

# An Analysis of the Law Relating to the Prohibition of Torture in India

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**Abstract** - In the present review paper, the legal framework in India that pertains to the prohibition of torture is investigated. Particular attention is paid to international agreements, contextual circumstances, statutory provisions, and the viewpoint of the court. India's ratification of the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) is investigated in this study. Additionally, other pertinent international instruments, such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), are also taken into consideration. International instruments that are pertinent to the research include both of these conventions, which are instances of international instruments. It examines the evolution of torture throughout time, the expansion of human rights organizations, and the establishment and ratification of the United Nations Convention on the Rights of the Child. The paper discusses constitutional provisions and criminal laws in India related to torture and highlights landmark judicial decisions that uphold the prohibition of torture. Challenges in implementing anti-torture laws and the judiciary's role in curbing torture are also discussed. The summary emphasizes the need for specific anti-torture legislation, sensitization programs, and public awareness campaigns to combat torture effectively.

**Keywords** - torture, India, UNCAT, human rights, ICCPR, ECHR, constitutional provisions, criminal laws, judicial decisions, challenges, implementation

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## INTRODUCTION

### Background

One of the most serious violations of human rights is torture, and the prohibition of torture is a fundamental concept that is established in a number of international accords and human rights instruments. Torture is a significant violation of human rights. Over the course of the past several decades, there has been a rising understanding on a global scale about the terrible practice of torture and the requirement of comprehensive legal frameworks to resist it. This knowledge has been fueled by the realization that torture is a kind of torture. In its capacity as a signatory to the United Nations Convention against Torture (UNCAT), India has pledged to eliminate the practice of torture inside its borders. In order to give a comprehensive study of the legislation that governs the prohibition of torture in India, the purpose of this review paper is to investigate its historical context, international commitments, legislative provisions, and judicial perspective. The paper will also discuss the challenges faced in the implementation of anti-torture

measures and offer suggestions for strengthening the legal framework.

Throughout history, torture has been used as a means of punishment, coercion, and obtaining information. Its presence can be traced back to ancient civilizations, where it was a tool of power wielded by rulers and authorities. The international community, on the other hand, became aware of the necessity of addressing torture and other types of ill-treatment as the notion of human rights began to arise. It was during the time period after World War II that the Universal Declaration of Human Rights (UDHR) was drafted and published in 1948. This document was essential in laying the groundwork for the prohibition of torture.

### Objectives

The primary objective of this review paper is to analyze the legal framework governing the prohibition of torture in India. Specifically, the paper aims to achieve the following objectives:

- a) To examine the definition of torture under various international conventions, including the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and UNCAT, and to highlight the differences between these definitions.
- b) To provide a historical background of torture, exploring its evolution as a human rights concern and the factors that led to the introduction and adoption of UNCAT.
- c) To discuss relevant international documents against torture, including regional human rights treaties and conventions, to understand the global commitment to combating torture.
- d) To assess the alignment between Indian laws and UNCAT provisions, analyzing India's adoption of the convention and any reservations or declarations made in the process.
- e) To explore the legislative provisions related to torture in India, including constitutional safeguards, criminal laws, and any specific statutes aimed at preventing torture.
- f) To analyze the judicial outlook towards the prohibition of torture in India, examining landmark decisions and the challenges faced in implementing anti-torture measures effectively.

## DEFINITION OF TORTURE UNDER VARIOUS INTERNATIONAL CONVENTIONS

The international community has expressly condemned the practice of torture as a grave breach of human rights. The practice of torture is described and addressed in a variety of international accords and human rights instruments. This is done with the intention of protecting individuals from this cruel behavior. There are basically three important international instruments that are completely discussed in below section i.e. UNCAT (*Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*), (ICCPR) *The International Covenant on Civil and Political Rights*, and UDHR (*The Universal Declaration of Human Rights*). The definition of torture is examined in relation to these three instruments.

### The Universal Declaration of Human Rights<sup>1</sup>

The Universal Declaration of Human Rights, which was passed by the United Nations General Assembly

<sup>1</sup> Universal Declaration of Human Rights. United Nations General Assembly. December 10, 1948.

on December 10, 1948, is considered to be one of the most important texts relevant to the subject of human rights. Despite the fact that it does not include an explicit definition of torture, it does contain relevant phrases that have been interpreted to include the prohibition of torture among its provisions.

