. The cops also threatened to implicate him under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Lingaraj sustained injuries on his back. Pursuant to an inquiry following a complaint by the victim, Jagatsinghpur SP suspended ASI Rabindra Senapati and Constable Shiba Jani.<sup>36</sup>

### **Case 5: Tortured to death of Abinas Paital at Mahakalpada police station, Kendrapada district**

On 26 August, a 23-year-old Abinas Paital was found hanging in a house located near the Mahakalpada police station in Kendrapada district of Odisha. The victim, a resident of Balana village within the limits of Mahakalpada police station, was arrested in connection with a case of mobile phone theft on 25 August afternoon.

Sarat, father of victim, alleged that his son was severely beaten in custody which led to his death. He alleged that police hanged the deceased's body from the staircase of a vacant house near the police station to make it look like a case of suicide. The dead body bore injury marks. On 26 August, Odisha DGP suspended Mahakalpada police station Inspector in-charge Shyamaghan Behera and ordered a Crime Branch probe into the death of Abinas.<sup>37</sup> On 5 September 2018, wife of the deceased and his parents threatened self immolation in front of the Kendrapada District Collectorate on 7 September if the policemen responsible for death of Abinas Paital were not arrested.<sup>38</sup>

### **Case 6: Torture and ill-treatment of subordinate staffers by Superintendent of Police, Nabarangpur district**

On 20 August 2018, Robin Chandra Lima (48) and Debraj Chandi (57), working as orderlies at the residence of the Superintendent of Police (SP) of Nabarangpur district alleged that they were subjected to torture by the SP several times. Robin said that he had to get admitted to Nabarangpur district headquarters hospital and later shifted to Saheed Laxman Nayak Medical College and Hospital in Koraput after falling sick due to exhaustion and forced labour on the order of the SP. Robin was directed to do sit-ups and take 20 rounds of the SP's official residence and he collapsed while carrying out the order of the senior officer.<sup>39</sup>

The other victim Chandi, a blood pressure patient, alleged that he was physically assaulted by the SP several times for delay in carrying out his orders. He said that the SP did not allow him to have his meals on 19 August.<sup>40</sup>

### **Case 7: Torture of a tipper driver Umakant Palei and his helper at Barbil police station, Keonjhar district**

On 9 June 2018, a tipper driver Umakant Palei and his helper were allegedly tortured at Barbil police station in Keonjhar district of Odisha. The police intercepted the vehicle belonging to Trishakti Logistics and driven by the victims for allegedly driving through a No Entry Zone. On interception

police beat up the duo. Later, the duo was taken to the Barbil police station where they were again tortured. Umakant Palei sustained injuries due to torture by the police and had to get admitted at Keonjhar District Hospital for treatment.

**Case 8: Torture of an elderly couple identified as Sarat Paikray (75), his wife and their son Sanjay Paikray, Puri district**

On 28 May 2018, police allegedly tortured an elderly couple identified as Sarat Paikray (75), his wife and their son Sanjay Paikray at Kumbharpada police station in Puri, Odisha. Police arrested the trio pursuant to a complaint filed by Sanjay's wife following a quarrel between her and her husband over a family matter. After arrest during the night of 28 May, the police took them to Kumbharpada police station where the trio was beaten up black and blue. The septuagenarian Sarat Paikray sustained injuries due to torture by the police and was admitted at the District Hospital, Puri in a critical condition.<sup>41</sup>

**Case 9: Torture and humiliation of Rabindra Swain, Jagatsinghpur district**

On 20 May 2018, a medicine shop owner Rabindra Swain of Majurai village in Jagatsinghpur block of Jagatsinghpur district was tortured and humiliated by cops when he refused to give Rs 10,000 to them for arresting the miscreants who snatched Rs 80,000 and gold bracelets from him. Though Swain and his wife approached local police officials in this regard, no action was taken against the errant cops.<sup>42</sup>

**Case 10: Disappearance of Sukal Sai Paharia from custody of Boden Police station, Naupada district**

On 19 April 2018, Sukal Sai Paharia, a postgraduate health worker hailing from Bhainsadani village under Naupada district of Orissa was summoned to Boden Police Station on suspicions of being a Maoist sympathiser. He appeared before the Boden police officials. However, since then he went missing and never returned home.

The victim's wife Saubhagya Paharia and the local residents alleged that Sukal Sai Paharia had died due to custodial torture by the police after some locals retrieved skeletal remains suspected to be of Sukal from a place 15 kilometres away from the Boden police station on 9 June 2018.<sup>43</sup>

**Case 11: Custodial torture of Mrs Padmini Mallick and her husband Rabindra Mallick by police, Boudh district**

On 21 March 2018, police allegedly tortured a tribal couple identified as Padmini Mallick and her husband Rabindra Mallick at Boudh police station in Boudh district of Odisha. The wife-husband duo alleged that Inspector In-Charge of Boudh police station Ms Priti Manjari Gadnaik beat them up with a lathi when she raided their home at Sarsara village in search of an alleged accused person during the night of 20 March. Not satisfied with their reply in the negative, the couple was taken to Boudh police station where they were again beaten up with sticks. The lady officer had verbally abused them casting aspersions on their caste "Kandha" and

abused in foul language. They also claimed that Ms Gadnaik threatened Rabindra Mallick to kill him if he disclosed the torture and harassment to anyone.<sup>44</sup>

Both Padmini Mallick and her husband sustained injuries in the beatings by IIC Gadnaik and they had taken medical treatment at Boudh District Hospital. Padmini Mallick was admitted at the hospital for two days while Rabindra Mallick received treatment as an outpatient.<sup>45</sup>

**Case 12: Torture of dalit father-son duo, Brundaban Behera, and Jagannath Behera, Jagatsinghpur district**

In March 2018, two constables allegedly assaulted a dalit, identified as Brundaban Behera, and his son Jagannath in Jagatsinghpur district. Later, the cops arrested the father-son duo in a false case and tortured them in police custody. They also misbehaved with Brundaban's wife in her house in absence of her family members. In April, Brundaban and his family members sat on a hunger strike in front of the Collector's office seeking action against the accused police constables including Atul Biswal and Premananda Barik. Pursuant to a petition by the victim's family, Odisha DGP RP Sharma directed Jagatsinghpur SP to initiate criminal action pursuant to which police registered a case under Sections 341, 323, 451, 506, 294, 354-A, 324 and 34 of the IPC against the accused police personnel.<sup>46</sup>

**Case 13: Tortured to death of Abinash Munda at Ainthapali police station, Sambalpur district**

On 9 February 2018, a 22-year-old youth identified as Abinash Munda was allegedly tortured to death at Ainthapali police station in Sambalpur district of Odisha. The deceased was a resident of Bhalupali village located in Bijepur Tehsil of Bargarh district. He was arrested by the police on 8 February in connection with a theft case. The police claimed that the deceased committed suicide by hanging himself with a bed sheet inside the lockup in the early hours of 9 February 2018. However, the family members of the deceased alleged that Abinash Munda was tortured to death while in police custody.<sup>47</sup>

## 2.2 Torture and deaths in judicial custody

There are 91 prisons in Odisha. These include 5 Central Jails, 9 District Jails, 73 Sub Jails, one Women jail, one Open Jails, and two Special Jails.<sup>48</sup>

During 2008-2018, a total of 419 prisoners have died in jails of Odisha. This included 48 deaths in 2008-09, 45 deaths in 2009-10, 48 deaths in 2010-11, 33 deaths in 2011-12, 47 deaths in 2012-13, 48 deaths in 2013-14, 53 deaths in 2014-15, 45 deaths in 2015-16, and 52 deaths in 2017-18<sup>49</sup>. No data is yet available for the year 2016-17.<sup>50</sup>

On 12 November 2018, an under-trial prisoner identified as Gopal Biswas lodged at Boudh Sub Jail in Odisha died at Boudh District Headquarter Hospital. The deceased, a resident of North 24 Parganas district in West Bengal, was serving jail term since 5 June 2018 after he was convicted in a

case of smuggling of ganja. Jail officials claimed that Biswas suddenly fell sick on 11 November 2018 late night and he was rushed to Boudh District Headquarter Hospital where he died next day.<sup>51</sup>

On 30 September 2018, a convict prisoner identified as Gadadhar Sahu died under mysterious circumstances in the custody of Jharpada Special Jail in Odisha's state capital Bhubaneswar. The deceased, a resident of Badatota village, Jatani tehsil under Khordha district, was lodged in Jharpada Special Jail since 2015 to serve a 10 year jail term in a rape conviction.<sup>52</sup> The jail officials claimed that on 30 September 2018 morning, Gadadhar Sahu complained of uneasiness and was rushed to the Capital Hospital, Bhubaneswar where he died during treatment. However, the family members of the deceased refuted the claims of the jail officials and stated that Gadadhar Sahu had died due to brutal torture by the jail authorities.<sup>53</sup>

