



ASIAN CENTRE FOR HUMAN RIGHTS

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ORISSA: JUVENILES FLEEING FROM TORTURE AND ABUSE

A fact-finding report on the fleeing of juveniles from the Government Observation Home, Special Home and Children's Home (Combined) for Boys at Berhampur under Ganjam District of Orissa on 21-22 September 2010



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I. Introduction and Executive Summary

On the intervening night of 21-22 September 2010, ten juveniles escaped from the "Govt Observation Home, Special Home and Children's Home (Combined) for Boys" at Berhampur under Ganjam District of Orissa, India. The incident was widely reported in the national media.

The juveniles fled after beating up the Head Guard, Mr Bijoy Kumar Sahu with a cricket bat. On the morning of 22 September 2010, the police caught seven of them at the local bus station. Two others managed to escape while another was caught later. The re-detained minors were subjected to further ill treatment and beating by the police, charged with draconian provisions of the Indian Penal Code and returned to the Observation Home.

The Asian Centre for Human Rights conducted an on-the-spot investigation and visited the Govt Observation Home, Special Home and Children's Home (Combined) for Boys at Berhampur from 29 September to 1 October 2010.

The testimonies/interviews suggest repeated and serious abuse at the Berhampur Observation Home including routine acts of torture and sexual violence. The findings of the Asian Centre for Human Rights (ACHR) are summarised below:

- Juveniles are routinely subjected to violence that constitutes torture and other forms of ill treatment;
- Juveniles, especially younger ones, are routinely subjected to sexual abuse both by the staff and adult inmates;
- Juveniles are forced to work for the staff/officials;
- The Observation Home is overcrowded and places minors at risk. At the time of the fact finding mission, there were 88 juveniles. However, at times, the number of juveniles at the Observation Home increases upto 150;
- Juveniles are being detained with at least three adults including one Mr Dora Nayak, 32 years, placing the former at high risks of abuse;
- Different classifications of juveniles – juveniles in conflict with law, orphans and/or abandoned children - live together in the Observation Home. There is an obvious threat of abuse from children in conflict with the law against those held for other reasons;
- Staffing is highly inadequate. There are only 9 staff to look after 88 inmates. The older inmates are regularly left unsupervised with other inmates enabling further abuse;
- There are only 40 poorly maintained beds for 88 juveniles;
- The juveniles are deprived of adequate food;
- There is total lack of sanitation and hygiene. There is only 1 (one) toilet and two bathrooms for 88 juveniles. Extremely low hygiene standards place the minors at risk of disease;

- Medical facilities are highly inadequate and the doctor does not visit the Observation Home;
- Educational or recreation facilities are virtually non-existent;
- There is clear evidence of corruption and misuse of funds intended for the welfare of inmates of the detention facility; and
- A First Information Report (Number 155, dated 22/09/2010) was registered at Baidyanathpur Police Station after the juveniles escaped following a complaint filed by the Superintendent of the Observation Home, Mr. Hemant Kumar Kar, to make a lesson out of this incident for other inmates. However, parents of the juveniles were not informed about the escape. At least six of those inmates who fled did not have any criminal cases against them - they were orphaned or abandoned.

The findings demonstrate that the State of Orissa has wholly failed in its obligations under the Juvenile Justice (Care and Protection of Children) Act, 2000, the UN Convention on the Rights of the Child and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The inmates currently detained, and particularly those who tried to escape from the Observation Home remain at imminent risk of almost certain abuse and torture.

Immediate intervention by the State to protect the minors from further abuse is urgently required. In this context, on 1 October 2010, the ACHR filed a complaint with the National Commission for Protection of Child Rights (NCPCR) to consider the preliminary findings of the ACHR's Fact Finding mission as an emblematic case of failure on administration of juvenile justice in Orissa and take appropriate measures.

II. Methodology

The ACHR conducted its on-the-spot investigation and visited the Berhampur Observation Home from 29 September 2010 to 1 October 2010.

Among others, the ACHR researcher interviewed Ms Murdu Bhasini, District Social Welfare Officer, Ganjam District of Orissa; Mr Bijoy Kumar Sahu, Head Guard of the Observation Home; Ms Amiyo Bala Mohanti, Education Officer of the Observation Home; one Mr Panda, a Guard at the Observation Home; and Mr Sudhanshu Panda, advocate for juvenile Bacchu (real name withheld).

The ACHR researcher was denied access to the captured juveniles. However, the ACHR researcher met family members of a few juveniles.

III. The ACHR's Findings

A. Events leading to the escape and capture of the inmates

It is alleged that minors are regularly picked up by the staff and older inmates for alleged purpose of assault/abuse.