### The International Covenant on Civil and Political Rights<sup>2</sup>

The International Covenant on Civil and Political Rights, which was approved on December 16, 1966, includes a provision that prohibits the use of torture. The United Nations General Assembly provides more clarification on this provision. This is what the article says:

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*

In the same way that the Universal Declaration of Human Rights (UDHR) emphasizes how utterly illegal torture is, the International Covenant on Civil and Political Rights (ICCPR) supports the rights and dignity of every individual. It is necessary for state parties to take strong action in order to put an end to torture and other forms of harsh treatment and to prosecute those who engage in them.

### The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>3</sup>

Adopted on December 10, 1984 by the UN General Assembly, UNCAT became operative on June 26, 1987. It is a comprehensive convention whose exclusive purpose is to prevent torture and similar abuses. It is the most important international tool aimed at ending torture since it gives a precise and comprehensive definition of the term.

Article 1 of UNCAT also covers psychological as well as physical forms of torture. Additionally, UNCAT expressly forbids the use of torture in a number of situations, such as armed wars and other crises.

UNCAT's robust definition sets a high standard for state parties to prevent and respond to torture effectively. It obliges states to criminalize torture in their domestic laws and establish jurisdiction over such crimes, even if committed outside their territories.

In conclusion, The UNCAT offers a thorough and precise definition of torture as well as particular

<sup>2</sup> International Covenant on Civil and Political Rights. United Nations General Assembly. December 16, 1966.

<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations General Assembly. December 10, 1984

responsibilities for state parties, while the UDHR and the ICCPR define the broad ban of torture and ill-treatment. When taken as a whole, these international agreements provide strong weapons against torture and guarantee the defense of human rights and dignity everywhere.

## **HISTORICAL BACKGROUND OF TORTURE AND INTRODUCTION OF UNCAT**

### **Historical Evolution of Torture**

The use of torture as a means of punishment and control can be traced back to ancient civilizations. In various societies, torture was employed as a method of extracting confessions, punishing wrongdoers, and instilling fear among the population. Historical records reveal that torture methods were diverse and often gruesome, including flogging, burning, mutilation, and psychological torment.

During the medieval period, torture reached its peak, particularly in Europe. Torture chambers, such as the infamous Spanish Inquisition's dungeons, were established to extract confessions and suppress religious dissent. The widespread use of torture continued through the Inquisition and beyond, extending to the colonial era when it was used to subjugate indigenous populations in newly colonized territories.

With the rise of Enlightenment philosophy in the 17th and 18th centuries, thinkers like Voltaire, Montesquieu, and Beccaria criticized the use of torture and advocated for the recognition of individual rights and dignity. These ideas laid the groundwork for the concept of human rights and the eventual rejection of torture as a legitimate means of justice.

### **Emergence of Human Rights Movements**

Human rights movements began to take shape in the late 18th and early 19th centuries, fighting for the defense of fundamental liberties and the outlawing of cruel and inhumane behavior. Two key turning points in this process were the eradication of slavery and the realization of the right to a fair trial.

During World War II, atrocities such as the Holocaust and the use of torture by authoritarian regimes occurred in the first part of the 20th century. The whole community became even more determined to defend human rights and stop torture in the future as a result of these horrifying incidents.

### **Objectives and Provisions Of UNCAT**

The United Nations Convention Against Torture (UNCAT) has as its principal mission the prevention and elimination of torture and other kinds of cruel, inhuman, or degrading treatment or punishment across the globe. It aims to achieve this through several key provisions and obligations for state parties.

**a) State Obligations:** State parties are obligated under UNCAT to take decisive action to stop, look into, and prosecute torture crimes committed on their soil. States must make torture illegal, create jurisdiction over such crimes anywhere they are committed, and make sure that extraordinary circumstances—like a national emergency or state of war—do not excuse torture.

**b) Non-Refoulement:** UNCAT's Article 3 forbids sending someone back, extraditing, or expelling them from a country where there are good reasons to think they may be tortured<sup>4</sup>.

