



**NEED FOR RATIFICATION OF UNCAT- COMBATING POLICE  
BRUTALITY IN INDIA**

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**ABSTRACT**

*The pandemic was indeed the most difficult time for the entire world. There was a section of society which faced heat the most, the prisoners. This article intends to spark the discussion regarding police atrocities in India, which are increasingly becoming the norm of today's culture. Firstly, the article will begin with a brief historical background of torture laws in India. Secondly, the article will shed light on how the aftereffects of the pandemic have further escalated custodial violence, torture by public servants and inhumane behavior towards undertrial prisoners. Thirdly, in a descriptive analysis, the article will discuss India's stand on the United Nations Convention against Torture (UNCAT) while addressing an alarming need for an anti-torture law in India. Lastly, with the aid of guidelines pronounced by Supreme Court, and reports of Law Commission and of National Human Rights Commission (NHRC), the article will aim to suggest measures which need to be adopted to deter rising abusive practices by the police.*

**Keywords:** Human Rights, Pandemic, Police brutality, Torture, UNCAT

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## **INTRODUCTION**

In a general context, ‘police brutality’ is the physically harsh and lethal treatment of accused persons and undertrial prisoners. According to an Amnesty International study from 1992, the most prevalent kinds of torture include intense beatings, often while the offender is hanged upside down, and electric shocks. People have also been crushed by large rollers, burnt, and stabbed with sharp objects. There have been reports of maiming sexual organs of victims. Rape is also a common form of torture. Apart from these, there are several other devastating methods used to obtain information from the accused. Police officials have approved such techniques for extracting confessions.

Custodial abuse in India has long been a subject of debate and discussion. Cruel and humiliating treatment of accused is strictly prohibited under the provisions of the Constitution and Criminal Laws. Torture is never acceptable, whether it occurs during an inquiry, an investigation, or a trial.<sup>2</sup> Active steps have also been taken by government institutions and not-for-profit organizations to curb the menace of unethical and inhumane treatment of persons in police and judicial custody.

### **1.2 Historical Background**

The police and its functions are historical concepts, from Jivagribhs (Rig Ved) to Ugras (in the Upanishads), in our historical documents one can find the trace of policing system. With time as the police system developed, it introduced the concept of police brutality as well.

#### **1.2.1 Andhra Pradesh**

The events of extra judicial killings and encounters in the state of Andhra Pradesh gave it a status of being a state which gave birth to police brutality in India. The rampant killing of over 2000 farmers and innocent peasants during Telangana Peasant armed struggle between 1946-51 was one such incident. The conduct of officials in the state was equal to Human Rights violations at its core. The gruesome history of killings by police raised concerns. The political killings as well as of those who were considered ‘unmanageable’ by policemen in the name of ‘encounters’ tops the list. The encounter killing of journalist Ghulam Rasool who was covering these illegal deaths proved the situation of the state.

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<sup>2</sup> Aditi Patil and Sarthak Roy, *Need for a Separate Anti-Torture Law: Probing India's Ethical Egoism on Torture* 96 Special Issue IJLIA (2019)

### **1.2.2 Bhagalpur Blinding, 1980**

Bhagalpur, a city in Bihar saw a rampant rise in crime rates during 1980s. The incident is inscribed as the darkest chapter in history. To curb the surging crime records and instil fear in criminals, police officials injected acid into the eyes of the accused. During the span of 2 years, 33 people were blinded. The habeas corpus petition was filed in apex court in 1981 by Hingorani on behalf of all the victims<sup>3</sup>. The case became the very first judicial precedent to order compensation for human rights violations.

