

## Torture and Enforced Disappearances

### SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

#### Torture

In its second Universal Periodic Review in 2012, out of 20 recommendations on torture, India accepted only one recommendation no: 15 in which Botswana called for the ratification of the Convention against Torture. The other 19 recommendations, made by several countries, were rejected even though most of them were asking the government to ratify and merely expedite ratification of the optional protocols of the Convention against Torture and to bring a new Prevention of Torture Bill after considering the recommendations made by the select committee. During the 1st UPR cycle in 2008 India accepted the recommendation no: 15 made by Switzerland to receive as soon as possible the Special Rapporteur on the question of torture whose request has been pending before the Indian Government for the last 20 years. First request was made in 1993, followed by reminders but there were no responses from the government. India failed to enact the Prevention of Torture Bill 2010 to enable ratification of the UNCAT. The Bill was referred to Select Committee of Rajya Sabha (Upper House) for its recommendations in May 2010 which are currently being examined by the Government.

#### Enforced Disappearances:

India received 8 recommendations on the issue of enforced disappearances in its second Universal Periodic Review in 2012. India rejected all the recommendations. Although India accepted the recommendation no: 12 in its 1st UPR cycle in 2008 made by Nigeria advising it to ratify the Convention on Enforced Disappearances. India signed the International Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2007, but has yet to ratify it. National Human Rights Commission of India (NHRC) in its UPR-II submission had stated that there is no evidence that the Government of India intends to ratify the Convention on Enforced Disappearance. It further stated that enforced disappearance is not codified as a criminal offence in domestic law, nor are extant provisions of law used to deter the practice. The NHRC received 341 complaints of disappearance in 2010 and 338 in 2011. These numbers are not comprehensive but significant enough to underline the need for the Government to act.

### NATIONAL LEGAL FRAMEWORK

In India, neither Constitution nor statutory law contains an express definition of torture. However, different provisions in law provide police power for use of force only in certain circumstances. India continues to have several draconian security laws that are supposedly aimed at stopping terrorism but are used effectively by state agents to abuse human rights. These laws include the Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA), and the Armed Forces Special Powers Act (AFSPA), the Assam Preventive Detention Act, National Security Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990).

These laws have the most deplorable effects on the human rights and they have further institutionalized torture.

The provisions contained both in the Code of Criminal Procedure, 1973 and in special security laws have led to de jure or de facto impunity from prosecution to perpetrators. Sec. 197 of the Criminal Procedure Code provides for the need of prior sanction to try security forces. Special laws, such as the Armed Forces (Special Powers) Act, 1958 contain similar provisions barring prosecution without prior government sanction in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

### CHALLENGES

#### Torture

The Prevention of Torture Bill, 2010 (PTB) was referred to a Parliamentary Select Committee of the Upper House in August 2010. Considering representations from human rights groups, the Committee substantially revised PTB, which now partially complies with CAT. Since then there have been no efforts taken to enact this law.

Laws governing India's armed forces allow human rights violations by security personnel to be tried in military not civilian courts, further entrenching impunity. In 2010 three civilians were extra judicially executed by Indian soldiers in Macchil, Kashmir and later falsely identified as militants. In 2013, a court martial found six army personnel guilty and recommended life imprisonment. However, the court martial proceedings were not disclosed to the public. The report of the high-level inquiry commission which was constituted by the State government was never made public.

### ISSUES AND IMPACTS

The National Crime Records Bureau (NCRB) reported 97 cases of custodial deaths during 2015 from every state of India, the highest reported from Maharashtra is 19. The 2014 National Crime Records Bureau statistics state that Chhattisgarh was among the States with the highest number of complaints (3,105) against the police for human rights abuses. However, the report states that the institution of judicial or magisterial inquiries has been only in 924 cases.

A report of the High-Level Panel on Socio-Economic, Health and Educational status of Tribal Communities in India, Ministry of Tribal Affairs in May 2014 suggests that in Chhattisgarh, a large number of tribals have been languishing in jails for long years without their trial concluding. In reply to an RTI application, the court registers for all cases disposed of between 2005 and 2012 revealed that average rate of acquittal over these years was 95.7 percent.