**c) Monitoring Mechanism:** The Committee against Torture, which is made up of impartial specialists, is established by UNCAT to oversee state parties' adherence to the treaty. States are expected to supply the Committee with reports on a regular basis, and the Committee then offers suggestions and observations to improve compliance.

**d) Universal Jurisdiction:** UNCAT encourages state parties to cooperate in the investigation and prosecution of torture, even in cases where the alleged perpetrators and victims are not nationals of the prosecuting state. This principle of universal jurisdiction ensures that perpetrators cannot evade accountability by seeking safe haven in other countries.

**e) Rehabilitation and Compensation:** Article 14 of UNCAT affirms the right of victims of torture to rehabilitation, including medical, psychological, and social support. It also highlights the right to seek and secure fair and reasonable compensation for the injury endured.

UNCAT has been ratified by a significant number of countries, attesting to the global consensus on the prohibition of torture. It has played a pivotal role in raising awareness about torture, promoting accountability, and encouraging states to strengthen their legal frameworks and practices to prevent and address torture effectively<sup>5</sup>.

## **INTERNATIONAL DOCUMENTS AGAINST TORTURE**

Various international instruments and human rights treaties have been established to combat torture and other forms of ill-treatment. This section explores key documents that specifically address torture:

### **International Covenant on Civil and Political**

<sup>4</sup> Fassin, Didier. "Human Rights and the Politics of Humanitarianism." *Anthropological Theory*, vol. 8, no. 3, 2008, pp. 333-353. DOI: 10.1177/1463499608095518

<sup>5</sup> Goodhart, Michael. "Human Rights: Politics and Practice." Oxford University Press, 2013. ISBN-13: 978-0199603349

## Rights (ICCPR)<sup>6</sup>

Adopted by the UN General Assembly in 1966, one of the most important international treaties pertaining to human rights is the ICCPR. It offers a thorough framework for the defense of political and civil rights.

The International Covenant on Civil and Political Rights (ICCPR) establishes the total prohibition of torture, emphasizing the lack of any situation in which torture is acceptable. It requires state parties to take decisive action to stop torture, punish those who do it, and make sure those who do it are held responsible.

The Human Rights Committee, the ICCPR's monitoring body, assesses state parties' adherence to the covenant and makes suggestions for improving its application. The international community reaffirms its commitment to ending torture and defending the rights and dignity of every person through the ICCPR.

## The European Convention on Human Rights (ECHR)<sup>7</sup>

The ECHR, adopted by the Council of Europe in 1950, is a regional human rights treaty that protects human rights in Europe. While the ECHR does not have a specific article dedicated solely to torture, it addresses torture and ill-treatment under various provisions.

Article 3 of the ECHR states:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The ECHR plays a crucial role in holding European states accountable for violations of the prohibition on torture and ensuring that victims have access to effective remedies and redress.

## The African Charter on Human and Peoples' Rights (ACHPR)<sup>8</sup>

In 1981, the Organization of African Unity, which is now known as the African Union, gave its official approval to a regional human rights pact that is known as the African Convention on Human Rights (ACHPR). The protection of human rights on the African continent is the principal goal of this organization.

Article 5 of the ACHPR specifically addresses torture, providing that: The ACHPR forbids torture and other cruel treatment outright and places a strong emphasis on protecting human dignity. It requires African governments to enact laws and implement other

policies aimed at stopping and punishing torture as well as offering victims suitable compensation.

Promoting and defending human rights in Africa and keeping an eye on state adherence to the charter's terms are important tasks carried out by the African Commission on Human and Peoples' Rights, the ACHPR's monitoring agency.

## Other Relevant International Instruments

**The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT):** As discussed in section 3, UNCAT is a dedicated treaty solely focused on combating torture and related abuses. It provides a comprehensive definition of torture and lays down specific obligations for state parties to prevent, investigate, and punish acts of torture<sup>9</sup>.

**The Inter-American Convention to Prevent and Punish Torture:** Specifically addressing the issue of torture in the Americas, this regional human rights pact was adopted by the Organization of American States in the year 1985. It specifies steps for state parties to take in order to prevent and punish acts of torture, and it reinforces the absolute ban of cruel and unusual punishment.<sup>10</sup>

**The Istanbul Protocol:** The Istanbul Protocol is a guidebook prepared by the United Nations that offers rules for the efficient investigation and recording of torture and other forms of ill-treatment. Despite the fact that it is not a legally binding treaty, the Istanbul Protocol exists. It is an invaluable resource for medical and legal experts who are dealing with victims of torture and recording evidence for the purpose of prosecution<sup>11</sup>.