On 5 September 2018, an undertrial prisoner identified as Ghanshayam Prusty (22) died in the custody of Salepur sub-jail under Cuttack district under mysterious circumstances. The deceased, a resident of Paika Sahi Mundasahi under Salepur police station area of Cuttack district, was arrested by police on 12 August 2018 in connection with selling of illegal liquor and the court sent him to Salepur sub-jail. The jail officials claimed that on 5 September 2018 morning Ghanshayam Prusty fell ill and started vomiting blood. They claimed they rushed the deceased to Community Health Center, Salepur. However, the doctors declared him brought dead.<sup>54</sup>

On 31 August 2018, a convict prisoner identified as Munawar Vishwal died in the custody of Nimapada Sub-Jail under Puri district in Odisha. A resident of Astaranga Balbhadrapur village of Puri district, he was serving life sentence for murder of his mother in 2015. Jail officials claimed that on 31 August 2018, the deceased suffered stomach pain and he was taken to Nimapada Primary Health Center. When his condition did not improve, he was transferred to the Capital Hospital in Bhubaneswar where he died during treatment. The family members of the deceased alleged that they were not informed about the illness of Munawar Vishwal by the police or jail officials and suspected foul play.<sup>55</sup>

On 18 July 2018, a convict prisoner identified as Trilochan Mallick lodged at Puri district jail died under mysterious circumstances. The deceased, a resident of Kakatpur area of Puri district, was convicted in 2009 in a murder case that took place in 2006 and he had been serving life imprisonment in the district jail. The jail officials claimed that on 17 July 2018 evening, the deceased complained of sickness and went to sleep. On the next morning the deceased was found by some jail inmates in a serious condition. He was rushed to Puri District Headquarters Hospital where he died during treatment.<sup>56</sup>

On 3 July 2018, a 35-year-old undertrial prisoner lodged at Boudh jail died under mysterious circumstances at Boudh district hospital. The deceased identified as Pramod Bhabsagar (35), a resident of Nakuanali village of Bandhapathar Panchayat under Boudh district, was arrested by Boudh police allegedly in connection with a rape case. On 25 June 2018, the deceased was remanded to judicial custody and sent to Boudh jail. The jail officials claimed that on 25 June 2018, Pramod Bhabsagar complained of chest pain following which he was rushed to the Boudh district headquarters hospital where he died during treatment on 3 July. The family members of the deceased alleged that the deceased was tortured to death by the jail officials while in custody.<sup>57</sup>

On 24 June 2018, undertrial prisoner Abdul Latif Khan (55) lodged at Jajpur sub-jail died at SCB Medical College and Hospital in Cuttack. The deceased, a resident of Jamdhar village under Jajpur district, was arrested by Jajpur police on 19 June 2018 in connection with a land dispute. On 20 June 2018, the deceased was remanded to judicial custody after rejecting his bail plea and was sent to Jajpur Sub Jail. The jail officials claimed that on 23 June 2018, Abdul Latif Khan complained of abdominal pain and the jail doctor initially attended him and later he was rushed to Jajpur District Headquarters Hospital. Later, he was shifted to SCB Medical College and Hospital in Cuttack where he died on 24 June 2018 evening.<sup>58</sup>

On 20 May 2018, an undertrial prisoner Prasanna Sahu lodged in the Jayapatna Jail on murder charges died at the Sambalpur District Headquarters Hospital where he was under treatment.<sup>59</sup>

On 12 May 2018, the body of an undertrial prisoner Jitendra Biswal was allegedly found hanging inside the high-security Jharpada Special Jail in Bhubaneswar by the security personnel. He was arrested in a rape case. He was taken to the hospital where doctors declared him brought dead.<sup>60</sup>

On 8 March 2018, an undertrial prisoner Anadi Charan Khatua lodged at the Bhadrak sub-jail died under mysterious circumstances. The jail authorities claimed that the inmate, who had long been affected with Tuberculosis, was taken to the Bhadrak district headquarters hospital at midnight on 8 March and he died during treatment. However, Additional District Medical Officer (ADMO) Pradip Khuntia stated that the inmate had already died by the time he reached hospital and therefore, no treatment was given at the district headquarters hospital. It is pertinent to mention that earlier on 15 February 2018 the jail authorities had made the deceased inmate walk to a hospital with both his hands cuffed.<sup>61</sup>

### 2.3 Interventions by Odisha State Human Rights Commission

The Odisha Human Rights Commission (OHRC) delivered orders in a number of cases of torture. The NHRC also issued similar directions.



### **Case 1: Odisha SHRC awards Rs 50, 000 to Markand Naik, victim of illegal detention<sup>62</sup>**

In October 2018, the Odisha Human Rights Commission directed the State Government to pay a compensation of Rs 50,000 to Markand Naik, a resident of Angul district, for illegally confining him after his son eloped with a minor girl. The OHRC sought a report from the range DIG and Angul SP. It noted that Naik was picked up from his house at Amantapur village on 8 September 2015 and subsequently put in fetters for an alleged offence committed by his son Mithun, who had allegedly kidnapped a minor girl on 6 September 2015. The investigating officer of the case DK Swain and constable Koili Kishan were suspended for putting Naik in fetters and a departmental inquiry was initiated against the duo. The order for compensation was passed in a complaint filed by Supreme Court lawyer and rights activist Radhakanta Tripathy before the National Human Rights Commission which transferred the case to the OHRC for appropriate action against the police and compensation to the innocent father.

### **Case 2: OHRC directs payment of Rs 3 lakh compensation in custodial death case<sup>63</sup>**

On 6 March 2018, the Odisha Human Rights Commission directed the State government of Odisha to pay a compensation of Rs 3 lakh to the next of kin of deceased Abhaya Kumar Singh (45) who died in the custody of Sambalpur jail on 19 June 2017 allegedly due to police torture. The deceased, a resident of Palampur village under Purulia police station limits of West Bengal had come to Sambalpur in Odisha with his younger brother Ajaya and brother-in-law Khata Singh during 'Shitalasathi' festival to do business. However, they were arrested by Sambalpur Police from 'Pirababa' crossing on 30 May 2017 and kept in Town Police Station. On the next day, the trio was taken to Ainthapalli Police Station and then to Jujumura Police Station. After keeping them in different police stations for a week, police forwarded Abhaya Singh to the court on 7 June 2017 which remanded him to judicial custody.

It was alleged that by the time Abhaya was remanded to custody, he was not able to stand properly and he was in a serious condition. He had problems of vomiting and he bled with urine. He was kept in jail for three days, but when his condition deteriorated, he was shifted to Veer Surendra Sai Institute of Medical Sciences and Research, Burla on 10 June 2017 where he died June 19.

### **Case 3: NHRC asks Superintendent of Police, Subarnapur for action taken report in a torture case<sup>64</sup>**

In August 2018, the National Human Rights Commission sought an action taken report from the Superintendent of Police, Subarnapur on a police torture case and directed him to take appropriate action against Sonapur PS IIC Srikanta Kumar Tripathy. While he was IIC of the Tarbha PS, Tripathy had illegally detained a bike mechanic Arjun Nayak (28) of

Ghantrapada and beat him up mercilessly for a mere fault of standing on the road on 14 May 2018. Arjun was critically injured and hospitalised. Later, Tripathy had also threatened family members of Arjun Nayak to book them in a dacoity case and send them to jail, if they do not produce Arjun in the police station within three days. After being discharged from hospital, Arjun approached the Sambalpur DIG and apprised him about the torture meted out to him by Tripathy. On his complaint, the DIG office sought a clarification from the Tarbha police station. On receipt of the letter from the DIG office, Tripathy got infuriated and detained Arjun's family members and threatened them of dire consequences.

The NHRC's direction came in a petition filed by rights activist Srikumar Mahanta.

## **3. Torture in India during November 2018**

Across India, cases of torture in police and judicial custody including of women continue to be reported on regular basis.

