

Torture and Accountability: India's Legislative Approach to Preventing Custodial Abuse and Meeting UNCAT Standards

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Abstract

India's commitment to the United Nations Convention Against Torture (UNCAT) has been a subject of considerable discourse. Despite acceding to the convention in 1997, India has yet to ratify it, which necessitates the alignment of domestic law with UNCAT's stipulations. This article examines the evolution of anti-torture legislation in India, focusing on the Prevention of Torture Bills from 2010 to 2023, which reflect India's efforts to address custodial abuse, offer victim compensation, and safeguard human rights. This paper analyzes the key legislative milestones, judicial advocacy, and civil society involvement in advancing anti-torture measures. Furthermore, it compares the various bills, exploring their evolving provisions and the potential challenges in ratifying the UNCAT. The paper concludes by suggesting further steps to align India's legal framework with international standards and ensure effective enforcement.

Keywords: India, United Nations Convention Against Torture (UNCAT), Prevention of Torture Bill, custodial torture, human rights, legislation, victim compensation, judicial advocacy, civil society, ratification

Introduction

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), adopted in 1984 and ratified by 173 nations, stands as a critical human rights instrument aimed at eradicating torture worldwide. India acceded to the Convention in 1997, yet it has not ratified it due to discrepancies between international norms and domestic legislation. The gap in Indian law lies in the absence of a comprehensive definition of torture, ineffective preventive measures, and insufficient legal frameworks to protect victims of torture.

The introduction of various anti-torture bills marks a significant step towards addressing these issues. These legislative efforts reflect India's increasing commitment to eliminating torture in its legal system and aligning its practices with international human rights standards.

Methodology

This study employs a qualitative research methodology, focusing on legislative documents, government reports, and case law. A comparative analysis of the Prevention of Torture Bills introduced in India from 2010 to 2023 was conducted to evaluate the evolution of provisions related to custodial torture and victim compensation. Key judgments from the Indian judiciary were reviewed to assess the role of

judicial advocacy in shaping anti-torture legislation. Furthermore, the influence of civil society organizations, such as Human Rights Watch and the National Campaign Against Torture (NCAT), in advocating for legal reforms was examined.

Legislative Measures in India

India's legislative measures to combat torture can be traced through the successive iterations of the Prevention of Torture Bill.

Prevention of Torture Bill 2010: This bill aimed to create a legal framework to combat custodial torture by establishing preventive measures and ensuring victims' protection. However, it lapsed in 2014 due to the dissolution of the Lok Sabha. Despite this, the bill set the groundwork for future legislative efforts by highlighting the need for a robust anti-torture framework.

Prevention of Torture Bill 2017: This bill, recommended by the Law Commission, introduced a more detailed and comprehensive approach to preventing torture. It aimed to address physical, mental, and psychological harm but was criticized for lacking sufficient attention to psychological abuse. It was introduced in the Lok Sabha but was not enacted.

Prevention of Torture Bill 2022: The 2022 revision introduced substantial changes, particularly focusing on victim compensation. It stipulated ₹2 lakh for injuries and ₹10 lakh for deaths caused by torture. Additionally, it emphasized the prevention of mental abuse and injury, incorporating provisions for psychological harm that had been overlooked in previous drafts.

Prevention of Custodial Torture Bill 2023: This bill, introduced by Prof. Manoj Kumar Jha, takes a more comprehensive approach by shifting the burden of proof to the accused public servant once a prima facie case of custodial torture is established. It also removes the requirement for prior government sanction before prosecuting public servants. This bill aims to provide compensation and rehabilitation for victims and safeguard the rights of complainants and witnesses.

Judicial and Civil Society Advocacy

Judicial Advocacy: The Indian judiciary has played a pivotal role in addressing custodial torture. Key rulings, such as *D.K. Basu v. State of West Bengal* (1997) and *Peoples Union for Civil Liberties v. State of Maharashtra* (2014), have emphasized the need for procedural safeguards and judicial oversight to prevent torture. These judgments have influenced the drafting of anti-torture legislation and reinforced the importance of protecting human dignity.

Civil Society Advocacy: Civil society organizations, including Human Rights Watch, Amnesty International, and the National Campaign Against Torture, have been instrumental in advocating for the ratification of UNCAT and the enactment of anti-torture legislation. These organizations have documented instances of torture and pressured the government to adopt stronger legal frameworks to protect citizens from custodial abuse.

Comparative Analysis of Legislative Proposals

The evolution of the Prevention of Torture Bill highlights India's growing commitment to preventing torture. The earlier versions, such as the 2010 and 2017 bills, were criticized for being incomplete and failing to adequately address mental and psychological abuse. However, the 2022 revision made significant strides by focusing on victim compensation and psychological harm. The 2023 bill,

introduced in the Rajya Sabha, further strengthens the legal framework by shifting the burden of proof to the accused and removing procedural hurdles that previously hindered prosecutions.

Despite these improvements, the bills have not yet been enacted, and India has not ratified UNCAT. The government's reluctance to fully adopt international standards, particularly regarding the definition of torture and victim compensation, remains a key challenge.

Suggestions for Future Reforms

To align India's legal framework with UNCAT, the following steps are recommended:

1. **Comprehensive Definition of Torture:** India must define torture in line with UNCAT's Article 1, encompassing both physical and mental abuse.
2. **Victim Compensation and Rehabilitation:** The legal framework should provide clear and prompt compensation for victims of torture, as outlined in the 2022 and 2023 bills.
3. **Independent Investigation and Accountability:** Independent mechanisms for investigating custodial torture and holding perpetrators accountable must be established.
4. **Ratification of UNCAT:** India should take the final step of ratifying UNCAT, aligning domestic law with international human rights standards.

Conclusion

India's legislative journey towards the prevention of torture reflects an evolving commitment to human rights. The successive iterations of the Prevention of Torture Bill have progressively addressed gaps in legal protection and victim compensation. However, significant challenges remain in aligning India's domestic laws with the United Nations Convention Against Torture. The ratification of UNCAT and the enactment of comprehensive anti-torture legislation will be crucial steps in ensuring that India upholds its human rights obligations and provides justice and reparation to victims of torture. Further advocacy by the judiciary and civil society, combined with strong political will, is essential to achieving these goals.

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