**The Rome Statute of the International Criminal Court (ICC)** The International Criminal Court (ICC), which was founded by the Rome Statute in 1998, has the authority to prosecute acts of torture where they constitute crimes against humanity and are perpetrated as part of an attack that is either widespread or systematic against a civilian population<sup>12</sup>.

<sup>9</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations General Assembly. December 10, 1984 .

<sup>10</sup> Inter-American Convention to Prevent and Punish Torture. Organization of American States. December 9, 1985.

<sup>11</sup> Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations, Office of the High Commissioner for Human Rights, 2004

<sup>12</sup> Rome Statute of the International Criminal Court. United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. July 17, 1998.

<sup>6</sup> International Covenant on Civil and Political Rights. United Nations General Assembly. December 16, 1966 .

<sup>7</sup> European Convention on Human Rights. Council of Europe. November 4, 1950.

<sup>8</sup> African Charter on Human and Peoples' Rights. Organization of African Unity. June 27, 1981.



The existence of international treaties that condemn torture is very necessary in order to safeguard human rights and put an end to torture and other forms of harsh treatment. The supervision and accountability provided by the monitoring organizations linked to these tools foster international cooperation in the fight against torture and the defense of human rights.

## **INDIAN AND UNCAT**

### **India's Adoption Of UNCAT**

India signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on October 14, 1997. Subsequently, India ratified the convention on October 2, 1997. By ratifying UNCAT, India demonstrated its commitment to eradicating torture and ill-treatment and aligning its legal framework with international human rights standards<sup>13</sup>.

### **Reservation and Declarations by India**

Upon ratification, India made two reservations to UNCAT. The first reservation pertains to Article 20 of UNCAT, which addresses the right not to be compelled to testify against oneself or to confess guilt. India's reservation limits this provision to the extent that it is in line with the Indian Constitution and criminal laws. This reservation indicates that India seeks to maintain its existing legal provisions related to self-incrimination and does not wish to make any significant changes to its criminal justice system.

The second reservation concerns Article 22 of UNCAT, which addresses the right of detained persons to communicate with and be visited by their family members and legal counsel. India's reservation indicates that it will apply this provision in conformity with its domestic laws and prison regulations.<sup>14</sup>

Furthermore, With the use of this proclamation, Indian citizens can now file complaints with the Committee in an effort to get answers and compensation for alleged acts of torture.<sup>15</sup>

### **Compatibility of Indian Laws with UNCAT Provisions**

While India's adoption of UNCAT signifies its commitment to the prohibition of torture, the compatibility of Indian laws with UNCAT provisions has been a subject of scrutiny and concern.

The legal framework against torture in India is primarily governed by the Constitution of India and various criminal laws. Nonetheless, the unavailability of a proper legal definition of torture in Indian laws has been a major issue.

Indian criminal laws, such as the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC), contain provisions that criminalize acts of violence and abuse but do not explicitly define torture. Sections 330 to 338 of the IPC address various forms of hurt and injury, but these provisions fall short of a comprehensive definition of torture as required by UNCAT. Additionally, the application of these provisions has often been criticized for being inadequate in prosecuting cases of torture.

Efforts to enact specific legislation to address torture have been made in India. The Prevention of Torture Bill was introduced in 2010, aimed at implementing UNCAT and criminalizing torture.

The lack of an explicit definition of torture in Indian laws, coupled with delays in enacting specific anti-torture legislation, raises concerns about the compatibility of Indian laws with UNCAT provisions. The absence of a comprehensive legal framework dedicated to combating torture undermines the effective implementation of UNCAT in India.<sup>16</sup>

Summary: India's adoption of UNCAT reflects its commitment to addressing torture and ill-treatment. However, reservations to certain provisions and the absence of an explicit legal definition of torture in Indian laws raise questions about the compatibility of the country's legal framework with UNCAT. To effectively implement UNCAT's provisions, India needs to enact specific anti-torture legislation and ensure that its domestic laws align with international human rights standards.