### **3.1 Emblematic cases of torture in police custody**

On 22 November 2018, a 45-year-old man identified as Arvind Yadav died under suspicious circumstances in the custody of Makkhanpur Police Station in Firozabad district of Uttar Pradesh. The deceased, a resident of Chamroli village of Firozabad district, was arrested and taken into custody by police after he stabbed another villager Avnish Yadav during a quarrel between them on 20 November 2018. On 22 November 2018 at around 9:00 a.m. police officials took the deceased to district hospital, Firozabad, where the doctors declared him dead on arrival. The brother of the deceased alleged that his brother Arvind Yadav was beaten to death in police custody and demanded action against the accused police personnel.<sup>65</sup>

On 22 November 2018, another youth identified as Raju Gupta (30) was killed in the custody of police in Agra district of Uttar Pradesh. The deceased, a resident of Gailana under Sikandara police station limits in Agra district, was arrested by Sikandara Police on 21 November 2018 pursuant to a complaint filed by his neighbor Anshul Kumar Singh, a businessman, accusing the deceased of stealing jewellery from his home. On 22 November 2018, when his condition deteriorated he was taken to the SN Medical College, Agra where the doctors declared him brought dead. Mrs Renu Lata, mother of the deceased, alleged that his son was beaten to death by the Police of Sikandara police station to extract a confession of theft. She claimed that her deceased son had informed her on 22 November 2018 when she went to visit him at the Police Station that police had been beating him brutally to force him to admit the allegation of theft. She also alleged that police did not inform her about the death of her son for several hours although she was at the police station on that day.<sup>66</sup>

On 22 November 2018, Crime Branch officials from Unit-I, PCMC in Pune city of Maharashtra picked up Ishtiyak alias Mushtaq Malahu Khan, owner of Fabia Steel situated at Khed Shivapur village under Pune district from his scrap unit along with his six employees - Sumeet Yadav, Abdul Shaheed Salam Khan, Rakesh Gautam, Mohammad Khan, Abdul Khan, and Wasim Khan and kept them in illegal detention for three days. Khan alleged that the crime branch officials subjected him and his employees to third degree torture including beatings and electric shock. They also threatened him to implicate him and his men in false cases. He alleged that he and his men were released only after he paid Rs 8.5 lakh to the crime branch officials.<sup>67</sup>

On 19-21 November 2018, three minor boys were tortured at Kotra police station in Udaipur district of Rajasthan. The minor victims were detained illegally for three days at the police station in connection with a case of theft of a bike. The victims sustained injuries and the horrendous incident came into light only after a video showing multiple injury marks and bruises on their bodies went viral in social media.<sup>68</sup>

On 18 November 2018, at least 23 villagers including women were illegally detained and tortured by the Indian Army personnel at Longkhojan village under Longding District of Arunachal Pradesh. The victims alleged that on 18 November 2018 evening a group of army personnel from Dhangrikumar in Charaideo district of Assam conducted a search operation in Longkhojan without being accompanied by civil police and without informing the Gaon Burah (village chief). The army personnel misbehaved with both men and women and used unparliamentary words during the search operation. The victims were forcefully dragged into the school playground and were made to kneel down with folded hands and spend the whole night without food, water and warm clothes despite it being chilling cold. The security forces also beat up many of the victims including former Longkhojan Gaon Panchayat Member Rankai Apesam, Baptist church pastor Lempo Wangjen and a woman. All of them sustained injuries. The villagers were released on the next morning only after obtaining seal and sign from the Gaon Burah on a blank paper.<sup>69</sup>

On 13 November 2018, a 19-year-old youth identified as Md Aboy died in police custody in Manipur's capital Imphal under mysterious circumstances. The deceased, a resident of Erong Khunou area in Thoubal district, was in police custody in connection with a case of death of a 16-year-old Muslim girl of the same locality, who hanged to death on 10 October 2018. The deceased allegedly committed suicide by hanging from a ceiling fan on 13 November 2018 morning at the state-run juvenile home at Takyel area in Imphal where he had been lodged on 12 November on the directions of a juvenile court.<sup>70</sup>

On 5 November 2018 at about 11.30 pm, Sub-Inspector Praful Giri and constable Shailesh Parsekar attached to Pernem police station in Goa tortured a 21-year-old youth Kapil Satelkar for taking a no-entry. Satelkar alleged that the constable abused him in filthy language even as the SI pulled him off his motorbike and slapped him. The constable also assaulted him with kicks on his back and stomach. The duo then dragged him for 20 meters and forcibly put him in the police jeep. The abuse and assault continued till they reached the Arambol outpost. He was then taken to Pernem police station and later to the primary health centre where the doctor did not provide him with even first-aid at the behest of the police officers. Pursuant to a complaint filed by the victim, commission member A D Salkar held that prima facie the allegations appear to be very serious in nature. The notice issued to the director general of police, superintendent of police (North), health officer of the primary health centre in Parsem calling for reports stated: "This incident, in my opinion, must be viewed with all seriousness, as such incidents reflects very badly on the image of police machinery." The case is slated for hearing on 20 December 2018.<sup>71</sup>

On 4 November 2018, a 28-year-old youth was tortured to death by two constables posted at the police outpost under Madha Police Station in Solarpur district of Maharashtra. On 4 November 2018 night at about 8.30 the deceased Pradeep Kalyan Kute, a tractor driver, was playing loud music while travelling in his tractor at Manegaon near Madha, off the Mumbai-Hyderabad national highway. Two constables posted at the police outpost questioned the deceased about the loud music and asked him to come to the police outpost. The deceased was later found unconscious in the outpost and was taken to a private hospital in Madha, where the doctors declared him brought dead. The family members alleged that Kute died after he was thrashed severely by the two constables at the police outpost. On 5 November, the police booked the two accused constables on charges of murder of the deceased.<sup>72</sup>

On 3 November 2018, a youth identified as Swaminathan (39) was allegedly beaten to death in the custody of Kozhikode Medical College police in Kerala. The deceased, a resident of Tirunelveli district of Tamil Nadu, was arrested by police personnel of the Medical College Police station from Kuttikattur area in Kozhikode on 3 November 2018 pursuant to a complaint lodged by local residents accusing the deceased of stealing from a metal shop. The police claimed that the deceased was taken to the Kozhikode Medical College Hospital as he complained of physical discomfort soon after arrest. They further claimed that he died shortly after admission at the hospital. However, the family members alleged that the deceased was arrested on 2 November 2018 and he succumbed to his injuries sustained due to torture by the police while in police custody.<sup>73</sup>



On 31 October 2018, a 21-year-old Dalit youth, Balraj Singh was tortured to death at Gidderbaha police station under Muktsar district of Punjab. The deceased was arrested from Mohali by Gidderbaha police on 31 October 2018 pursuant to a complaint filed by the father of a 16-year-old girl with whom the deceased had allegedly eloped. Police had registered a case against him under Section 363 and 366 IPC. The police claimed that the deceased committed suicide by hanging himself with the *nara* (rope used in a dress) of his lower at the police station lock room on 31 October 2018. The father of the deceased Mr Pappu Singh alleged that his son was killed by the police after beating him brutally and hanged his dead body to look it like a case of suicide.<sup>74</sup>

### 3.2 Torturous prison conditions and deaths in judicial custody

On 22 November 2018, the Supreme Court lashed out at the Centre and States over pathetic conditions in the jails across the country, saying that everything has been reduced to a “joke”. A bench of Justice Madan B. Lokur and Justice Deepak Gupta said: *“Please visit the jails and the observation homes for children to see the condition. Ask your officials to get out of their offices to see the condition in the jails. Taps are not working, toilets are not working. They are all blocked...they are in a pathetic condition. Ask them to have a look, then they will realise the pathetic condition they (prisoners) are living in.”*<sup>75</sup>

The apex court said that among India’s prison population, undertrial prisoners accounted for 62% against the world average of 18-20%. The court noted that this statistic raised questions about the humaneness of our system.<sup>76</sup>

The court also expressed concern about the facilities given to Justice Amitava Roy, a retired judge of the Supreme Court, who is heading a committee appointed to review the cases of undertrial prisoners. The court has sought details of the infrastructure for the committee.<sup>77</sup>

In March 2018, the court’s amicus curiae Gaurav Agrawal submitted that 240 jails in the country were housing inmates 150% above their capacity. His report said that out of the 77,000 sanctioned posts in the prisons department, 24,500 were vacant. Mr. Agrawal said Tamil Nadu and Uttar Pradesh were some of the worst cases in the prison staff-inmate ratio. Only 5,000 prison staffers monitored over 92,000 inmates in Uttar Pradesh, and Tamil Nadu had 4,000 prison staffers to monitor 13,000 prisoners.<sup>78</sup>

The observations by the apex court came during the hearing of a suo motu case in respect of pathetic conditions in a jail and observation home in Haryana’s Faridabad city as personally found by Justice Adarsh Kumar Goel and Justice U U Lalit of the apex court during a surprise visit to the detention facilities in Faridabad. Invited by the Haryana Legal Services Authority to a function earlier this year, Justices Goel and Lalit had on their own also visited the jail and Observation Home and found the situation was pathetic.

Taking cognisance of the findings by the two justices, a bench of former Chief Justice of India Dipak Misra, Justices A M Khanwilkar and D Y Chandrachud had on 13 July 2018 issued directions for taking immediate measures to improve the condition in Faridabad Jail and Observation Home.<sup>79</sup>

Earlier on 1 November 2018, the National Human Rights Commission had summoned the state chief secretary and the inspector general of police (prisons) of Uttar Pradesh for not responding properly to notices issued by it in respect of deaths of over 2,000 prisoners in the State’s overcrowded jails in the past five years and submit reports to the NHRC. As the officials failed to submit the reports, NHRC further directed the two senior officials to appear in person before it on 12 December 2018. While issuing the order, the NHRC had stated: *“No reports have been submitted by the concerned authorities despite warning of coercive process. In ordinary course the Commission would have issued summons for their personal appearance but one more opportunity is granted to them for submission of requisite reports. Exercising its power given U/S 13 (a) of Protection of Human Rights Act, 1993, the Commission directs that the Inspector General of Prisons, Uttar Pradesh and Chief Secretary, Uttar Pradesh be summoned to appear in person on 12.12.2018 to produce the required information / documents.”*<sup>80</sup>

Earlier, in its order dated 29 July 2018, NHRC had sought details from the state government of Uttar Pradesh concerning human rights of prisoners, including appointment of doctors and para-medical staff in prisons.