## **1.3 INTERNATIONAL DOCUMENTS**

The right to be free from torture is codified in several international human rights instruments that protect individuals from being exposed to physical and mental turmoil by acts of public servants. The prohibition of torture has also been adopted in various regional and universal human rights treaties.<sup>4</sup>

### **BILL OF HUMAN RIGHTS**

- Universal Declaration of Human Rights, 1948 – Article 5
- International Covenant on Civil and Political Rights, 1966 – Articles 4, 7 and 10
- International Covenant on Economic Social and Cultural Rights, 1966 – Preamble, Article 2 and 5

### **UN CHARTER**

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 1984 – Articles 1, 2, 10 and 11

### **1.3.1 United Nations Convention Against Torture (UNCAT)**

The convention is an international human rights treaty under the backing of United Nations. It aims to safeguard every person from cruel and degrading treatment while in custody. It prevents harsh punishments and acts of torture which are practiced by public servants, especially towards people belonging to marginalized communities. It requires obligation of States to provide fair trial to the accused persons. The optional protocol to the convention requires public officials to work in a just and reasonable manner without committing atrocities in their jurisdiction. It encompasses certain rights and obligations –

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<sup>3</sup> Khatri and Ors. V. State of Bihar, 1981 SCR (2) 408

<sup>4</sup> Law Commission of India 273<sup>rd</sup> Report on Implementation of “United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment” through Legislation (October 2017)

- The right of persons to be protected from torture by the state
- The right of the State to protect individuals from torture by its agents
- *The obligation of the state to prosecute torturers*
- *Individuals' right not to be deported or extradited to another state where they may be subjected to torture*

### **1.3.2 International Bill Of Rights**

The Universal Declaration of Human Rights (1948), The International Covenant on Civil and Political Rights (1966) and The International Covenant on Economic Social and Cultural Rights (1966) together form the Universal Bill of Rights.<sup>5</sup> These instruments are significant treaties which most States have signed and ratified. They provide a wide array of protection against violation of civil and human rights.

### **1.4 India's Stand On The UNCAT**

The right to life and personal liberty is enshrined in Indian Constitution. It protects every person from deprivation of basic rights as an individual. In line with right to life as a fundamental right, the constitution also recognizes right against self-incrimination, protection in respect to arrest and detention, and protection in respect of conviction. The legal position in India is in much discussion as regards to Anti-Torture laws. Through legislations, the parliament has justified taking stern measures to combat torture in prisons. Under the Code of Criminal Procedure, 1973, many safeguards have been provided to the accused – right to fair trial, right to free legal aid, right to default bail, right against double jeopardy, etc. Further, in accordance with provisions of Indian Penal Code, 1860, punishments have been prescribed against public servants who commit atrocities against arrested persons.

The Prevention of Torture Bill, 2010 was passed in the Lok Sabha to address the ongoing debate. However, after decision of Rajya Sabha's Select Committee, the bill lapsed in the parliament and is yet to be passed. India has been a signatory to UNCAT since 1997 but the ratification in parliament is still pending.

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<sup>5</sup> *Id* at 2

## **WHY INDIA HAS NOT RATIFIED UNCAT TILL DATE?**

India made promise on international platform in the year 1997, but even after 23 years has not acted upon it. Even almost after quarter of century there is no law on national level for the same. 170 countries including Pakistan and China has ratified the convention, where India stands with minority of 25 countries with no legislation to ratify it<sup>6</sup>. The main contentions behind non-fulfilment can be inconsistency between domestic laws and the clauses of UNCAT. But there exist few loopholes between legislations, which are discussed below:

### **2.1 Domestic Laws Covering The Crux Of Convention**

There has been a contention that the major provisions of UNCAT have been covered under existing criminal laws of the country. There are conclusive definitions provided under IPC for ‘hurt’ and ‘grievous hurt’ but ‘Torture’ has not defined anywhere. However, courts included psychic torture, tiring interrogative prolixity etc in the sphere of torture.

Apart from that Section 330 and 348 of Indian Penal Code, 1860 penalizes offences that can be considered as torture (with 7 and 3 years of imprisonment respectively). Both the provisions are not dedicated for torture by public officials as such. Therefore, they fall deficient to the elements of Torture as defined under UNCAT. Section 331 and 342, however, ostensibly talks about deterring police officer on using third degree during interrogation, that may amount to torture<sup>7</sup>.

