



## The need for an anti-torture law in India: Human rights still in chains

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### Abstract

Torture is one of the most serious violations of human rights and dignity. India being the largest democracy having a strong constitutional framework, but still there are routine incidents of custodial torture and deaths. The fact that there is no specific anti torture law has limited remedies for the victims which encouraged impunity among the agents of the state. This paper discusses the legal and constitutional protections against torture in India as well as its intentional obligations under United Nations convention against torture (UNCAT) and the difference between the principle and practice. This paper identifies the common sense arguments for the necessity of a standalone anti-torture law in several case studies, such as D.K basu v. state of west Bengal and the Jayaraj and Bennix case when the state failed to obtain accountability, rehabilitate victims, and achieve policing reform. The paper also reviews previous legislative attempts including the Prevention of Torture Bill (2010) and Law Commission's 273rd Report (2017), and suggests a way forward emphasizing enacting laws, oversight, and sensitizing law enforcement agencies to torture. Ultimately, the paper concludes that, without an anti-torture law, the constitutional commitment to human dignity and liberty in India is only symbolic, and human's rights remain "in chains" metaphorically.

**Keywords:** Custodial torture, human rights, uncat, constitutional safeguards, police reform, law commission of india, accountability, prevention of torture bill, india

### Introduction

Torturing someone is the most degrading forms of human rights violation. India is the biggest democracy which guarantees rights and safeguards of citizen given by constitution. Despite this fact numerous incidents of custodial violence report in India every year. According to the report of National campaign Against Torture 2020, 1731 people died in custody in India this is the offence which is reported and we don't know unreported incidents. On an average almost five deaths per day, yet there is no accountability for these incidents which results in justice elusive.

We know our Indian constitution is the longest written constitution in the world. Which upholds the right to life and liberty of a person, the absence of a antitorture law raise a question that who is responsible for these custodial brutality. India has signed the United Nations convention against torture (UNCAT) in 1997, but there is enforcement of this convention. This delay leads to recognize torture as a distinct and non-punishable offence.

This article argues that without a specific legal framework criminalizing torture, India's human rights remains a symbol rather than a substantive – metaphorical India rights are in chains.

### Understanding Torture: Meaning and Scope

#### a. International Definition

'Torture' is define under Article 1 of UNCAT as any act which secure pain or suffering, whether physical or mental, is intentional inflicted for obtaining information, punishment, intimidation or coercion, by or with the consent of a public official.

#### b. Domestic Context

In Indian law there is no direct statutory definition of 'Torture'. The Indian Public code (IPC) addresses "Hurt"

and "Grievous hurt" under section 319-338. But these provisions are incapable or inadequate to capture the specific nature of custodial violence. Torture in police or judicial custody involves above of power, which ordinary provisions fail to address.

Without a separate statute or recognition victim of custodial violence must rely on constitutional remedies or judicial activism rather than legislative protection.

### Constitutional and Legal Safeguards

Our framers of the constitution had envisioned protection of citizens against state misuse of excesses power through various fundamental rights.

- **Article 20(3):** Right to Protection against self-incrimination is guaranteed.
- **Article 21:** Right to Protection of life and personal liberty which is expanded by judiciary to include the right to live with dignity.
- **Article 22:** Protection against arrest and detention in certain cases which including being informed of grounds for arrest and the right to counsel.

Judicial Interpretation has strengthened the constitutional rights:

Nilabati Behera v. state of Orissa (1993) 2SCC 746:

The recognized the custodial torture and death as serious violations of human rights. It also states that this is the duty of the state to protect those in custody and failure to do so results in liability.

### D.K Basu v. state of west Bengal (1997) 1SCC 416:

Supreme laid down guidelines for arrest and detention of the person and also emphasizing the right to be free from torture under custody.

Despite these ruling, the enforcement remains weak which lead in result offenders often go punished due to lack of a specific penal provision.

### India's International obligations

India has made delay in ratifying UNCAT which has drawn repeated criticism from UN Human Rights Council and the Universal Periodic Review (UPR) mechanism. The Ratification of UNCAT would bind India legally to criminalize torture and make a law which can establish mechanisms for victim redress and punishment and submit periodic compliance reports.

In contrast, many other countries like the United Kingdom in 1988, Sri Lanka in 1994 and the Philippines in 2009, have enacted specific anti-torture laws after ratifying the UNCAT, India's hesitation has sent a troubling signal about its seriousness towards commitment towards international human rights norms.