The notices for personal appearances of the Chief Secretary and the Inspector General (Prisons) were issued pursuant to a complaint lodged by an Agra-based human rights activist, Naresh Paras, regarding the number of deaths in prisons due to overcrowding, poor healthcare, lack of basic amenities and non-compliance of norms by jail authorities.<sup>81</sup>

On 25 November 2018, some inmates of Raebareli jail in Uttar Pradesh alleged about getting death threats from senior jail officials and the Special Task Force (STF) officers. In a video clip that had gone viral on social media, a prisoner Anshu Dixit claimed that he along with fellow inmates Sohrab Khan and D S Singh were being threatened by jail officials and senior STF personnel. Naming all the officers, Dixit cautioned if he or his fellow inmates were killed, an FIR must be registered against them. In a separate video, Dixit and his fellow inmates allegedly showed the poor quality of food being offered inside the jail and further claimed that a parallel canteen was being run inside the prison premises. They alleged that in the other canteen, besides sweets and aloo paratha, cigarettes and other things are available. This facility is availed by a large number of inmates and lakhs of rupees are earned every day. The money is shared from bottom to the top.<sup>82</sup>

The revelation came a day after six jail officials, including a senior jail superintendent were suspended for failing to check the clandestine entry of liquor and firearms inside the prison.<sup>83</sup>

### Cases of deaths and torture in judicial custody

Deaths of prisoners as a result of torture and ill treatment in the jails are a regular phenomenon.

On 29 November 2018, an under-trial prisoner identified as Ramesh died under suspicious conditions in the custody of Sunaria jail in Rohtak district of Haryana. The deceased, a resident of Kalan village of Makrauli, was lodged at Sunaria jail to serve a jail term in connection with a case of death of a person due to rash driving by him. He died on 29 November 2018 at Post Graduate Institute of Medical Sciences (PGIMS) Hospital, Rohtak. Jail officials claimed that on 28 November 2018 the deceased was rushed to PGIMS Hospital, Rohtak following sudden deterioration of his health and he died during treatment.<sup>84</sup>

On 28 November 2018, a convict prisoner Amit Kalra died under suspicious circumstances in the custody of Kathua district Jail in Jammu and Kashmir. The deceased, a resident of Sarwal village of Jammu, was serving a prison term. Jail officials claimed that on 28 November 2018 the deceased was rushed to Kathua district hospital following deterioration of his health and he died at the hospital. However, as per the doctors at the district hospital, the deceased was brought dead to the hospital and there was no opportunity for treatment.<sup>85</sup>

On 27 November 2018, a 21-year-old under-trial prisoner identified as S. Jayamoorthy was allegedly tortured to death in the custody of Kalapet Central Jail in Cuddalore district of Tamil Nadu. The deceased, a resident of Cuddalore district, was arrested and remanded into judicial custody on 21 November 2018 in connection with a theft case. The jail officials claimed that on 27 November 2018, the deceased suddenly fell ill and was admitted to the Indira Gandhi Government General Hospital in Pondicherry where he died during treatment. However, the family members of the deceased alleged that Jayamoorthy died due to severe beatings by the jail officials inside the prison. They protested demanding action against the jail officials responsible for his death.<sup>86</sup>

On 26 November 2018, a prisoner identified as Moinudeen Abdul Sirajmiya Shaikh alias Mesu (35) died in the custody of Taloja jail in Raigad district of Maharashtra. The deceased, a resident of Wadala of Mumbai, was arrested from Kolkata on 20 November 2017 by Crime Branch unit II in connection with a heist in a Bank of Baroda branch in Navi Mumbai on 13 November 2017.<sup>87</sup>

On 25 November 2018, an under-trial prisoner identified as Amol Dnyaneshwar Kamble (30) was allegedly tortured to death at Pune Yerawada central jail in Maharashtra. The deceased, a resident of Bibvewadi in Pune city was arrested on 10 October 2018 and sent to judicial custody in connection with a case of assault. He died on 25 November 2018 inside the jail. Jail officials claimed that the deceased was in the habit of demanding tobacco and cigarette from other inmates. They said the deceased was kept under observation at the jail

hospital for treatment after he vomited on 25 November 2018 at around 11am. It was stated that while lying at the jail hospital bed the deceased allegedly put a towel around his neck and tied its knot on a door between 4 pm and 4.45 pm and that he died accidentally. However, the uncle of the deceased Deepak Jadhav and activist Milind Rajhans alleged that Kamble was killed by jail officials and demanded registration of a case of murder against the jail officials responsible for his death.<sup>88</sup>

On 23 November 2018, a convict prisoner identified as Sikandar lodged in Jail Number 2 of Tihar Central prison, Delhi was found dead under suspicious circumstances. Prison officials claimed that the deceased had a cardiac arrest and fell. The body had blood clot on his forehead and nose. However, the deceased's wife, Mehrunissa, claimed her husband had called her couple of days earlier from another inmate's phone that was kept hidden in the cell and asked her to arrange for Rs 16,000 urgently to pay to one Balraj. She said he asked her to leave the money with a tea-seller near the jail and said it would reach him. She said she suspected her husband was murdered since he was having a dispute with a few other inmates. She also stated that three months earlier he was attacked by them and had to be hospitalised with serious injuries to his ears.<sup>89</sup>

On 23 November 2018, an under-trial prisoner identified as Imtiyaz Bashir Shaikh died in the custody of Navsari sub-jail in Gujarat under suspicious conditions. The deceased, a resident of Dharagiri village under Navsari district, was arrested three months ago allegedly for demolishing/destroying the pillars in the fencing of the village temple complex. On 23 November 2018 morning the deceased who was lodged in Barrack No. 9 allegedly committed suicide. The jail officials claimed that the deceased slashed veins of his both hands and legs with a blade leading to profuse bleeding. They said the deceased was immediately rushed to the civil hospital where he died during treatment. However, the jail administration had no answer as to how the blade allegedly used by the deceased reached inside the jail.<sup>90</sup>

On 23 November 2018, another under-trial prisoner identified as Jagsir Singh, a resident of Alamwala village under Muktsar district, died in the custody of Muktsar district jail in Punjab due to alleged torture by police during arrest. He was booked by Kabarwala police station on 29 October 2018 for allegedly carrying 4 gram heroin. He remained absconding, but police succeeded to arrest him on 20 November 2018. He died on 23 November 2018 under mysterious circumstances. Jail officials claimed that the deceased was a drug addict and he died due to 'some fit' as an acute symptom of withdrawal of drug. However, the family members alleged that the deceased died as a result of severe beatings by a large number of policemen at the time of his arrest on 20 November.<sup>91</sup>

On 21 November 2018, an under-trial prisoner Govardhan Pujahar died under suspicious circumstances at

Dumka Central Jail in Jharkhand. The deceased, a resident of Jama of Dumka district was arrested and sent to judicial custody on 19 November 2018 in connection with a case of beating and physical assault. The deceased allegedly committed suicide on 21 November 2018 by hanging himself. Jail officials claimed that the deceased was suffering from epilepsy. On 21 November 2018 evening during counting before bedtime the jail officials found one inmate missing. On checking and searching the jail premises, the dead body of the deceased was found hanging by a rope inside the under-construction jail hospital building.<sup>92</sup>

On 16 November 2018, a 38-year-old undertrial prisoner Surinder Kumar died under mysterious circumstances at Ludhiana Central Jail in Punjab. The deceased, a resident of Chawa village of Gurdaspur district, was arrested and sent to judicial custody under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) on 16 October 2018. He died under mysterious circumstances on 16 November 2018 morning.<sup>93</sup>

On 14 November 2018, a 73-year-old prisoner Tanik Singh alias Avadh Kishor Prasad Singh lodged at Camp Prison, Bhagalpur in Bihar died for want of medical treatment. The deceased, a resident of Lohanda village of Sikandara thana area under Jamui district of Bihar, was serving life imprisonment after conviction in a murder case. In 2015, the deceased was shifted to Camp Jail from Munger district Jail. The deceased who was stated to be a diabetic, died on 14 November 2018 evening while being taken to Mayanganj Hospital, Bhagalpur.<sup>94</sup>