## **LEGISLATIVE PROVISIONS RELATING TO TORTURE IN INDIA**

Torture is a serious human rights concern, and its prohibition is enshrined in various legal instruments, including the Constitution of India and criminal laws. This section explores the legislative provisions relating to torture in India, with a focus on constitutional provisions, criminal laws, relevant amendments, and landmark case laws.

### **Constitutional Provisions<sup>17</sup>**

The Constitution of India contains fundamental rights and directives that are relevant to the prevention of torture and protection of human dignity.

**a) Article 21 - Right to Life and Personal Liberty:** The right to life and personal liberty is protected by Article 21 of the Indian Constitution, which places an

<sup>13</sup> United Nations Treaty Collection. "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Accessed from [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mt\\_dsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mt_dsg_no=IV-9&chapter=4&clang=_en) on 2nd August 2023.

<sup>14</sup> The Indian Penal Code, 1860.

<sup>15</sup> Nithya Ramakrishnan. "Enacting a Law against Torture in India." *Economic and Political Weekly*, Vol. 45, No. 17, April 24, 2010, pp. 13-16

<sup>16</sup> The Code of Criminal Procedure, 1973.

<sup>17</sup> The Constitution of India

emphasis on the safeguarding of an individual's bodily and mental integrity. As a result of the Supreme Court of India's wide interpretation of Article 21, the right to live with human dignity has been included. This right also incorporates the right to be free from torture and other forms of cruel treatment.

**b) Article 20(3) - Protection against Self-Incrimination:** Article 20(3) of the Constitution protects individuals from being compelled to be witnesses against themselves. This provision ensures that accused persons are not subjected to torture or forced to confess guilt, thereby safeguarding against coercive tactics during interrogations.

**c) Directive Principles of State Policy:** Part IV of the Constitution contains a set of principles that serve as a guide for the state as it formulates policies with the intention of promoting the welfare of the people. These concepts are known as the Directive Principles of State Policy. Despite the fact that these principles are not legally enforceable, they highlight the need of ensuring that workers are provided with humane working conditions, have access to maternity leave, and have their health and strength protected.

### Criminal Laws and Torture

In addition to constitutional provisions, several criminal laws in India address offenses related to torture and other forms of abuse.

**a) Indian Penal Code (IPC)<sup>18</sup>:** Sections 330 to 338 of the IPC cover various forms of hurt, grievous hurt, and wrongful restraint, which may be related to acts of torture. These provisions penalize the infliction of physical harm or injury upon a person, but they do not explicitly define torture as an independent offense.

**b) Code of Criminal Procedure (CrPC):<sup>19</sup>** There are provisions in the CrPC pertaining to law enforcement officers' arrests, searches, and interrogations. Section 50 requires that everyone arrested be told of the reason(s) for their arrest as well as their right to a medical examination by a licensed physician. Section 41 controls the process for making an individual arrest. Ensuring procedural protections during detention is the goal of these regulations.

**c) The Protection of Human Rights Act, 1993:<sup>20</sup>** To advance and defend human rights in India, the Protection of Human Rights Act established the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs). The NHRC and SHRCs have the jurisdiction to investigate claims of human rights breaches, including torture, and suggest suitable measures.

### Relevant Amendments and Case Laws

**a) Amendment to Section 375 of IPC:** In 2013, the Indian government introduced significant amendments to the criminal law through the Criminal Law (Amendment) Act, 2013<sup>21</sup>, in response to the public outcry following the Nirbhaya gang-rape case. One of the amendments pertained to Section 375 of the IPC, which defines rape. The amended law expanded the definition of sexual assault to include acts such as inserting objects into the victim's body, thereby recognizing forms of torture and abuse during sexual assaults.

**b) D.K. Basu v. State of West Bengal (1997)<sup>22</sup>:** In a historic decision, the Indian Supreme Court established precise rules that police must adhere to while making arrests and questioning suspects in order to guard against abuse and torture while they are in custody. The purpose of these rules, often referred to as the "D.K. Basu Guidelines," is to safeguard the rights and dignity of those who are detained while making sure that no one is mistreated.

