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Absence of a Standalone Anti-Torture Statute in India

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“For the powerful, crimes are those that others commit.”

- Noam Chomsky, Imperial Ambitions: Conversations on the Post 9/11 World

Introduction

In 1997, almost 30 years ago, India signed the United Nations Convention Against Torture¹ (UNCAT). Till date, India has not ratified it. In the interim, the country witnessed one Bill passed by a House of Parliament, a comprehensive Law Commission Report with a prepared draft statute, and a Supreme Court petition asking the judiciary to precipitate government action. Nevertheless, in 2026, India still lacks a dedicated anti-torture legislation. This is not a story of oversight. It happens to be a story of a law that, surprisingly, nobody in power has ever been forced to pass.

The Trail of Events

The timeline shows its own narrative of delayed intent:

- **1997** - India becomes UNCAT signatory, pledging in essence to incriminate torture as a standalone crime, different from the usual “hurt”² provisions under the Indian Penal Code, 1860.

¹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter UNCAT].

² Indian Penal Code, S. 319 (1860).

- **2010** - The Prevention of Torture Bill gets passed by the Lok Sabha, but gets criticised as weak as it defined torture scarcely and provided a short limitation period for redresses and complaints. The Rajya Sabha sends the Bill to a Select Committee.
- **2012** - The Select Committee submits a considerably rewritten variant synchronising the Bill in accordance with UNCAT's meaning of torture.
- **2014** – After the change in government and the dissolution of the 15th Lok Sabha, the Bill lapses and is never resubmitted.
- **2016-2017** - Senior Advocate and former Law Minister, Ashwani Kumar files a Writ Petition requesting the Apex Court to command the Parliament to enact a standalone law. The Central government replies to the Court that it is analysing the matter and the petition is disposed of on those assurances.
- **October 2017** – the Law Commission's 273rd Report³ advises ratifying UNCAT and affixes a fresh draft Prevention of Torture Bill, 2017 defining torture in a broad and inclusive sense, transferring the onus of proof on the State when a person is injured in custody, and ordering punitive measures as much up to life imprisonment.
- **2018** - A query to the government about the 273rd Law Commission Report resurfaces regarding the developments upon the Report. The answer confirms but doesn't commit, that the report exists and is "under consideration".
- **2019** - Ashwani Kumar again moves the Supreme Court, now requesting it to direct the Centre to actually legislate on ground. A Coram of three-judges, led by then Chief Justice, Ranjan Gogoi discards the application, stating that it cannot force the Parliament to pass a law or the executive to ratify an international convention or treaty; both are policy decisions *ultra vires* to the scope of judicial review⁴.
- **Present** - No standalone statute is there. Constitutional provisions are the sole protections⁵ against custodial torture which require to be threaded together from dispersed sections of the Bharatiya Nyaya Sanhita⁶ and Bharatiya Nagarik Suraksha

³ Law Commission of India, *Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation*, 2017.

⁴ The Leaflet, *Supreme Court rejects plea seeking legislation on custodial torture*, THE LEAFLET, (September 5, 2015), <https://theleaflet.in/supreme-court/supreme-court-rejects-plea-seeking-legislation-on-custodial-torture>

⁵ INDIA CONST. art. 20, cl 3, art. 21. art. 22.

⁶ No. 45, Acts of Parliament, 2023 (India).

Sanhita⁷, 2023, and Supreme Court guidelines opined in *D.K. Basu v. state of West Bengal*⁸, not a specialised statute.

Why the Delay?

Several reasons form the explanation of the delay other than just “lack of political will”.

First, none of the institutions have yet been mandated to take action. Supreme Court’s order of 2019⁹ is the clearest confirmation: the Court specifically said it lacked the power to direct the executive or the Parliament to ratify a treaty, calling them subjects of policy. Without judicial compulsion, and without electoral pressure, torture of undertrials rarely makes a difference.

Second, present dispersed protections dilute the recognised urgency. The *D.K. Basu* guidelines, now partially codified into the BNSS¹⁰, impose arrest memo, medical examination, and custody notification. The State, signalling to this framework, can contend a dedicated statute would be superfluous, despite the fact that a framework and a statute are different in nature and application: guidelines steer procedure, whereas a standalone law would identify a specific, culpable offence of torture with defined punitive remedies and a reversed onus of proof.

Third, defiance from the police and security establishment due to institutional camaraderie persists. According to the 2017¹¹ draft which infers custodial injury was inflicted by the men in uniform, that law imposes a form of accountability that internal penal systems have refrained diluting in the past.

Fourth, ratifying UNCAT bears its share of friction. It would disclose India’s domestic habits to international scrutiny, complicating the state’s positions in matters that involve extradition and mutual legal relief.

Changes that would entail a Specific Statute

⁷ No. 46, Acts of Parliament, 2023 (India).

⁸ (1997) 1 SCC 416).

⁹ *Ashwani Kumar v. Union of India*, (2019) 13 SCC 568.

¹⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, ss. 36, 38, 48, 53 (India).

¹¹ Jinee Lokaneeta, Law Commission Report on Torture is a Step in the Right Direction, but Just a Bill is Still Some Way Off, THE WIRE, (November 15, 2017), <https://thewire.in/law/prevention-of-torture-bill-india-law-commission>

Three things could be facilitated if a dedicated anti-torture law is enacted, conveniently replacing the current framework. It would define torture as a precise culpable offence, rather than depending upon general dispersed provisions for wrongful confinement or grievous hurt. It will reverse the onus of proof for custodial injury statutorily rather than leaving this to individual judicial interpretations, affirming concrete punitive remedies instead of requiring the aggrieved to rely on constitutional remedies which have been evolved through litigation.

Conclusion

India adjudicates custodial violence via loaned statutes; procedural codes and judge made precedential frameworks, even after twenty-nine years of signing UNCAT. It still lacks a law that particularly suffices the actual problem. Until that change, the lacuna between the Constitution's promise under Article 21 and upon what provisions a victim of custodial torture can sue will be filled by the courts, a case at a time.