Under Indian Evidence Act, 1872, the provisions of proper victim medical examination and laws circling witness protection falls short of what is a necessary requirement under convention. Though, section 24 discusses the confession caused by threats and section 25, talks about Confession which cannot be proved against him in court of law<sup>8</sup>.

There are also few safeguards mentioned under Constitution of India, under Article 20 and 21. Article 20 gives right against conviction of offences (based on the principle of double jeopardy and self-incrimination). Article 21 can be interpreted through lens of protection from torture or right to be free from torture by state and its functionaries. The same can be extracted from the term ‘Personal Liberty’ as expressed in the article. Further Article 22 also provides four-fold

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<sup>6</sup> Som Thomas, *Every custodial death A reminder of Why India must ratify the convention against torture*, The Wire (Oct 7, 2021, 15:00 PM), <https://thewire.in/rights/custodial-deaths-india-convention-against-torture>

<sup>7</sup> The Indian Penal Code, 1860, § 330, 331, 332, 348, No 45, Acts of Parliament, 1860 (India)

<sup>8</sup> The Indian Evidence Act, 1872, § 24, 25, No.1, Acts of Parliament, 1872 (India)

rights surrounding conviction, like preventive detention, production before Magistrate, meet the lawyer of choice and inform grounds of arrest<sup>9</sup>.

Code of Criminal Procedure, 1973, specifies various sections to inhabit anti-torture traits. Section 50-56 are in tunes with Article 22. Another essential provision is under Section 176 which gives powers of magisterial inquiry on custodial deaths. Also, section 482 talks about complaints to High Courts if magistrate fails to look into the complaints of custodial torture<sup>10</sup>. Lastly, Section 7 and 29 of Police Act, 1861 talks about suspension, penalizing of police officers who are negligent in terms of discharging their duties and violating the constitutional provisions and non-compliance of statutory guidelines<sup>11</sup>.

There is a lacuna in legal provisions as well. The compensation to the victims of torture has received a minimalistic attention by courts because of void in legislative provisions. The situation is, even if the act of torture is established there is no legal obligation for compensation under law. However, in several cases like *Nilabati Behera v. State of Orissa*<sup>12</sup>, the court has awarded compensation to victims, the concrete legal framework is still missing.

## **2.2 Unable Or Unwilling?**

India has a customary practice of passing a domestic legislation before ratifying an international convention. Although India is bound under Article 51C and 253 of Constitution<sup>13</sup> to encourage settlements and respect international treaty obligations, the step towards formulation of anti-torture legislation is still absent after 23 years. However, as mentioned above there were instances in 2010, 2017 and 2018 when the domestic legislation under Prevention of Torture Bill was passed in Lok Sabha<sup>14</sup>. The bill keeps on getting lapsed due to dissolution of Lok Sabha.

There have been legislations like National Food Security Act, 2013 (Right to Food), the controversial Land Acquisition Act, 2013 passed during the same reign but Prevention of Torture Bill failed to make cut through the priorities list. It has been confirmed by then Law

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<sup>9</sup> India Const. art 20, 21, 22

<sup>10</sup> The Code of Criminal Procedure, 1973, § 50-56, 176, 482, No. 2, Acts of Parliament, 1973 (India)

<sup>11</sup> The Police Act, 1861, § 7, 29, No. 5, Acts of Parliament, 1861 (India)

<sup>12</sup> *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

<sup>13</sup> India Const. art 51C, 253

<sup>14</sup> PRS Legislative Research, <https://prsindia.org/billtrack/the-prevention-of-torture-bill-2010> ( last visited Oct. 18, 2021)

Minister Ashwini Kumar that standing committee prepared the draft of Anti-torture bill in 3 months but even after 11 years, there has been no action taken to pass, consider or review the same<sup>15</sup>.