On 8 November 2018, a prisoner identified as Hemraz (58) died under mysterious circumstances in the custody of Pilibhit district jail in Uttar Pradesh. The deceased, a resident of Itaroda village under Bisalpur Kotwali area in Pilibhit district, was serving a sentence of murder since December 2016. The jail officials claimed that on 8 November 2018 the deceased fell sick. As his health suddenly deteriorated he was admitted to the district hospital, Pilibhit, where he was declared dead. However, daughter of the deceased Mrs Kamlesh accused the jail administration of killing his father. She said her father's body bore several injury marks, including on his face and eyes. She said she saw a deep cut on the nose of his father while blood was found oozing out from behind his head.<sup>95</sup>

On 5 November 2018, a 50-year-old undertrial prisoner lodged at Dumka district Jail in Jharkhand died allegedly due to want of medical treatment. The deceased identified as Joan Tudu, a resident of Kormo village of Gopikandar block in Dumka district, was sent to judicial custody on 10 October 2018 in connection with a case of fraud. The jail officials claimed that on 4 November 2018 morning the deceased was admitted to the ICU ward of Sadar Hospital, Dumka after he complained of acute chest pain. He died during treatment due to heart failure. However, the family members of the deceased

accused the jail authorities of being negligent. They alleged jail officials did not provide timely treatment to the deceased.<sup>96</sup>

On 4 November 2018, a 30-year-old undertrial prisoner identified as Ashok Sharma died in the custody of Taloja jail in Raigad district of Maharashtra under mysterious circumstances. The jail officials claimed that the deceased was lodged at Taloja jail on 3 November 2018 at around 11 pm. On 4 November 2018 at around 12.05 am he was admitted to the prison hospital on complaints of sickness. As he complained of giddiness he was taken to and admitted at NMMC hospital in Vashi, Navi Mumbai at about 7.05 pm on the same day. According to the doctors at the NMMC hospital, the deceased died within 25 minutes of his admission. The deceased was arrested on 29 October 2018 in connection with a robbery case for assaulting and robbing an Ola cab driver. He was booked under Section 394 of IPC for voluntarily causing hurt while committing a robbery.<sup>97</sup>

### 3.3 Torture and rape of women in custody

Despite numerous Supreme Court judgments and enactment of the Criminal Law Amendment Act 2013, women continue to face torture and sexual violence at the hands of the law enforcement personnel.

#### **Case 1: Rape and blackmail of a rape survivor by a sub-inspector of police, Bhiwandi, Maharashtra<sup>98</sup>**

On 22 November 2018, a 26-year-old rape survivor filed a complaint against a police sub-inspector for raping and blackmailing her. Since the filing of the complaint the accused cop identified as Rohan Ganjari, posted with the Kongaon police station under Bhiwandi zone in Thane district, had been absconding. The survivor stated that she approached the Kongaon police in 2017 and sought to register an FIR against one Rabiya and one of Rabiya's male friend who had raped her. She alleged that Rabiya called her to her home for discussion, served juice laced with sedatives and then she was raped by a friend of Rabiya while she recorded the act on her mobile phone. Rabiya then began blackmailing her and demanded Rs 50,000. But the cops added the name of Satish, who is the survivor's boy friend false in the FIR and thereafter, Ganjari had arrested Satish and put him behind bars. Ganjari then demanded sexual favours to remove Satish's name from the FIR. The survivor alleged that on 8 August 2018, Ganjari took her to a Kalyan lodge and raped her. Before that, he made sure he had her signature on a statement saying she had a physical relationship with him by her own consent. Ganjari began demanding sexual favours regularly, forcing her to approach the Kongaon police against him.

#### **Case 2: Alleged torture of two sisters by police, Nayapalli police station, Bhubaneswar**

On 6 May 2018, two sisters - residents of Behera Sahi under Nayapalli police limits in Odisha's capital Bhubaneswar were allegedly tortured in detention at the Nayapalli police station. The victims claimed the police had



dragged both of them to the police station following a group clash over land dispute and confined them to a room at the police station for around two hours. They said that during detention the police officials including the inspector in charge beat them up with plastic pipes. The two sisters sustained injuries on their bodies, photographs of which they had uploaded in social media.<sup>99</sup>

The inspector-in-charge of Nayapalli police station, Sangram Patnaik, and two women sub-inspectors, Minati Nayak and Sasmita Dhal, were transferred to Reserve Police hours after the video uploaded by the victims went viral social media. The transfers were done following a directive from Odisha's Director General of Police Rajendra Prasad Sharma in connection with the viral video.<sup>100</sup>

The two sisters appeared before the OHRC and filed a separate petition alleging police brutalities on them. They alleged that inspector-in-charge of Nayapalli police station tried to molest them.<sup>101</sup> On 29 June 2018, the Odisha Human Rights Commission directed the former Nayapalli Inspector in Charge and the two women police officials to depose before it on 10 July 2018 in connection with the viral video that featured the two sisters assaulted by the cops.<sup>102</sup>

### **Case 3: NHRC asks for Action Taken Report on alleged sexual predation of a minor girl by police in Odisha**

In the last week of October 2018, the NHRC directed the Jajpur Superintendent of Police to furnish an Action Taken Report on the alleged sexual predation of a minor girl by a police officer of inspector rank. The rights panel, acting on a petition moved by Sangita Swain, secretary of Angul-based Human Rights Watch organization, asked the Jajpur SP for initiating appropriate penal action against the Kaliapani police station Inspector-in-Charge.<sup>103</sup>

The accused police officer had allegedly meted out physical and mental torture on the victim girl. A complaint in this regard had been lodged with the local police on 26 May 2018. However, police did not act on it. The copies of the complaint were also submitted to the Jajpur SP and DGP but no action was taken against the accused IIC.<sup>104</sup>

## **3.4 Judiciary's action against torture in November 2018**

The judiciary regularly adjudicates cases of illegal, unjustified and unwarranted arrests, extracting confession from innocent persons for offences which they have never committed, by way of custodial violence.

The emblematic cases are given below.

### **Case 1: CBI begins probe into the killing of 12 persons, including five minors by police in a fake encounter in Palamu district of Jharkhand<sup>105</sup>**

In November 2018, the Central Bureau of Investigation (CBI) had filed a case in the killing of 12 people, including five minors, in a fake encounter in Jharkhand's Palamu district in June 2015 pursuant to directions from the Jharkhand High

Court to probe the killings. The police had termed the deceased as Maoists.

A petition filed by Jawahar Yadav before the High Court stated that in June 2015, his son and some other relatives were sleeping on the roof of the house when at about 10 pm, some men on motorcycles barged into his home and forcibly took them away. On June 10, he learnt that his son Uday, relative Neeraj Yadav and 10 others alleged to belong to a banned Maoist organization "Jharkhand Jan Mukti Parishad" were killed by security forces in an encounter. He stated that none of the deceased, including his son and Neeraj Yadav was ever associated with any Maoist activities.

On the other hand, the police had claimed in its FIR that Maoists travelling in vehicles had fired at cops and a CRPF's CoBRA team to which they retaliated. The cops said they had recovered rifles and carbines from the alleged Maoists. However, the operation came under the scanner after some senior police officers i.e. then DIG Hemant Toppo of Palamu district and then officer in-charge of Sadar police station, Harish Chand Patnaik claimed that such an encounter never happened.

While ordering a CBI probe, a bench of Justice Rongon Mukhopadhyay noted: "The photographs, which have been produced and also brought on record, do create a doubt on the facts placed by the police regarding the encounter. It is indeed surprising that all of 12 bodies were kept in a line as if somebody had brought the dead bodies from some other place and arranged it in a queue".

### **Case 2: Brutal torture of Dalits at Rapur village in Nellore district of Andhra Pradesh<sup>106</sup>**

On 14 November 2018, the Hyderabad High Court issued notices to the Chief Secretary, principal secretaries of home and social welfare, Director General of Police of Andhra Pradesh, Nellore District Collector, the Rapur SI, the Gudur division DSP and others for filing detailed counter affidavits in the petition filed alleging brutal attack and torture of Dalits by police at Rapur village in Nellore district on 1 August 2018.

Justice AV Sesha Sai was dealing with the petition filed by R Rama Chandraiah and others from Scheduled Caste community seeking registration of a case against the police personnel responsible for the alleged brutal, physical and mental torture of petitioners and others on the day of the incident. The petitioners urged the court to entrust the case either to Central Bureau of Investigation or a probe by a Special Investigation Team.

### **Case 3: Delhi High Court sentences 16 former policemen to life imprisonment in the Hashimpura massacre, Uttar Pradesh<sup>107</sup>**

Over three decades after the Hashimpura massacre in Uttar Pradesh in which 38 Muslims were shot dead in cold blood, the Delhi High Court on 31 November 2018 sentenced 16 former policemen to life imprisonment, holding it was a "targeted killing" of "unarmed, innocent and defenceless" persons.