**c) PUCL v. State of Maharashtra (2014)<sup>23</sup>:** The right to live in accordance with one's human dignity is recognized by the Supreme Court of India in this judgment as a fundamental component of Article 21 of the Constitution. The court underlined that the use of torture and other cruel, inhumane, or humiliating treatment is forbidden under the rule of law and that governments must take decisive action to stop it.

**d) Nilabati Behera v. State of Orissa (1993)<sup>24</sup>:** The Supreme Court of India acknowledged the right to compensate for victims of torture and assault while incarceration in this landmark ruling. According to the ruling of the court, victims or their relatives are entitled to compensation for the infringement of their basic rights.

Human rights are protected and people are shielded from torture and abuse by the legal measures pertaining to torture in India, which include both criminal legislation and regulations included in the constitution. Nonetheless, it is still quite concerning that Indian law does not define torture clearly. The prevention of torture and the defense of human dignity in the nation also depend on the efficient application and enforcement of current laws and regulations.

### JUDICIAL OUTLOOK TOWARDS THE PROHIBITION OF TORTURE

In India, the court is essential to maintaining the ban on torture and defending human rights. This section

<sup>18</sup> The Indian Penal Code, 1860.

<sup>19</sup> The Code of Criminal Procedure, 1973.

<sup>20</sup> The Protection of Human Rights Act, 1993.

<sup>21</sup> Criminal Law (Amendment) Act, 2013.

<sup>22</sup> D.K. Basu v. State of West Bengal (1997) 1 SCC 416

<sup>23</sup> PUCL v. State of Maharashtra (2014) 10 SCC 635.

<sup>24</sup> Nilabati Behera v. State of Orissa (1993) 2 SCC 746.

looks at the judiciary's perspective on the ban on torture, emphasizing important rulings, difficulties in putting the ban into practice, and the court's role in reducing torture.

### Landmark Judicial Decisions

**a) D.K. Basu v. State of West Bengal (1997)<sup>25</sup>:** The Supreme Court of India released rules in this historic case to stop torture in detention and defend the rights of those who are being held captive. The court determined that Article 21 of the Constitution, which protects the right to life and personal liberty, is violated by all forms of torture and cruel, inhuman, or humiliating treatment. The "D.K. Basu Guidelines" set out certain precautions to avoid abuse and highlight the necessity of accountability and openness in police practices during arrests and interrogations.

**b) Nilabati Behera v. State of Orissa (1993)<sup>26</sup>:** The Supreme Court granted compensation to the family of a victim who passed away while under police custody in a landmark decision. The court declared that torture and acts of abuse against detainees were flagrant violations of human rights and ordered the state to reimburse the victim's relatives. This ruling demonstrated the judiciary's dedication to holding state officials responsible for crimes of torture.

**c) PUCL v. State of Maharashtra (2014)<sup>27</sup>:** In this instance, the Supreme Court upheld Article 21 of the Constitution's fundamental guarantee of the right to live in human dignity. The court stressed that the values of justice and the rule of law are incompatible with torture and inhumane treatment. It reaffirmed the obligation of state authorities to uphold people's rights and dignity and to take action to stop abuse and torture.

**d) State of Andhra Pradesh v. Challa Ramkrishna Reddy (2000)<sup>28</sup>:** In this case, the Supreme Court held that the burden of proving innocence lies on the prosecution and not on the accused. The court stressed the importance of ensuring that suspects are not subjected to torture or compelled to confess guilt. This decision reinforces the right against self-incrimination and underscores the need to prevent torture during interrogations.

### Challenges in Implementation

Despite the judiciary's efforts to uphold the prohibition of torture, there are challenges in implementing and enforcing the laws effectively.

**a) Delayed Justice:** One of the significant challenges is the delay in judicial proceedings, which hampers the timely adjudication of torture cases. Prolonged legal

processes can result in victims not receiving justice promptly and may even lead to witnesses turning hostile.

**b) Inadequate Investigation and Evidence:** In many cases, there is a lack of proper investigation and collection of evidence to establish torture allegations. The difficulty in proving torture claims beyond reasonable doubt can lead to acquittals, undermining the deterrence effect of the law.