Most of the laws in India are introduced or borrowed by British. The laws were adopted post-independence but are in application till date. Since the Britishers set up the legal structure, such as policing system in India, it was more of a dominating nature. In a democratic set-up like India, where police is for assistance, the necessary amendments are not passed yet. Therefore, if India chooses to ratify UNCAT, it will demand to make necessary alterations to such acts which probably too much work.

### 2.3 Other Reasons

According to various experts like Ajai Sahni, the convention is “political and discriminatory” in nature. He says that another scrutiny will burden the police officials and that will be reflected in exercise of their duties<sup>16</sup>. Further he adds, that India will continuously be under radar for international scrutiny if it ratifies the convention. Former CJI Deepak Gupta stated that before ratifying the UNCAT or formulating the fresh piece of legislation, the existing discrepancies must be tackled. The active laws must be rectified first before ratifying international convention<sup>17</sup>.

Also, according to reports, the ratification will trigger debates on Human Rights violations in Jammu Kashmir and North-East India, which might reduce India’s prestige on global scale. Central government time and again in Supreme court has mentioned that they are considering the recommendations proposed by 273<sup>rd</sup> Law Commission Report but at the same time determined on the fact that minor amendments in existing domestic laws will be adequate, therefore will come in tune with Committee against Torture<sup>18</sup>.

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<sup>15</sup> Karan Thapar, *India’s 23-year-old failure to ratify UN Convention Against Torture is Shameful*, The Wire (Oct. 13, 2021 16:10), <https://thewire.in/rights/watch-indias-23-year-old-failure-to-ratify-un-convention-against-torture-is-shameful>

<sup>16</sup> Azaan Javaid, *States,UTs yet to reply on ratifying UN convention against torture*, Hindustan Times (Oct 12, 2021 09:30), <https://www.hindustantimes.com/india-news/states-uts-yet-to-reply-on-ratifying-un-convention-against-torture/story-hsJNbwM2znbzfz4UECfd6J.html>

<sup>17</sup> R.K. Vij, *Why separate anti-torture law?* The Hindu (Oct 19, 2021 19:16) <https://www.thehindu.com/opinion/op-ed/why-a-separate-anti-torture-law/article32132114.ece#:~:text=The%20Bill%20was%20not%20only,but%20that%20was%20left%20undefin ed.>

<sup>18</sup> *Id.* at 12

## **NEED FOR RATIFICATION OF UNCAT**

Article 21 affirms the right against torture. According to the reports of National Campaign against Torture (NCAT), there were almost 111 people who died in police custody between April 2019 to March 2020. 18 deaths were reported on roads by police during enforcing lockdown, whereas 1,569 deaths were recorded under judicial custody<sup>19</sup>.

### **3.1 Surge in Number Of Torture Cases During Covid-19**

According to United Nations Office on Drugs and Crime (UNODC), there was almost 50% drop in robbery, theft and burglary cases during Covid lockdown. At the same time, In India there was rampant rise in cases of deaths in police custody<sup>20</sup>. In reports of NCAT, 50 people died by suicide due to torture by police. However, in last 10 years, 400 out of 1000 cases of custodial deaths were listed due to illness or natural deaths. This raises issue of ambiguity in answering the reasons for deaths in custody<sup>21</sup>.

#### **3.1.1 Tamil Nadu Custodial Deaths**

Known as George Floyd incident of India, the case took place in Thoothukudi district of Tamil Nadu. The rage and wrath of policemen met with deadly consequences. The father-son duo was arrested under the offence of keeping the shop open post curfew. Jayaraj (father), had an argument with the police petrol team a day prior to his arrest. The duo was charged under various sections of IPC. The witnesses and localities mentioned about illness of both the accused and also said that they were bleeding while they were presented in court. Where one section of population termed it as ‘revenge’ by police, there is no deny in the fact that the act was sheer violation of Human Rights and the duo was robbed on their dignity.

#### **3.1.2 Assam Firing, 2021**

In Sipajhar district of Assam, several people were injured and three lost their lives in police firing on encroachers, on government orders. The issue faced huge public rage and court ordered judicial enquiry on same.