In Chhattisgarh (2015-16), there have been multiple cases of rape, sexual violence of adivasi women and encounter deaths by security forces in the name of counter insurgency operations. In Sukma district of Chhattisgarh, a minor tribal girl -Madkam Hidme, was killed under questionable circumstances in June, 2016. The Police claimed that she was a Maoist killed in an encounter. The fact-finding team reported that Hidme was brutally raped and then pumped with bullets.

**CHALLENGES**

Permission to prosecute police and paramilitary personnel are rarely granted by the government. An RTI application was filed to know the number of instances where the government has granted sanction for prosecution of security forces operating in J&K between 1989 - 2011. The response to the RTI revealed that out of the 44 applications made during this period, sanction was granted to none of them.

**Enforced Disappearances**

According to the Association of Parents of Disappeared Persons (APDP), there have been about 8,000 cases of enforced disappearances in the Kashmir valley and 7000 mass graves have been discovered. In a 2006 report, Human Rights Watch documented many instances of enforced disappearances as well as extra judicial killings. The presence of 2,700 mass unmarked graves in Kashmir was confirmed by the J&K State Human Rights Commission in 2011. However, no inquiry or investigation has been initiated.

The Government of India has failed to conduct any impartial investigation into the case of discovery of mass graves in Tombisana High school in Imphal, Manipur in December 2014. In its Annual Report, the Working Group on Enforced and Involuntary Disappearances said that it had not received a response from the government of India to a letter asking to stop constructions on a mass grave site in Manipur.

**ISSUES AND IMPACTS**

In a case of extrajudicial killings in 2015, 20 alleged red sanders smugglers were gunned down by the Andhra Pradesh state police in the Seshachalam forest. An SIT was formed to investigate the encounter killings, which submitted a closure report citing "lack of evidence". It has been called a case of illegal arrest, arbitrary detention, custodial torture and extra-judicial killing.

As part of counter-insurgency operation Punjab between 1984 and 1995, security forces allegedly killed thousands of Sikhs characterized by systematic and widespread human rights abuses, extrajudicial executions, and "disappearances." In 1995, human rights activist Jaswant Singh Khalsa uncovered municipal records demonstrating that police officers had secretly cremated thousands of bodies in three crematoria in the district of Amritsar—then one of 13 districts in Punjab.

Seeking a detailed investigation into 1,528 documented cases of alleged extrajudicial executions and enforced disappearances, a case was filed in 2012 by the Extrajudicial Execution Victim Families' Association, Manipur, and Human Rights Alert in the Supreme Court of India. Human rights activists allege that these are just the recorded cases and that instances of people simply disappearing have gone unreported over the years.

**RECOMMENDATIONS**

- Ratify the Convention against Torture**
- Ratify the Convention against Enforced Disappearances.**
- Ratify the Optional Protocol to Convention against Torture;**
- Invite the Special Rapporteur on Torture as soon as possible;**
- Enact Prevention of Torture Bill taking into full consideration the recommendations/ suggestions made by the select committee and adopt a robust domestic legislation.**
- Repeal the AFSPA and Other Security Laws**
- Amend the continuance of AFSPA and related legal protocols in accordance with recommendation of Justice Verma Committee Report;**
- Make provisions to ensure that 'disturbed areas' under AFSPA are regularly reviewed till AFSPA is amended/repealed every six months;**
- Remove requirement of sanction for prosecution of security personnel and grant permission to enable prosecution in all pending cases involving human rights violations;**
- Amend the Army Act, and similar provisions in all laws governing the Central Armed Police Forces, to guarantee that cases of human rights violations of civilians are not tried in military courts;**
- Ensure that all allegations of human rights violations are promptly and independently investigated, and that perpetrators are prosecuted in civilian courts, and victims and their families receive reparations;**
- Ensure that sexual violence perpetrated by armed forces is brought under purview of criminal law;**
- Confer power on NHRC to investigate cases against armed forces personnel, especially violence against women;**

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