

Assignment topic

Convention against Torture

Introduction

The Convention Against Torture is the most important international human rights treaty that deals exclusively with torture. The Convention obligates countries who have signed the treaty to prohibit and prevent torture and cruel, inhuman or degrading treatment or punishment in all circumstances. The Convention compels governments who ratified it to investigate all allegations of torture, to bring to justice the perpetrators, and to provide a remedy to victims of torture. The Convention was adopted by the U.N. General Assembly in 1984 and went into force in 1987. As of 15 July 2020, there are 170 States parties. 25 UN Member States are not yet party to the Convention.

- 1) The UNCAT is an international human rights treaty, under the review of the UN and was adopted in 1984. It aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. The convention requires states to take effective measures to prevent torture in any territory under their jurisdiction and forbids states to transport people to any country where there is reason to believe they will be tortured.
- 2) The Committee against Torture (CAT) - It is a body of human rights experts that monitors implementation of the Convention by State parties. The Committee is one of eight UN-linked human rights treaty bodies. All state parties are obliged under the Convention to submit regular reports to the CAT on how rights are being implemented. Upon ratifying the Convention, states must submit a report within one year, after which they are obliged to report every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations.”

- 3) Under certain circumstances, the CAT may consider complaints or communications from individuals claiming that their rights under the Convention have been violated.

Optional Protocol to CAT

- A) The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the General Assembly on 18 December 2002.
- B) It provides for the establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

About UNCAT and key provisions:

The Convention follows the structure of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), with a preamble and 33 articles, divided into three parts.

Definition of torture

Article 1.1 of the Convention defines torture as:

For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an

official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

Ban on torture

Article 2 prohibits torture, and requires parties to take effective measures to prevent it in any territory under their jurisdiction. This prohibition is absolute and non-derogable. "No exceptional circumstances whatsoever" may be invoked to justify torture, including war, threat of war, internal political instability, public emergency, terrorist torture cannot be justified as a means to protect public safety or prevent acts, violent crime, or any form of armed conflict. In other words, Subordinates who commit acts of torture cannot abstain themselves from legal responsibility.

Ban on refoulement

Article 3 prohibits parties from returning, extraditing, or refouling any person to a state "where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Ban on cruel, inhuman, or degrading treatment or punishment

Article 16 requires parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1" in any territory under their jurisdiction.

UNCAT - India

India signed the convention in 1997 but it remains yet to ratify. About 1,731 people had died in custody in 2019 a/c to NHRC report. Every Custodial Death a Reminder of Why India Must Ratify the Convention Against Torture. The National Human Rights Commission had said custodial violence and torture are already "rampant" in the country.

The Law Commission of India has recommended the Centre to ratify the United Nations Convention Against Torture and frame a standalone anti-

torture law directly making the State responsible for any injury inflicted by its agents on citizens.

The recommendation of the Commission, headed by former Supreme Court judge Justice B.S. Chauhan, will now work to add pressure on the government to recognise torture as a separate crime. So far, neither the Indian Penal Code nor the Code of Criminal Procedure Code specifically or comprehensively addresses custodial torture.

The Prevention of Torture Bill, 2017

In its 273rd report handed over to the Law Ministry on October 30, the Commission has proposed a new anti-torture law titled “The Prevention of Torture Bill, 2017” which provides a wide definition to torture not confined to physical pain but also includes “inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental or psychological.”

The draft Bill has recommended punishments for torture ranging from fine to life imprisonment on the perpetrator. In case a person in police custody is found with injuries, it would be “presumed that those injuries have been inflicted by the police.” The burden of proof is on the police to explain the injury on the under-trial.

The bill proposes to give the courts to decide a justiciable compensation for the victims taking into consideration his or her social background, extent of injury or mental agony. The compensation should suffice to pay for the medical treatment and rehabilitation of the victim.

How Supreme Court has dealt with custodial torture cases?

The Supreme Court, recently while hearing a PIL filed by former Union Law Minister Ashwani Kumar, had described torture as an instrument of “human degradation” used by the State. It was after the scathing remarks of the apex court, the government had referred the question of a law on torture to the Law Commission, its highest recommendatory body on laws.

Landmark judgements by Hon. Supreme Court;

- **DK Basu v. State of West Bengal case:** The Court has issued guidelines that the police must follow in all cases of arrest and detention.
- **Nilabati Behera v. State of Orissa case:** The Court made sure that the state could no longer escape liability in public law and had to be compelled to pay compensation.