Reversing a trial court order of 2015 that acquitted the 16 guilty police personnel, who were with the Provincial Armed Constabulary (PAC), a bench of Justices S Muralidhar and Vinod Goel termed the case as an instance of custodial killing where the legal system was unable to effectively prosecute the perpetrators of gross human rights abuses. The court noted that it was conscious that for the families of those killed, this was perhaps “too little, too late” as they have had to wait for 31 years for justice.

Around 42 to 45 Muslim men, old and young, were rounded up by the PAC from Hashimpura area in Meerut city on 22 May 1987 and taken away into the armed forces’ truck. The victims were shot at two different locations by the PAC personnel with .303 rifles and the bodies were thrown into two canals - Gang nahar and Hindon River. The court concluded that 38 detainees were killed while five survived to recount the horrific tale. The dead bodies of just 11 of them were able to be identified later by their relatives while the remaining bodies were not recovered.

Holding that the deaths of the victims were “custodial deaths”, the court said although they were not taken to an enclosed place by the PAC, they were unlawfully detained, kept in a PAC truck and taken to two places and asked to keep their heads down and not allowed to move.

The court directed the convicts to surrender by 22 November, failing which the SHO concerned would immediately take them into custody. The 16 former cops were held guilty for the offences of murder, kidnapping, criminal conspiracy and destruction of evidence under the IPC.

The case was transferred to Delhi on a Supreme Court direction in September 2002 following a petition by the families of the massacre victims and survivors.

### 3.5 Interventions by the NHRC/SHRCs during November 2018

The National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRCs) are mandated to address human rights violations and continue to intervene against cases of torture. As per latest data available, the National Human Rights Commission registered a total of 6,294 fresh cases while it disposed of a total of 7,479 cases (Fresh + Old) during October 2018. A total of 21,158 cases (Fresh + Old) were under consideration of the commission till end of the month.<sup>108</sup> A large number of complaints relate to torture.

In October 2018, the NHRC has awarded a total of Rs 1,20,90,000 in 70 cases of human rights violations, including 22 cases of deaths in judicial custody and 1 case of deaths in police custody; 7 cases of abuse of power and 3 cases of unlawful detention.<sup>109</sup>

Some of the emblematic cases of interventions are given below.

#### Case 1: NHRC calls for Action Taken Report in respect of torture and ill treatment of tribal people during their forcible eviction in Angul district

On 2 November 2018, the National Human Rights Commission asked for additional information from the concerned authorities<sup>110</sup> in respect of severe torture of more than 50 tribal people and their family members by police and administrative officials during forcible eviction from Saanda, Bankuli, Hensala, Magarmana, Jaganathpur villages under the Khamar police station in Angul district of Odisha on 11 August 2018.<sup>111</sup>

Taking cognisance of a petition filed Sangita Swain, Secretary, Human Rights Watch, the National Human Rights Commission registered a case (No. 4465/18/16/2018) and sought for an action-taken report from the Odisha Human Rights Commission with regard to allegations. In her petition, Swain alleged that victims Babuli Sahoo, Chakradhar Sahoo, Nirakara Sahoo, Bidhan Behera, Maheswara Sethy, Bauri Sethy, Tanaka Dhara Sahoo, Sridhara Sahoo, Gulap Sethy, Lipun Garnaik, Siba Dalei along with other 50 villagers and their families of Saanda, Bankuli, Hensala, Magarmana, Jaganathpur villages under the Khamar police station in Angul district were illegally evicted from the forest land and severely tortured by the police and administrative authorities under political influence.<sup>112</sup>

The petition stated that police and administrative official beaten up the tribal people to forcibly evict them from their villages and it sought appropriate penal actions against the responsible police and administrative officials.<sup>113</sup>

#### Case 2: NHRC asks Odisha government to file ATR about police attack on lawyers<sup>114</sup>

In October 2018, the National Human Rights Commission had sought an action-taken report from the Chief Secretary and DGP of Odisha over the brutal attack by police personnel on two lawyers in the state. The rights panel issued the order pursuant to a petition filed by Supreme Court lawyer and rights activist Radhakanta Tripathy.

In his petition filed before the NHRC, Mr Tripathy alleged that on 28 August 2018, lawyer Debi Prasanna Pattnaik was allegedly beaten up by police personnel in public view at Shastri Nagar in Nuabazar area of Cuttack while another lawyer Subhrakant Satpathy was assaulted by cops when he objected to the brutality of cops on an old man at Baleswar railway station on 13 September 2018. Mr Satpathy went to the railway station at 11.30 pm to see off his relatives. Mr Pattnaik was attacked by a few police officials following a verbal duel near Nua Bazaar Bridge. He sustained critical injuries in the attack and was later admitted to the SCB Medical College Hospital for treatment.

#### Case 3: NHRC awards compensation to victims of torture by Special Protection Group personnel engaged in anti Maoist operations<sup>115</sup>

In February 2018, the National Human Rights Commission had awarded compensation to two tribal men

assaulted by Special Protection Group (SPG) jawans engaged in anti-Maoist operations in Nuapada district of Odisha. The rights panel asked the state government to award compensation of Rs 1 lakh to each of the victims, who were allegedly meted out third degree torture on suspicion of being Maoist informers.

The SPG personnel picked up three tribal youths on 18 August 2015 from Loharpali village under Khadiala block in the district on suspicion of being Maoist sympathisers. They detained the trio, alleging that they were providing feedback to the ultras on combating operation by security forces. While one of the youth identified as Sahu died in custody, Nurtyan Nayak and Narendra suffered life-threatening injuries.

As the tale of torture became public, the state government was forced to initiate coercive action by arresting the four jawans accused of torturing the villagers. The jawans - Khushi Ram Bhoi, Kamdev Pradhan, S. Kujur and Pramod Jagdala - are currently facing trial and have been placed under suspension. The state government had earlier awarded Rs 10 lakh ex-gratia compensation to family members of the deceased. It had also borne Nayak's treatment cost amounting to Rs 2,88,214.

The award for compensation was given pursuant to a petition filed by rights activist Radhankanta Tripathy who had earlier drawn the attention of the rights panel on the paramilitary forces' custodial torture on the victims.

**Case 4: Tamil Nadu SHRC awards compensation of Rs 10 lakh to NoK of deceased CRPF personnel in Vellore district and recommends action against accused cops<sup>116</sup>**

In November 2018, the Tamil Nadu State Human Rights Commission directed four policemen including the Deputy Superintendent of Police to pay a compensation of Rs 10 lakh to the wife of a retired Central Reserve Police Force personnel five years after her husband was tortured to death in police custody in Gudiyatham taluk police station in Vellore district of Tamil Nadu. The SHRC also recommended the State government to initiate disciplinary action against policemen and Dr K.Selvaraj, police surgeon, professor of forensic medicine, Government Vellore Medical College, Vellore.

The order was given by the SHRC while disposing off a petition filed by G. Sumalatha, wife of the deceased. She submitted that on 19 September 2013 her husband Gopal (43) who had retired as havildar from the CRPF was in his poultry farm when two constables from Gudiyatham taluk police station came there and took him to the police station to interrogate him in connection with the murder of a person. The policemen did not produce him in the court but informed her that he died on 1 October 2013, at about 6.00 pm in the police station.

The complainant stated that the exact reason for his death was not disclosed to her while her husband was healthy at the time of arrest. She sought action against K.Sundaram, DSP, Gudiyatham sub-division, M. Muralidharan, inspector, K. Inbarasan, SSI and S. Umachandran, head constable, Gudiyatham taluk police station, Vellore district.

Denying the allegations, the policemen stated that the deceased had been arraigned as an accused in the murder of Sugumaran, government higher secondary school teacher. He, along with others were arrested at Gudiyatham bus stand and brought to the police station for enquiry. The cops claimed that Gopal became unconscious and was rushed to the primary health centre at Melpatti. Following the advice of the doctor he was shifted to Gudiyatham where he was declared as brought dead.

SHRC member Justice D. Jayachandran said that police had not come forward to disclose how Gopal died in police custody. The commission suspected that Gopal was beaten severely by police. Holding them responsible for his death, the judge directed the policemen to pay a compensation of Rs 10 lakh to Sumalatha and recommended the government to initiate disciplinary action against the policemen and Dr K.Selvaraj.

**Case 5: Tamil Nadu SHRC awards Rs 1 lakh compensation to A. Rajinikanth, victim of torture<sup>117</sup>**

In November 2018, the Tamil Nadu State Human Rights Commission directed two policemen to pay a compensation of Rs 1 lakh to A. Rajinikanth on charges of implicating him in false criminal case and assaulting him in custody. He was forcefully stripped in the police station.