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<sup>19</sup> National Campaign Against Torture, <http://www.uncat.org/in-media/custodial-death-torture-a-human-rights-abuse-indian-and-international-perspective-latest-laws/> (last visited Oct 20, 2021)

<sup>20</sup> National Campaign Against Torture, <http://www.uncat.org/press-release/india-torture-report-2020-increase-in-custodial-deaths-despite-covid-19-lockdown-at-least-one-suicide-every-week-due-to-torture-in-police-custody/> (last assessed on Oct 20, 2021 14:28)

<sup>21</sup> Record Of Discussion of The Interaction Between NHRC, India and The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

### 3.2 International Pressure

According to Asian Center for Human Rights, a report by EU, lack of initiative by India in framing laws to prevent torture, rising cases of custodial deaths and abuse is no surprise. The Vice President of UNCAT, Claude Heller, has urged India to ratify the convention<sup>22</sup>. There has been an international pressure on us to not only ratify UNCAT but also to formulate the necessary domestic Anti-torture laws. While presenting Universal Periodic Review (UPR) in 2008 and after, India, time and again gave word on ratifying convention but futile<sup>23</sup>.

India's submission to UN Human Rights Council have always on a positive note affirmed that India will soon ratify the treaty and legislate the domestic laws. Non-performance of the promise for past 23 years has put us in bad light on global arena.

### 3.3 India And Human Rights: A Silent Tussel

UNCAT provides a blueprint to assure total eradication of torture. Being a richest democracy in the world, it is a paradox that India is still out of it. The instances of torture and ill-treatment of people in custody surfaced in last couple of years. The moral need for anti-torture law exceeds legal need by colossal margin. The holistic aspect of treaty covers the investigation as well as victim welfare and rehabilitation. The inclusive legislation in a country with such a vibrant democracy will have great impact, especially with free press.

Recent cases of Police brutality are:

1. Attack by police in college campuses in Delhi, in 2019<sup>24</sup>.
2. The Hyderabad Encounter, 2019<sup>25</sup>
3. Vikas Dubey Encounter, 2020<sup>26</sup>
4. Death of Sagar Chalavadi during lathi-charge outside SSLC center, 2020<sup>27</sup>

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<sup>22</sup> Conference Report Strengthening Legal Protection Against Torture in India

<sup>23</sup> Id 21

<sup>24</sup> Prakash K Datta, *Jamia Protest: Can police enter university campuses?*, India Today, (Oct 20, 2021 14:50) <https://www.indiatoday.in/news-analysis/story/jamia-protest-can-police-enter-university-campuses-1628941-2019-12-17>

<sup>25</sup> Murali Karnam, *Hyderabad 2019 'Encounter': Inquiry Panel Exposes Cover-Up, Lies in Official Narrative*, The Wire (Oct 19, 2021 18:55) <https://thewire.in/law/hyderabad-2019-encounter-inquiry-panel-exposes-cover-up-lies-in-official-narrative>

<sup>26</sup> **Manish Sahu, *Vikas Dubey encounter case: Judicial panel exonerates UP***

***Police, The Indian Express (Oct 20, 2021 12:00)***

<https://indianexpress.com/article/india/vikas-dubey-encounter-case-inquiry-commission-gives-clean-chit-to-up-police-7282806/>

<sup>27</sup> Revathi Rajeevan, *18-year-old Dies Outside Exam Centre in Karnataka's Bijapur, Family Claims Police*

#### 5. Brutal beating of Dalit Family in Guna, M.P, 2020<sup>28</sup>

These are some incidents which were out in public, one can only imagine the situation behind lockups. Therefore, there is a need for dedicated law to combat police brutality. One must understand that Human rights are made for people, they are inclusive and are guaranteed to people for sake for their well-being. The absence of legislature against torture is a sheer violation of our human rights. Issues of human rights is not partisan, they are not based on yes or no factor. These issues are necessary to be out for discussions and debates.