The need for police reforms in India is long recognised. None of the major recommendations were adopted by any government. However, Two retired DGPs, Prakash Singh & N K Singh, had filed a PIL in the Supreme Court, Supreme Court delivers judgment requiring state and central government to implement its seven directives;

Directive One

Constitute a State Security Commission (SSC) to:

- (i) Ensure that the state government does not exercise unwarranted influence or pressure on the police
- (ii) Lay down broad policy guideline and
- (iii) Evaluate the performance of the state police

Directive Two

Ensure that the DGP is appointed through merit based transparent process and secure a minimum tenure of two years

Directive Three

Ensure that other police officers on operational duties (including Superintendents of Police in-charge of a district and Station House Officers in-charge of a police station) are also provided a minimum tenure of two years.

Directive Four

Separate the investigation and law and order functions of the police.

Directive Five

Set up a Police Establishment Board (PEB) to decide transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of Deputy Superintendent of Police.

Directive Six

Set up a Police Complaints Authority (PCA) at state level to inquire into public complaints against police officers of and above the rank of Deputy Superintendent of Police in cases of serious misconduct, including custodial death, grievous hurt, or rape in police custody and at district levels to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct.

Directive Seven

Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organizations (CPO) with a minimum tenure of two years.

Till date, only eleven states have enacted fresh Police Acts to replace the old legislation and two states have amended their earlier laws on the subject to accommodate the new directives of the Court.

Recently, the Hon. Supreme Court directed Centre to install CCTV cameras and recording equipment in the offices of Central Bureau of Investigation (CBI), National Investigating Agency (NIA), Enforcement Directorate (ED), Narcotics Control Bureau (NCB), Department of Revenue Intelligence (DRI), Serious Fraud Investigating Office (SFIO) & any other agency which carries out interrogation and has power of arrest.

Primary question is India need a separate anti-torture law?

Although, Torture is not defined in the Indian Penal Code, but the definitions of ‘hurt’ and ‘grievous hurt’ are clearly laid down. India has several effective existing laws; Indian Penal Code, Indian Evidence Act and Criminal Procedure laws. We first need to implement the law as we have it. The investigations, the prosecutions; these must be rectified first. Then police need to be trained better. The temptation to use third- degree methods must be replaced with scientific skills.

Conclusion

On 26 June 1997, our Government announced its intention to ratify the Convention. But this has not yet happened, despite the promise made, on 14 October 1997, when we signed the treaty. Torture has become an integral part of police culture. Police in India have been given unlimited powers by laws made by the colonial rulers. They have been left untouched after independence. Since the present-day rulers depend on the police for their extra constitutional activities, they are reluctant to reform the police. As a result, the people suffer and are forced to live with a system of broken-down law and order.

In the Disha rape and murder case of Hyderabad in December last, the police shot dead four youths, Chennakesavulu, Mohammed Areef, Naveen and Shiva. In sharp contrast to the custodial killing of a father and son duo in Thoothukudi, Tamil Nadu who kept a shop open after COVID-19 curfew hours died in custody. On the night of 2 July, a team of the UP police set out on an ‘encounter’ mission, but its target got the better of the police and killed eight of them in the encounter.

The UNCAT aims at preventing torture and other acts of cruel, inhuman, or degrading treatment around the world. In order to ratify it, India should enact an anti-torture law of its own. The Vajpayee government was not very enthusiastic about enacting such a law. Eventually, the Congress-led UPA government brought forward the Prevention of Torture Bill and got it passed in the Lok Sabha. The Rajya Sabha referred it to a Select Committee where it got stuck and lapsed with the subsequent dissolution of the Lok Sabha in 2014.

No circumstance can justify the use of torture. Neither war, nor insurgency, nor public emergency, nor orders from superiors can be invoked to explain away the practice. It is forbidden by our Constitution, our laws and the categorical rulings of our Supreme Court. And it is prohibited, absolutely, both under international humanitarian law and the human rights instruments of the United Nations.

In my opinion, rather than ratifying CAT we should implement our existing laws because responsibility to maintain law and order by state and it is difficult for central govt. to decide alone. There is an urgent need for reforming the criminal justice system in India in light of rising cases of custodial torture and killings as per Supreme court's directions, recommendations of Law commission and Report submitted by Malimath Committee.

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