At around 12:30 a.m. on 22 September 2010, Mr Sahu went to the juveniles' quarters and asked a juvenile who sleeps at dormitory No.2 to follow him. As the juveniles share bed (only 40 beds for 88 juveniles), the other juvenile who was sharing the bed at dormitory No.2 with the one called by Mr Sahu, informed his friends.

A group of juveniles after being informed that one of the juveniles of dormitory No.2 was picked up, reached the room near the main gate, which is allegedly known for abuse and assault of children, confronted Mr Sahu and attacked him with a cricket bat and fled. At the time of the incident, Mr Sahu was the only staff on duty.

Some of the inmates called the police who transferred Mr Sahu to Maharaja Krishna Chandra Gajapati Medical Hospital at around 2 a.m.

The juveniles who escaped were identified as:

1. Dipon (name changed), Age 15 years
Son of (s/o): Jati Pradhan
Village: Atharnala
Police station: Sadar, District: Puri
2. Ripon (name changed), Age 14 years,
S/o K. Suba Rao



ACHR researcher visiting the Observation Home

Village: Langanbeda
Police station: Naranpatna
District: Koraput

3. Antar (name changed), Age 17 years
S/o Pitambar
Village: Badpur
Police station: Bhadrakh town
District: Bhadrakh
4. Bacchu (name changed), Age 16 years,
S/o Pandab Behera
Village: Hundat
Police Station: Purusottampur
District: Ganjam
5. Rajan (name changed), Age 17 years
S/o Abhira Sahu
Village: Panchua
Police station: Chandbali
District: Bhadrakh
6. Bijoy (name changed), Age 16 years
S/o Nilakantha Singh
Village: Talabania
Police station: Jagatpur
District: Cuttack
7. Pratap (name changed), Age 12 years
S/o Umashankar Behera
Village: Christian Sahi
Police station: Mohana
District: Ganjam

8. Durga (name changed), Age 15 years
S/o Sankar Rao
Village: Kesharpur
Police station: Purighat
District: Cuttack
9. Dineshwar (name changed), Age 14 years
S/o Suba Rao
Village: Semiliguda
Police station: Semibiguda
District: Koraput
10. Samrat (name changed), Age 16 years
S/o Binayak Hans
Village: Irrigation colony
Police station: Bhawani Patna
District: Kalahandi

While juveniles from SI No. 1 to 7 were caught by the police on the morning of 22 September 2010, SI No. 8 was caught some time later. Two others (SI No. 9 and 10) are still missing.

The first seven were caught by the police as they were waiting to board buses to go home. The y were taken to Baidyanathpur police station and badly beaten up. One of them, Antar, had to be hospitalised as a result of the beating.

On 22 September 2010, the Superintendent of the Observation Home, Mr. Hemant Kumar Kar filed a First Information Report against the escaped juveniles and the Orissa Police at the Baidyanathpur Police Station registered a case (Number 155, dated 22/09/2010) under various sections of the IPC including Section 147 relating to rioting, Section 148 relating to rioting with deadly weapon, Section 149 relating to unlawful assembly, Section 224 relating to resistance or obstruction by a person to his lawful apprehension, Section 307 relating to attempt to murder, Section 333 relating to voluntarily causing grievous hurt to deter public servant from his duty and Section 427 relating to mischief. It is pertinent to mention that six of the escaped inmates did not have any criminal case against them - they are orphaned or abandoned.

Section 22 of the Juvenile Justice (Care and Protection of Children) Act, 2000 with respect to



Baidyanathpur Police Station where juveniles were tortured after their capture

escaped juvenile provides that “Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed under this Act, and shall be sent back to the special home or the observation home or that person, as the case may be; and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the special home, or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be deemed necessary under the provisions of this Act”. It appears that draconian provisions of the Indian Penal Code were invoked against the juveniles who escaped in order to make a lesson out of it for the other juveniles.

All the arrested juveniles were produced before the Magistrate who sent them to the same Observation Home where they are at serious risk of almost certain abuse and torture.

Mr Sudhanshu Panda, Advocate for one of the escaped juvenile detainee Bacchu (name changed), however, told the ACHR researcher that family members of Bacchu including Mr Pandav Behera, father of the juvenile, were not informed by the officer in charge of the Observation Home about the escape of the juveniles.

This is a clear violation of the Section 17(2)(b) of the Juvenile Justice (Care and Protection of Children) Act, 2000 which provides that in the event of an escape, “The parents or guardians shall be informed immediately about such escape if known.”

B. Deplorable conditions of the Observation Home

The interviews provide a picture of appalling conditions in the Observation Home.

i. Routine violence and abuse

The ACHR researcher found consistent, serious and credible evidence that both the staff and older adult inmates regularly sexually abused the junior inmates.

The ACHR researcher also found that the inmates at the Observation Home were routinely subjected to acts of violence and sexual abuse. If any inmate refuses to follow the dictate of the officials, he is subjected to beating and deprived of food.