## **GUIDELINES SURROUNDING POLICE ACCOUNTABILITY AND REFORMS**

The role of state and non-state actors is crucial in determining the volume of cases that are filed in violation of custodial violence. Technological advances in social media usage also compel a need to bring anti-torture legislations. Some peculiar instances for such acts may include spread of communal violence through social media networks.

### **4.1 National Human Rights Commission (Nhrc)**

- 1997 Report
  1. Regarding encounters, the officer-in-charge is bound to record details of the encounter in an appropriate register as soon as he receives the information of the same.
  2. In cases of death and serious offences, expedited course of action should be pursued to investigate into facts and circumstances of the case
  3. Independent investigation agencies like CID and CBI should be handed the task of investigating felony and organized crimes
  4. For cases ending in conviction, compensation to the dependants of the deceased must be considered

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*Assaulted Him*, News18, (Oct 10, 2021, 21:23 PM), <https://www.news18.com/news/india/19-year-old-diesoutside-exam-centre-in-karnataka-family-claims-police-assaulted-him-2690161.html>

<sup>28</sup> Anuraag Singh, *Cops in MP brutally assault Dalit couple, kids and kin for resisting removal of encroachment*, The New Indian Express, (Oct 15, 2021, 11:37 PM), <https://www.newindianexpress.com/nation/2020/jul/15/copsin-mp-brutally-assault-dalit-couple-kids-and-kin-for-resisting-removal-of-encroachment-2170211.html>

- 2003 Report

1. As held by the Supreme Court in *Lalita Kumari vs Govt. of UP*<sup>29</sup>, FIR must be registered by police officer for cognizable offences. The police do not have the power to conduct inquiry and then proceed with FIR.
2. The concerned Magistrate should be bound to inquire the case within 3 months of complaint.
3. The Senior Superintendent of Police must report the case to the commission before 48 hours of filing of complaint.
4. The postmortem report, inquest report, and findings of the magisterial enquiry must be reported within 3 months.

#### **4.2 Supreme Court Guidelines**

- *Prakash Singh vs Union of India*<sup>30</sup>

1. The Supreme Court directed to set up a State Security Commission.
2. The SSC would lay down directions and policies for efficient working of prisoner security.
3. The state would have no authority to interfere in police investigation and the police shall work in autonomous manner.
4. The Indian Criminal Law requires judicial magistrate to conduct every custodial death inquiry.
5. Community policing and advanced training camps must be set up for better working of police force.
6. The idea is to depart from colonial policing measures and adapt to a more democratic approach towards police reforms.
7. The constitutional framework must be maintained while executives perform their functions.

#### **4.3 Law Commission's 273<sup>rd</sup> Report (2017)**

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<sup>29</sup> *Lalita Kumari vs Govt. of UP* (2014) 2 SCC 1

<sup>30</sup> *Prakash Singh vs Union of India*, (2006) 8 SCC 1

- Title of the report: Implementation of “United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment” through Legislation.
- Several recommendations made in respect of torture cases –
  1. The definition of ‘torture’ expanded to a large extent to include physical and mental injuries.
  2. The Commission advised the government to ratify UNCAT and provided a legal framework of anti-torture law to be considered for enactment.
  3. Need to amend existing legislations (CrPC and Evidence Act) to include compensation and burden of proof.
  4. Torturers be held accountable for violation and victims be provided adequate compensation.
  5. Prioritize protection of victims, witnesses, and complainants in custodial violence cases.

## **JUDICIAL RESPONSE: SUPREME COURT’S ATTEMPT TOWARDS POLICE REFORMS**

Due to lack of a particular legislation to prevent torture, many cases are registered against public servants under Section 330 and 331 of Indian Penal Code. Section 330 is the offence of “voluntarily causing hurt to extort confession, or to compel restoration of property.” Section 331 deals with “voluntarily causing grievous hurt” for the purpose of extracting information. The term of imprisonment in both the offences is seven years and ten years, respectively.