The order was given by SHRC Member, Justice D. Jayachandran, in a petition filed by the victim. As per the petition, the victim was falsely implicated in a criminal case by police in Puzhal police station, Chennai, on the basis of a false complaint of cheating by one Sivakumar. On 20 December 2013, at about 3 am, Babu Rajendra Bose, inspector, and Mani, sub inspector of Puzhal police station, took the victim to police station and locked him up. He was forced to remove all his clothes and subjected to inhuman treatment. Police asked him to settle the loan to tune of Rs 4 lakh allegedly taken from Sivakumar. They also alleged that he had taken 4 and half sovereign of gold rings, a 2 sovereign gold bracelet and a 2 and half sovereign of gold chain from Sivakumar. Police locked him up in the cell at the police station for two days till 4 pm on 22 December. Thereafter, he was produced at the judicial magistrate's residence at Velachery at about 6.45 p.m. On the way to Puzhal jail the police took him to a secluded place near the police station and again assaulted him. He sustained injuries.

The policemen denied all the allegations. However, after considering evidences, Judge D. Jayachandran held that Rajinikanth was falsely implicated in the criminal case and illegally arrested by Babu Rajendra Bose and Mani and remanded to judicial custody. This amounts to violation of human rights of the complainant, Tamil Nadu SHRC held.

**Case 6: Tamil Nadu SHRC awards Rs 2.5 lakh compensation to Mr. Arunkumaran, a victim of illegal arrest, arbitrary detention and ill treatment<sup>118</sup>**

In November 2018, the State Human Rights Commission has recommended the Tamil Nadu State government to pay a



compensation of R 2.5 lakh to Mr. Arunkumaran, who was erroneously arrested in connection with a case and meted out ill treatment.

Awarding the compensation, SHRC member A. Chittaranjan Mohandoss stated: *"This Commission carefully examined complaint, counter, depositions and all other records and it's clear from the above that Mr. Arunkumaran faced humiliation and he was mishandled by the respondents has violated the basic human rights of the complainant."* The SHRC also directed that the State government that the Additional Chief Secretary to Government, Home Department, Secretariat, Chennai "shall take discretionary action against all the respondents."

The SHRC further recommended the State government to recover the compensation amount from the guilty police officials viz. Inspector E. Rajeswari, Special Sub-Inspector R. Balakrishnan and Head Constable K. Francis (all attached to Central Crime Branch then) involved in the case.

The order was given in a petition filed by the victim identified as M. Arunkumaran of South West Boag Road in T. Nagar in Chennai. According to the complaint, the victim was allegedly dragged to a tempo van from his office on 11 August 2014 by the above named Central Crime Branch personnel and was brutally beaten up in custody. The cops also denied food and medication to the victim.<sup>119</sup>

## 4. International Action against Torture in November 2018

### 4.1 India lacks behind Maldives: UN Committee against Torture reviews the initial report of Maldives

While India consistently refuses to ratify the UNCAT despite signing the same in 1997, tiny Maldives had ratified the Convention and on 28 November 2018, the UN Committee against Torture (CAT) considered the initial report<sup>120</sup> of Maldives on its implementation of the UNCAT.<sup>121</sup>

Introducing the report, Maldivian representatives stressed that the newly formed Government had replaced the highly repressive authoritarian regime and that its challenge now is to rebuild democratic institutions, restore the separation of powers and checks and balances, and rebuild an independent judiciary. The CAT was informed that reforming prisons and eliminating the gap in the implementation of the laws prohibiting torture will be accorded priority, and cooperation with the Human Rights Commission of Maldives shall be enhanced in the review of past cases of torture. The Maldives also informed that reports of torture and inhuman and degrading treatment during the states of emergency declared in 2015 and in 2018 would be properly investigated and examined. It also reiterated that the new Government would uphold the 65-year moratorium on the death penalty and review the question of the abolition of the death penalty very carefully, raise the age of criminal responsibility to 18, and

enforce and implement with full effect laws such as the Sexual Offences Act, Prevention of Sexual Harassment Act, and the Domestic Violence Act.<sup>122</sup>

The CAT experts welcomed the policies and commitments announced by Maldives, and especially the commitment to address impunity for torture, which was the most serious concern, considering that, since the entry into force of the Anti-Torture Law, there had been no convictions for the 223 allegations of torture, made mostly against police and prison correction officers. The experts also commended the setting up of a Commission on Murders and Disappearances to establish trustworthy investigations, and urged the new administration to ensure that it could carry out its work unimpeded by the police, prosecution or State authorities.<sup>123</sup>

However, the Committee expressed its concern on the lack of an independent judiciary, and stated that there was a need to reform institutions involved in criminal justice, notably police and prosecution, and increase their cooperation with the Human Rights Commission of Maldives in the investigation of complaints of torture and cruel treatment. The Committee also observed that Maldives should strengthen the protection of victims of domestic violence and the implementation of the Domestic Violence Act, reform the legal provisions which exculpated perpetrators of child sexual abuse against married girls, and abolish corporal punishment, including flogging of children and victims of rape.<sup>124</sup>

### 4.2 India lacks behind Viet Nam: UN Committee against Torture considers the initial report of Viet Nam

Even Communist Vietnam ratified the UNCAT which India consistently refuses to do despite signing the same in 1997.

On 15 November 2018, the UN Committee against Torture concluded its consideration of the initial report<sup>125</sup> of Viet Nam on the efforts made by the State party to implement the provisions of the Convention against Torture.<sup>126</sup>

Introducing the report, Quy Vuong Le, Deputy Minister of Public Security of Viet Nam, said that chapter two of the national Constitution of 2013 contained articles on human rights and the fundamental rights and responsibilities of citizens which also included the right not to be subjected to torture, cruel, inhumane or degrading treatment. Other than these Constitutional provisions, the right not to be subjected to torture was also guaranteed in various legal acts in the areas of criminal, administrative and civil justice.

He also informed that the National Assembly had in 2015 amended many important laws and regulations pertaining to the prevention of torture, including the Criminal Code, the Criminal Procedure Code, the Law on the Organization of Criminal Investigation Agencies, the Law on the Execution of Temporary Custody and Detention, as well as bilateral agreements with third countries on extradition and transfer of

sentenced persons. He conceded that though the 2015 Criminal Code did not define a separate offence of torture, it however, did define crimes such as “the use of corporal punishment” and “obtaining testimonies under duress” as offences that in their nature constituted torture.<sup>127</sup>

During the course of discussion, the Committee experts noted that while the right not to be tortured was stated in the Constitution, there was no separate provision on the offence of torture or the definition of torture. They inquired whether the State party had any plans to make the provisions on compliance with superiors’ orders in line with the Convention, and whether the amended Criminal Code of 2015 had led to more prosecution of cases of torture.<sup>128</sup>

The Committee informed that it had received several reports indicating that torture, police brutality and deaths in custody remained prevalent in the country. They noted that the deprivation of liberty could take place in reformatories, re-education camps and compulsory detoxification centres without a trial or safeguards, and asked the State party to ensure that detention in those institutions was not used as a surrogate for ordinary criminal detention.<sup>129</sup>

The Experts further inquired about the statute of limitation, pre-trial detention, the right to legal counsel, registration of persons deprived of liberty, medical staff working in the penitentiary system, an oversight mechanism for the police, the application of non-refoulement, stateless persons, Vietnamese citizens seeking political asylum abroad, prisoners of conscience, prison conditions, death in custody, cooperation with civil society, training for public servants on human rights, legal status of the Public Prosecutor, impartiality of judicial proceedings, arbitrary detention and secret detention, the right to lodge complaints, reparations, inadmissibility of evidence obtained through torture, and the rights of minorities.

In his concluding remarks, the Deputy Minister of Viet Nam assured that the delegation had understood the observations and comments of the Committee Experts, and noted that Viet Nam was well aware of its obligations under international conventions. He also invited the Committee Experts to visit the country.

### 4.3 UN Sub-committee on Prevention of Torture visits Liberia

Liberia despite being afflicted by conflicts in the past has not hesitated to ratify the UNCAT and the Optional Protocol to the UNCAT and invite the United Nations Subcommittee on Prevention of Torture (SPT) for the second visit to the country from 29 October to 2 November 2018 to review the implementation of the recommendations the SPT made following its first visit in 2010.<sup>130</sup>

*“The situation of persons deprived of their liberty is a matter of grave concern to us. The recommendations in our first visit report remain as relevant as when they were made back in 2010,”* said

Sir Malcolm Evans, who headed the SPT delegation to Liberia.<sup>131</sup>

The SPT during its visit held discussions on the establishment of an independent National Preventive Mechanism, a body which the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) requires be established and which must have the authority and capacity to undertake preventive visits to any place where it believes persons may be deprived of their liberty. Liberia is a State party to the OPCAT.