The younger children in particular suffer treatment that amounts to torture, and sexual abuse both at the hands of the staff and the senior inmates.

The adult/older inmates work for staff and abuse and intimidate the younger inmates.

ii. Adults with juveniles

The basic purpose of enacting any law relating to juveniles in conflict with law is to ensure separation of the juveniles from the adults, among others, “by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate



Mr Bijoy Kumar Sahu admitted to hospital with injuries

rehabilitation”. Detention of adults with children is expressly forbidden under national and international human rights law, among others, because of the fact that it places the minors at severe risk of abuse and exploitation.

There are 88 inmates in the Berhampur Observation Home for boys out of which at least three inmates are above the age of 18 years. Of them, one Dora Nayak is 32 years old and the rest two are respectively 24 years and 22 years of age. It is unclear as to how the adults are being kept at the Observation Home.

iii. Different categories of juveniles being kept together

The majority of the juveniles lodged in the Govt Observation Home, Special Home and Children’s Home (Combined) for Boys have been charged with various offences including Section 302 relating murder, Section 307 relating to attempt to murder and Section 379 relating to theft.

There are also orphaned and/or abandoned juveniles held in the same facilities without regard for their different legal status.

The Beijing Rules on the administration of Juvenile Justice in its commentary on Rule 13 relating to detention pending trial state that “The danger to juveniles of “criminal contamination” while in detention pending trial must not be underestimated. It is therefore important to stress

the need for alternative measures. By doing so, Rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.”

In this context, the Juvenile Justice (Care and Protection of Children) Act, 2000 sought to partially reflect the spirit of the Beijing Rules. Section 16 of the Act provides that “where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government”.

As the name, “Govt Observation Home, Special Home and Children’s Home (Combined) for Boys”, suggests the State government of Orissa has failed to ensure separation of juveniles as required under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Since adults too have been staying in the Observation Home, it is clear that no inspection has been carried out. This is despite that Section 35 of the Juvenile Justice (Care and Protection of Children) Act, 2000 clearly provides that “the State Government may appoint inspection committees for the children’s homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed”.

iv. Overcrowding

The Govt Observation Home, Special Home and Children’s Home (Combined) for Boys at Berhampur is overcrowded. There are only 40 beds for 88 juveniles. The beds are in very poor condition and most of them are broken. As the Observation Homes in Orissa are limited, sometimes, about 125 to 150 juveniles are placed at the Berhampur Observation Home.

v. Inadequate food and sanitation

The budget for each juvenile per month is Rs 750 for living and medical costs. There is evidence of serious corruption as inmates are deprived of adequate and proper food, clothes and other basic facilities like drinking water. Denial of food is a regular punishment.

Sanitation and hygiene are inadequate.

Section 8(f) of the Juvenile Justice (Care and Protection of Children) Orissa Rules, 2002 provides that “each institution shall have sufficient number of latrines in the proportion of at least one latrine for seven children”. However, there is only one toilet for 88 inmates. The toilet is kept in unsanitary condition and poses health risks.

Further, Section 8(g) of the Juvenile Justice (Care and Protection of Children) Orissa Rules, 2002 provides for “sufficient number of bathrooms in the proportion of at least one bathroom for ten children”. At Berhampur Observation Home, there are only 2 bathrooms for 88 juveniles, which are highly unhygienic.

The bed sheets and other clothes provided to the inmates are unsanitary. Mosquito nets were never washed.

The sweeper does not work in the Observation Home. He works for the officers and staff.

vi. Lack of medical facilities

Because of the unhygienic environment, juveniles suffer from regular health problems. Medical facilities are miserably lacking. Medicine provided is often expired and presents a health threat.

The doctor, Rajesh Kumar Sahu, who is in charge of visiting the Berhampur Observation Home seldom visits. He gets only Rs 500 (five hundred) per month from his duty in the Home.

vii. Lack of educational and recreational facilities

The juveniles do not receive proper education and recreation facilities do not exist. Ms Amiyo Bala Mohanti, the only education officer at the Govt

Observation Home, Special Home and Children's Home (Combined) for Boys, Berhampur, is supposed to counsel and provide education for all 88 juvenile inmates.

viii. Lack of staff

There is lack of adequate number of staff. As per Section 48(5) of the Juvenile Justice (Care and Protection of Children) Orissa Rules, 2002, there should be at least 25 staff for strength of 100 juveniles in an Observation Home. It further provides that "the number of posts in the category of Counsellor, Case Worker/Probation Officer, House Father/House Mother, Educator and Vocational Instructor shall proportionally increase with the increase in the capacity of the institution."

But at the Govt Observation Home, Special Home and Children's Home (Combined) for Boys, Berhampur has only nine staffs for 88 inmates. It should have at least 22 staff as per the Orissa Rules, 2002. The lack of staffing enables older inmates to perpetrate abuses upon the junior inmates.