1. In *Francis Coralie Mullin v. Administrator, U.T. of Delhi*<sup>31</sup>, the Supreme Court observed “any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity.” The court further noted that a violation of Article 21 cannot be held valid by procedure prescribed by law. If a law authorises procedure which leads to such torture, the test of reasonableness and non-arbitrariness would fail.
2. In the landmark decision of *D.K Basu v. State of West Bengal*<sup>32</sup>, the Supreme Court held that “custodial violence including torture and death in lock ups strikes a blow at the rule of law.” The court deliberated on powers of executives to be limited by law. The Supreme Court provided some remedies to define protection in such cases and in

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<sup>31</sup> *Francis Coralie Mullin v. Administrator, U.T. of Delhi*, 1981 SCR (2) 516

<sup>32</sup> *D.K Basu v. State of West Bengal*, AIR 1997 SC 610

cases of disappearance after arrest, burden of proof shall be upon police.

3. In *Rama Murthy v. State of Karnataka*<sup>33</sup>, the Supreme Court recognized the need for prison reforms and related issues of inmates facing ill-treatment and torture.
4. In the case of *Sube Singh v. State of Haryana*<sup>34</sup>, Supreme Court stated various reasons for prevalence of third-degree torture during interrogation and suggested preventive measures for such unethical treatment.
5. In *Nandini Satpathy v. P.L Dani*<sup>35</sup>, the Court looked upon different methods of torture other than the traditional physical beatings. It was held that not only bodily harm, but “psychological torture”, “atmospheric pressure”, and “environmental coercion” used in interrogation by police are illegal.
6. The Supreme Court in *Mehmood Nayyar Azam v. State of Chhattisgarh*<sup>36</sup> dealt with atrocities against a social activist who was falsely accused in criminal cases. The police tortured him physically while in custody. The Court observed that functionaries of the state must not become lawbreakers as it would amount to contempt for law.
7. In *State of M.P. v. Shyamsunder Trivedi*<sup>37</sup> the court pointed out that in cases of custodial death or police torture, it is difficult to expect direct evidence of the complicity of the police. The Court called deaths in police custody as the “worst kind of crimes in civilised society, governed by rule of law.”

## **SUGGESTIONS AND CONCLUSION**

Fundamental re-evaluation of police reforms fixing police action and accountability is a need of the hour. The convention ensures safeguards to prevent torture and enhance training of law enforcement. India needs to understand that ratifying UNCAT will build inter as well as intra countries mutual confidence. Being the part of system, it will lead to better international support and restructured domestic reforms to combat much required anti-torture law. There is a need for specific law that determines torture and at the same time provide provisions to address and penalise the same. Therefore,

1. Need for comprehensive bill that includes the definitive structure for the term ‘torture’

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<sup>33</sup> *Rama Murthy v. State of Karnataka*, Criminal Appeal No. 443 Of 2010

<sup>34</sup> *Sube Singh v. State of Haryana*, 1988 AIR 2235

<sup>35</sup> *Nandini Satpathy v. P.L Dani*, 1978 AIR 1025

<sup>36</sup> *Mehmood Nayyar Azam v. State of Chhattisgarh*, CIVIL APPEAL No. 5703/2012

<sup>37</sup> *State of M.P. v. Shyamsunder Trivedi*, Appeal (crl.) 217 of 1993

and defines the punishments for the same. Also, compensation scheme must be provided.

2. It should not only be seen through legislative point of view but also through lens of Human Rights.
3. State Security Commission, as instructed by Supreme Court must be established with immediate effect.
4. Police officials indulged in fake encounters must be arrested, prosecuted and punished severally.

Before law and policy reforms, the attitude of India towards human rights needs restructuring. The time stresses to uphold the rights enriched in constitution, to protect and secure lives of citizens. In order to achieve good governance and holistic legal order, there is a dire need to stop barbarism by police and take up cognizance to tackle the issue of brutality. The ratification of UNCAT will therefore, reiterate India's international commitment towards law enforcement in protection of Human Rights.

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