### The Indian Reality: Custodial Torture and Impunity

Reports by human rights organizations which consistently expose the prevalence of custodial violence:

- According to National Human Rights Commission (NHRC) data more than 1,500 custodial deaths occur annually in India due to custodial torture.
- The Jay Raj and Bennix case (Tamil Nadu, 2020) – which is widely publicized 2020 incident in Tamil Nadu, where a father and son were killed due to brutal torture in police custody results that case became a major national story, sparking widespread outrage over police brutality and custodial violence in India.
- The Mathura rape case – It was a landmark case of 1972 incident of custodial rape in India, that revealed how power dynamics most of the victims come from marginalized communities, which making torture not only a human rights issue but also a social justice concern.

### Previous Legislative Efforts

**a. Prevention of Torture Bill, 2010:** Was a legislative proposal in India which intended to criminalize torture. This was passed by the Lok Sabha in 2010, but lapsed in the Rajya Sabha and was reintroduced in 2017 but not passed by legislature.

### b. Law Commission's 273<sup>rd</sup> Report (2017)

The Commission of India, in its 273<sup>rd</sup> report which titled "Implementation of the UNCAT through legislation recommended that enacting a comprehensive law which covers torture and defining it with punishment, specifying penalties, and providing compensation to the victims which can solve the issue of custodial torture.

The proposed draft included-

- Definition of torture consistent with UNCAT provisions.
- Punishment up to 10 years for offenders.
- Compensation and rehabilitation for the victims.

Despite its need and clarity, parliament has yet not taken any action.

### Why India needs a standalone Anti-Torture law

#### 1. To fulfill international obligations

India has already ratified the UNCAT and yet not passed any domestic legislation which shows India as a backward country in international arena. Passing the legislation would align India with global human rights norms and

strengthen its moral authority as the world's largest democracy.

#### 2. To Strengthen the Indian criminal law and Accountability

A specific law would eliminate the loopholes and ambiguities and create criminal liability for acts of torture committed by public officials, which can replace the current culture of impunity.

#### 3. To Provide Rehabilitation for Victim

Torture victims often face physical and psychological trauma. A dedicated state can institutionalize a mechanism for compensation, counseling and medical care to the victims.

#### 4. To Reforms Detention and Policing Practices

An Anti-Torture law framework can wider police reform-including mandatory CCTV in lockups, independent oversight and human rights training which can make a reform in traditional evil practices.

#### 5. To Uphold the rule of law

Torture corrodes the constitutional morality and fundamental rights of citizens which is a core of Indian constitution. As Dr. B.R. Ambedkar warned that "Constitutional morality is not only a natural sentiment but has to be cultivated". A robust Anti-Torture law would embody that cultivation.

### Challenges in Implementation

- **Political Reluctance:** Law enforcement agencies misuse the absence of anti-torture law which results in custodial torture. They use the loophole for their personal benefits they use it as a weapon against the general public to dominate in the society. Implementation of law would gradually lead to lose the misuse of power. These agencies fear misuse of such law, leading to institutional resistance.
- **Weak oversight mechanism:** NHRC and state Human Rights Commissions lack a lot in investigate the custodial torture matter which made them to depend on police reports. These reports can be easily manipulated by a powerful official or politician for their benefits and to close the matter to hide their negligence.
- **Judicial Delays:** Proceedings of torture cases is slow due to which it is seen that witnesses are often intimidated due to presence of powerful officials and they change their statement in court which make justice delay.
- **Culture Acceptance:** In some quarters custodial violence is still seen as a "necessary evil" for extracting the confession but it is made as cultural acceptance in reality it should be treated as an exemption in cases like terrorism and other serious offences.

These barriers underscore that legislation alone is insufficient, effect implementation and altitudinal will change are equaled vital.

### The way Forward

1. **Enact the Prevention of Torture Act:** A law which is consistent with UNCAT will be considered as the best anti-torture law. It should define torture clearly and impose strict penalties on the violation of law.
  2. **Establish Independent Oversight Bodies:** By empowering NHRC and creating state-level anti-torture commissions with investigative power, a drastic change in cases of custodial torture can be achieved.
  3. **Mandatory CCTV and Forensic oversight:** The implementation of Supreme Court directions in *Paramvir Singh Saini v. Baljit Singh* (2020) to make surveillance in police stations mandatory.
  4. **Police Training and Sensitization:** Every state in India has to give human rights education as mandatory at all levels of police training.
  5. **Judicial vigilance and awareness among people:** Courts must proactively enforce compliance, while civil society and media must sustain public attention on custodial rights. This will help to aware the people about their rights.
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### Conclusion

India is the largest democracy in the world and with the longest constitution in the world its constitutional foundation and moral rests on respect for human dignity. Yet, the continued prevalence of torture betrays that very important principle. The failure to enact an anti-torture law reflects not just a legislative gap but a moral failure of the state.

As Justice Krishna Iyer observed, “Custodial torture is a wound in the soul of our nation - it must heal through law and humanity.”

Until the parliament enacts a comprehensive anti-torture statute, India’s commitment to justice and liberty will remain incomplete and human rights, tragically, will remain in chains.

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