The post of caretaker is vacant. Mr Sahu plays the multiple roles of caretaker, pharmacist, and head guard. Sometimes there is only one staff on duty to manage 88 juveniles. At the time of the incident of beating of Mr Sahu (22 September 2010 at 12:30 am) he was the only staff on duty. Mr Sahu has been serving in the Berhampur Home for the last 12 years and many staff have been posted for many years without any transfer.

IV. Orissa government's failure to respect national and international law

The government of Orissa notified the Juvenile Justice (Care and Protection of Children) Orissa Rules, 2002 to implement the Juvenile Justice Act, 2000 in the state. However, there are serious problems in the implementation of the Act.

Section 29 of the Juvenile Justice Orissa Rules 2002 provides that the state government shall constitute State/district/city level inspection teams for a period of 3 years to visit and oversee day-to-day functioning of the homes and give suitable directions to be followed.

The inspection team shall consist of minimum five members from representatives of government, local authority, child welfare committee, medical and other experts, voluntary organizations and reputed social workers. The inspection visit will be carried out by not less than three members by prior information or by surprise. However, since there has been no inspection of the "Govt Observation Home, Special Home and Children's Home (Combined) for Boys" at Berhampur, the adults continue to live in the Observation Home!

Under Section 63 of Juvenile Justice (Care and Protection of Children) Act, 2000, every police station should have at least one trained "juvenile or the child welfare officer" who will handle the juvenile in conflict with law and "Special juvenile police unit" composed of juvenile or the child welfare officers shall be created in every district and city to deal with juveniles. However, this has not been fully implemented.

Under Section 10 of the Juvenile Justice (Care and Protection of Children) Act of 2000, the police must report any arrest of a juvenile in conflict with law to the Juvenile Justice Board to be constituted in each district. Orissa has constituted 28 Juvenile Justice Boards (two more Boards are under constitution) but most Boards are not functional.

On 1 October 2010, the State government appointed former Minister, Ms Saraswati Hembram as the Chairperson of the Orissa State Child Rights Protection Commission for a period of three years. It remains to be seen as to how the State Commission deals with the administration of juvenile justice.

V. Recommendations

The treatment and conditions of the juveniles at the "Govt Observation Home, Special Home and Children's Home (Combined) for Boys" at Berhampur violate the Juvenile Justice (Care and Protection of Children) Act, 2000, the UN Convention on the Rights of the Child and various other UN principles such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile

Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

On 1 October 2010, the ACHR filed a complaint with the NCPCR with the request to consider its findings at the Berhampur Observation Home as an emblematic case of failure of the administration of juvenile justice in Orissa. The ACHR also requested the NCPCR to send its investigation team to urgently investigate alleged torture and sexual assault/harassment of the inmates at Berhampur Observation Home, the imminent risk of almost certain abuse and torture faced by the juveniles who were captured after their escape and to take appropriate legal action against staff/officials and recommend compensation to victims as appropriate.

In this report, the ACHR also makes the following recommendations to the NCPCR, the Orissa State Child Rights Protection Commission and the State government of Orissa to take necessary measures to ensure the following:

- i. Order an inquiry into the entire incident including allegations of abuses and torture of the juveniles in the Berhampur Observation Home, make the findings public and take appropriate measures;
- ii. Review the FIR (Number 155, dated 22/09/2010) filed against the escaped juveniles especially considering the fact that at least six of the escaped juveniles had no case pending against them and they were staying in the Observation Home as abandoned/orphaned children;
- iii. Order an investigation as to how adults are being kept at the Berhampur Observation Home and remove them with immediate effect. Investigate as to whether adults are being kept in other Observation Homes in Orissa and remove any adult staying in these Observation Homes. Necessary action against the officials must be taken for serious dereliction of duty of keeping the adults with the juveniles;
- iv. Separate different categories of juveniles in order to reduce “criminal contamination” as identified under the Beijing Rules;
- v. Reduce overcrowding and provide a bed to each of the inmates;
- vi. Provide adequate quantity of nutritious food;
- vii. Increase the number of toilets and bathrooms commensurate with the number of juveniles as provided under the Orissa Juvenile Justice Rules, 2002;
- viii. Employ adequate staff for the Observation Homes as provided under the Orissa Juvenile Justice Rules, 2002;
- ix. Ensure regular visits by doctors to the Observation Home as provided under the Orissa Juvenile Justice Rules, 2002;
- x. Implement the Right to Education Act, 2009 for all the juveniles;
- xi. Create mechanism for submission of complaints by juveniles and carry out regular surprise visits to the Observation Homes; and
- xii. Take measures to fully implement the Juvenile Justice (Care and Protection of Children) Act, 2000 in letter and spirit.



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