**c) Lack of Awareness and Sensitization:** Despite judicial pronouncements and guidelines, there may be a lack of awareness and sensitization among law enforcement officials and other relevant authorities. Proper training and education are essential to ensure compliance with the law and prevent instances of torture.

**d) Overcrowded Prisons and Detention Facilities:** The conditions in overcrowded prisons and detention facilities can contribute to the prevalence of ill-treatment and abuse. The lack of adequate infrastructure and resources can exacerbate the risk of torture in custodial settings.

### Role of the Judiciary in Curbing Torture

The judiciary has a crucial role to play in curbing torture and protecting human rights in India.

**a) Interpretation and Enforcement of Laws:** Through its interpretation of constitutional provisions and relevant laws, the judiciary establishes the legal framework against torture. Landmark judgments and guidelines, such as those in D.K. Basu and Nilabati Behera cases, underscore the prohibition of torture and set standards for state authorities to follow.

**b) Monitoring and Oversight:** The judiciary, through courts and tribunals, monitors the implementation of laws and guidelines related to torture. It reviews cases of alleged torture, ensures due process, and holds state authorities accountable for any violations.

**c) Safeguarding Human Rights:** The judiciary safeguards the fundamental rights of individuals and ensures that their dignity and integrity are protected. Judicial decisions often emphasize the importance of upholding human rights principles in all aspects of governance and law enforcement.

**d) Advocacy and Public Awareness:** Through its pronouncements, the judiciary raises public awareness about the prohibition of torture and the importance of safeguarding human rights. Judicial decisions often attract media attention and public discourse, leading to increased awareness and scrutiny of issues related to torture.

The judiciary in India has taken significant steps to uphold the prohibition of torture and protect human rights. Landmark decisions and guidelines, such as

<sup>25</sup> D.K. Basu v. State of West Bengal (1997) 1 SCC 416

<sup>26</sup> Nilabati Behera v. State of Orissa (1993) 2 SCC 746.

<sup>27</sup> PUCL v. State of Maharashtra (2014) 10 SCC 635

<sup>28</sup> State of Andhra Pradesh v. Challa Ramkrishna Reddy (2000) 7 SCC 148.

those in D.K. Basu and Nilabati Behera cases, underscore the judiciary's commitment to prevent custodial torture and provide remedies to victims. However, challenges in implementing and enforcing anti-torture laws persist. To effectively curb torture, it is essential to address these challenges and ensure timely justice and protection for victims of torture. Continued judicial activism, public awareness, and state accountability are crucial in the fight against torture and the promotion of human rights in India<sup>29</sup>.

## CONCLUSION

As a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), India has committed itself to ending torture and preserving human dignity. The prohibition of torture is a fundamental tenet of international human rights law. There have been notable judicial and legislative initiatives in India to combat torture, but there are still obstacles in the way of completely putting anti-torture legislation into effect and upholding them. The history of torture shows that it has been a cruel practice for a very long time. However, as international instruments and human rights groups have grown, there is now widespread opposition to torture. In addition to serving as a framework for governments to effectively prevent and resolve torture, UNCAT and other international agreements such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) strengthen the ban against torture. India has shown its commitment to the fight against torture by adopting UNCAT and making the necessary changes to its criminal code. Implementation issues still exist, nevertheless, and include overcrowding in prison facilities, poor investigation, ignorance, and delayed justice. India must pass specific anti-torture laws that clearly define torture as a crime and make it illegal in order to combat these issues and bolster the anti-torture movement. To guarantee adherence to human rights norms, law enforcement personnel should participate in training and sensitization activities. Advocacy and public awareness initiatives can also help cultivate a culture that rejects torture and respects human dignity. The courts continue to play a crucial role in reducing torture. In order to guarantee that anti-torture legislation and regulations are properly implemented, judicial activism, supervision, and monitoring are crucial. The judiciary must continue to defend the principles of human rights, provide refuge to victims of torture, and hold public servants accountable for any wrongdoing. In conclusion, India has shown its commitment to the outlawing of torture by its ratification of international agreements and its judicial approach to upholding human rights. By addressing the problems and strengthening its legal and judicial system, India can make significant strides toward

putting an end to torture and creating a society that protects the rights and dignity of every individual. The government, courts, civil society, and citizenry must work together to eradicate torture from India and to further the international effort to combat this horrible crime.

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