“It is the duty of the State to ensure that all persons in detention are treated properly. Liberia is yet to establish its National Preventive Mechanism to prevent torture and ill-treatment. This should have been done over ten years ago. We are committed to working constructively with the Liberian authorities to help them do this and we hope they will respond positively to our offer,” concluded the head of delegation.<sup>132</sup>

The SPT met with the Liberian authorities and had technical discussions with some relevant ministries to seek their views regarding the effectiveness of the measures so far taken to bring Liberia into compliance with its obligations to prevent torture and ill-treatment. The SPT also met with the Independent National Commission on Human Rights, members of civil society as well as with United Nations representatives. The SPT also visited prisons, police stations and other detention facilities. The SPT will submit its confidential report to the Government of Liberia, containing its observations and recommendations arising from the visit. The report made following the SPT’s first visit in 2010 remains confidential unless the state requests its publication.<sup>133</sup>

## 5. Nigeria’s anti-torture law shows India’s failure to criminalise torture

Nigeria had been a signatory to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UNCAT) since 28 July 1998 and it ratified the convention on 28 July 2001, in less than three years of becoming a signatory to the instrument. Nigeria accepted the Inquiry Procedure provided under Article 20 of the Convention. It also ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 27 July 2009.<sup>134</sup> In April 2014, the United Nations Subcommittee on Prevention of Torture carried out a high level advisory visit to the country to hold talks with the authorities in order to assist them in the implementation of the OPCAT.<sup>135</sup>

Nigeria, however, has not yet submitted any report before the Committee Against Torture (CAT) either under the CAT or OPCAT although its initial report was due on 28 June 2002.<sup>136</sup>

### Legal framework for prohibition of torture and cruel, inhuman or degrading treatment or punishment

Torture and other ill-treatment are absolutely prohibited, at all times, by international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and the CAT and Nigeria is a party to both conventions. Acts of torture and certain types of other ill-treatment are crimes under international law. The ratification of the CAT and the ICCPR had created legal and political obligations on the Republic of Nigeria to comply with and implement the provisions of the Convention at the domestic level. The Nigerian Constitution also prohibits torture and other inhuman or degrading treatment.

The 1999 Constitution sought to provide a framework to prohibit torture by providing “no person shall be subject to torture or to inhuman or degrading treatment” under Section 34 (1)(a).<sup>137</sup>

### Torture: A common tool for criminal investigation across Nigeria

The 1999 Constitution did not explicitly state that the freedom from torture, cruel and inhuman treatment is a non-derogable right. Until enactment of the Anti Torture Act, 2017 on 29 December 2017, there was no law whose sole objective is the prohibition and punishment of torture and other forms of cruel, inhuman or degrading treatment in Nigeria.

In its report titled, “*Welcome to hell fire*” *Torture and other ill-treatment in Nigeria*, published in September 2014, global human rights watchdog Amnesty International found that torture and other ill-treatment were routine practice in criminal investigations across Nigeria. Suspects in police and military custody across the country have been subjected to torture as punishment or to extract ‘confessions’ as a shortcut to “solve” cases – particularly armed robbery and murder.<sup>138</sup>

The report stated that many police sections in various states, including the Special Anti-Robbery Squad (SARS) and Criminal Investigation Division (CID), have “torture chambers”: special rooms where suspects are tortured while being interrogated. Often known by different names like the “temple” or the “theatre”, such chambers are sometimes under the charge of an officer known informally as “O/C Torture” (Officer in Charge of Torture).<sup>139</sup>

The National Human Rights Commission of Nigeria registered a total of 165,543 cases across the country in 2017 under the heading “Civil and Political Rights” which included unlawful arrest & detention, cruel, inhuman and degrading treatment, torture, extrajudicial killing, appeal for mercy, enforced disappearances, participation in political affairs, freedom of religion, thought and conscience, threat to life etc. Of these, 14,733 cases were registered under the sub-heading ‘Torture’ and 20,029 cases were registered under the sub-heading ‘cruel, inhuman and degrading treatment’.<sup>140</sup>

Anti Torture Act – a platform to realize the constitutional prohibition on torture

The Anti Torture Act, 2017 provides a platform to apply the prohibition on torture or inhuman or degrading treatment as laid down in Section 34(1)(a) of the 1999 Constitution. The law fills the legislative gaps by explicitly making the right to freedom from torture, cruel, inhuman and degrading treatment a non-derogable right, criminalising torture and protecting victims and witnesses of torture.

The Anti-Torture Act 2017 is a very concise legislation. This Act makes comprehensive provisions for penalising the acts of torture and other cruel, inhuman and degrading treatment or punishment, and prescribes penalties for the commission of such acts.

### Definition of acts of torture

Section 2 of the Anti Torture Act, 2017 defines what amounts to torture. Sub-section (1) states that torture is deemed committed when an act by which pain and suffering, whether physical or mental, is intentionally inflicted on a person to – (a) obtain information or confession from him or a third person; (b) punish him for an act he or a third person has committed or suspected of having committed; or (c) intimidate or coerce him or third person for any reason based on discrimination of any kind. The provision however provides that torture does not include pain or suffering inflicted in compliance with lawful sanctions.

Sub-section (2) provides that torture includes (a) physical torture or such cruel, inhuman or degrading treatment which - causes pain, exhaustion, disability or dysfunction of one or more parts of the body and (b) mental or psychological torture, which is understood as referring to such cruel, inhuman or degrading treatment calculated to affect or confuse the mind or undermine a person’s dignity and morale.

The sub-section provides an exhaustive list of acts that constitute torture or cruel, inhuman or degrading treatment. Some examples of physical and mental and psychological torture<sup>141</sup> are (i) systematic beatings, head-banging, punching, kicking, striking with rifle butts and jumping on the stomach; (ii) food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten; (iii) electric shocks; (iv) cigarette burning, burning by electric heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds; (v) the submersion of head in water or water polluted with excrement, urine, vomit or blood; (vi) blindfolding; (vii) threatening a person or such persons related or known to him with bodily harm, execution or other wrongful acts; (viii) confinement in solitary cells put up in public places against their will or without prejudice to their security; (ix) prolonged interrogation to deny normal length of sleep or rest and (x) causing unscheduled transfer of a person from one place to another, creating the belief that he shall be summarily executed etc.



## Duty of Government

Section 1 of the Act imposes an obligation on government to ensure that integrity and safety of all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or held in custody is subjected to any form of physical/mental torture. The provision also creates a duty on the Government to adhere to domestic and international standards on absolute condemnation and prohibition of torture.

## No justification for torture

Section 3 is the stand out provision of the Anti Torture Act, 2017. It makes freedom from torture a non-derogable right. Sub-section (1) states clearly no exceptional circumstances whatsoever, a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture. Sub-section (2) prohibits secret detention facilities, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out.

## Evidence obtained as a result of torture inadmissible

Section 3 provides that evidence obtained through torture is inadmissible in any proceeding, except against a person accused of torture. This embargo makes any evidence obtained through torture meaningless and therefore, there is no incentive for committing acts of torture.

## Right to complain

Section 4 recognises the right of the victim to complain against acts of torture. Sub-section (1) provides for the right to complain by a person who has suffered or alleges that he has been subjected to torture to a competent authority including the police, National Human Rights Commission or any other relevant institution or body having jurisdiction over the offence and to have his case promptly and impartially examined by it. Sub-section (2) imposes a duty on the competent authority to take steps to ensure that the complainant is protected against all ill-treatment or intimidation as a consequence of his complaint or any given evidence.

Section 5 provides that a person who has suffered torture or any interested party on his behalf may seek legal assistance from the Human Rights Commission/NGOs/Private persons in the proper handling and filing of the complaint.

## Victim's right to medical examination

Section 6 recognises the right of a person arrested, detained or under custody to get examined physically and psychologically by an independent and competent doctor of his own choice and such examination shall be conducted outside the influence of the police or security forces.

## Liability for torture

Section 7 provides for liability of perpetrators of torture. Sub-section (1) treats a person who actually participates in the infliction of torture or who remain present during the commission of the act as liable as the principal while sub-

section (2) treats a superior military police or law enforcement officer or senior government official who issues an order to lower ranking personnel to torture a victim as equally liable as the principal. Sub-section (3) provides that an order from a superior officer or from a superior in the office or public authority shall not be invoked as a justification for torture.

## Penalties for acts of torture

Section 8 provides for penalties for acts of torture. Sub-section (1) prescribes for imprisonment for a term not exceeding 25 years on conviction for an offence of torture. Sub-section (2) provides that in case of loss of life of a person as a result of torture, the offender or the perpetrator will be charged with murder. Sub-section (3) states that the penalty prescribed in sub-section (1) or (2) does not in any way take away the victim's right to other legal remedies including the right to claim in court for damages or compensation for the torture.

## Regulatory Agency, Education Campaign, Rules and Regulations

Section 9 of Anti Torture Act, 2017 imposes legal duty on the Attorney- General of the Federal Republic of Nigeria and other law enforcement agencies to ensure effective implementation of the Act. Section 10 casts upon the Attorney-General and other concerned parties the duty to ensure that education and information regarding the prohibition against torture is fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Section 10 empowers the Attorney-General, with the approval of the President, to make rules and regulations for the effective implementation of the Act.

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