

# **TORTURE IN LAWFUL CUSTODY IN INDIA: ANALYZING THE VIOLATION OF THE UN CONVENTION AGAINST TORTURE (UNCAT) AND THE PSYCHOLOGICAL CONSEQUENCES OF TORTURE**

*Santosh Kumar\**

## **Abstract**

Torture in lawful custody in India is a serious concern and constitutes a violation of the UN-Convention against Torture. Addressing this issue requires a multi-faceted approach involving legal, institutional, and societal measures to ensure the protection of human rights and the prevention of torture. Torture in police cells, prisons, or controlled by other government agencies is referred to as custodial torture. In the Indian constitution, Article 21, is a flagrant violation and a gross negation of human rights. Torture as well as other types of mistreatments of prisoners are worldwide issues. Mistreatment techniques are divided into two categories: psychological and physical. Physical techniques invariably result in psychological after-effects. Our review aims to investigate the Psycho-legal issues of investigating mistreatment in prison to suggest updated approaches and methodologies for handling such cases in a psychological context. It also provides an analysis of the literature on the psychological effects of torture and physical and sexual abuse suffered by prisoners, as well as the abuse they endured. Legislators, national organizations, and public health system initiatives in this area require a multidisciplinary approach as well as standardized and updated methodologies. This research is based on doctrinal research using peer-reviewed publications (reviews and articles), case studies, books, research reports, and institutional documents that can be accessed online through major electronic databases.

**Keywords:** Torture, Custody, UNCAT, Psychological Consequences, Mistreatment, Psycho-legal.

- I Introduction**
- II Torture in Lawful Custody in India**
- III Custodial Death and the Role of the Criminal Justice System**
- IV India's Compliance with UNCAT**
- V Psychological Consequences of Torture in Police Custody**
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- VII Challenges and Recommendations**

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\*PhD Scholar, Central University of South Bihar and Former Protection Associate UN

## I Introduction

Torture is a grave violation of human rights, and international law, including the UN (United Nations) Convention contrary to Torture and also Other Harsh, Inhuman or Humiliating Conduct or Punishment (UNCAT), which forbids the use of torture in all circumstances<sup>1</sup>. India is a signatory to the UNCAT and not ratified it in 1997<sup>2</sup>. However, allegations of torture and ill-treatment in lawful custody have been reported in India, voicing worries about abuses of human rights. The UNCAT describes torture as an act by which severe suffering or pain, whether bodily (physical) or psychological, is deliberately imposed on an individual for purposes such as punishment, obtaining information, intimidation, or compulsion. It also obliges states to take effective measures to avoid torture within their jurisdiction<sup>3</sup>.

Despite these international responsibilities, there have been documented cases and reports of torture or agony in Jail, police custody or prisons, and other imprisonment facilities in India. The methods of torture may include physical abuse, psychological torture, sexual violence, and other forms of degrading treatment<sup>4</sup>. The psychological consequences of torture can be severe and long-lasting. Victims may be hurt by PTSD (post-traumatic stress disorder), depression, anxiety, and other mental health issues<sup>5</sup>. The impact extends not only to the persons directly affected but, also to their relatives and communities. To address this issue, it is very important for India to sustain its responsibilities under international law and take effective measures to prevent torture. This includes investigating and prosecuting those responsible for torture, ensuring accountability, and providing remedies and support aimed at victims.

Civil society organizations (CSOs), human rights defenders, and global bodies play a vital role in advocating and monitoring against torture. They can contribute to raising awareness, documenting cases, and pressuring authorities to take action to eliminate torture and uphold human rights values. Efforts to battle torture also require restructurings in the justice

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<sup>1</sup> Lene Wendland, *A Handbook on State Obligations Under UN-CAT* 13-18 (Apt, Geneva, 1st edn., 2002).

<sup>2</sup> Government of India, "Issues Related to Rohingya Muslims on UNCAT" 1-2 (Government of India Ministry of Home Affairs, 2021)

<sup>3</sup> Lene Wendland, *A Handbook on State Obligations Under UN-CAT* 13-18 (Apt, Geneva, 1st edn., 2002).

<sup>4</sup> N Krishna Kumar, *Human Rights Violations - in the Police-Custody* 35-82 (SBS Publishers and Distributors Pvt Ltd, 1st edn., 2009).

<sup>5</sup> Joshua N Aston, *Torture Behind Bars Role of the Police Force in India* 10-47 (Oxford University Press, 1st edn., 2020).

system(Especially in criminal matters), improvements in detention conditions, training for prison personnel and law enforcement, and the establishment of effective oversight mechanisms. Public awareness campaigns on human rights and the consequences of torture can further contribute to a culture that rejects and condemns such practices<sup>6</sup>.

## II Torture in Lawful Custody in India

Torture by police in India is a grave human rights issue that has been widely documented and criticized by various human rights organizations and advocates. Instances of police torture often involve the use of physical and psychological methods to extract confessions, intimidate individuals, or exert control<sup>7</sup>. This matter/thing is a violation of both domestic and international laws, including the UNCAT, to which India is a signatory. Police brutality and torture are prevalent in India, and the sum of protective/custodial deaths resulting from extreme forms of torture has risen sharply from 100 in 2020-21 to 175 in 2021-22<sup>8</sup>. India has not yet been able to make any concrete law on torture, but India has signed the UN- (United Nations) Convention Against Degrading or Inhuman Treatment and Other Cruel, Punishment<sup>9</sup>. The practice of torture is clearly banned in India, but it occurs all the time in police stations, and there is even a common euphemism for it: third-degree interrogation. The NCAT (National Campaign Against Torture) found that Sixty percent (60%) of persons who died in the custody of police in 2019 were from marginalized and poor communities<sup>10</sup>. Indian courts have been required to advance the situation by giving teeth to state and national human rights, including police torture, but police find another way to avoid facing justice<sup>11</sup>.

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Joshua N Aston, *Torture Behind Bars Role of the Police Force in India* 10-47 (Oxford University Press, 1st edn., 2020).

<sup>7</sup> Jasir Aftab & Nausheen Khan, *Custodial Torture and Deaths: The Dark Side Of Indian Police*, Livelaw (Jan. 07, 2022)

<sup>8</sup> Maja Daruwala and Valay Singh, "When Police Brutality Becomes Normalised", *Hindustan Times*, Oct. 21, 2023, available at: <https://www.hindustantimes.com/india-news/when-police-brutality-becomes-normalised-101697831398746.html> (last visited on Jan. 2, 2024).

<sup>9</sup>Shonottra Kumar, "Torture in Police Custody: What are Your Rights?", *Nyaaya*, Feb. 14, 2022, available at: <https://nyaaya.org/guest-blog/torture-in-police-custody-what-are-your-rights/> (last visited on Jan. 2, 2024).

Shonottra Kumar, "Torture in Police Custody: What are Your Rights?", *Nyaaya*, Feb. 14, 2022, available at: <https://nyaaya.org/guest-blog/torture-in-police-custody-what-are-your-rights/> (last visited on Jan. 2, 2024).

<sup>11</sup>*Ibid.*

Custodial torture refers to the inhuman treatment of individuals in custody by the police. India doesn't have a distinct law on torture, but India has signed the UN (United Nations) Convention Against Degrading or Inhuman Treatment and Punishment Other Cruel things. The Indian Evidence Act 1872 and the Police Act 1861 provide penalties for police personnel who inflict violence on a person in their custody. One obstacle to stopping torture in detention in India is the country's non-ratification of the UN-CAT, Degrading or Inhuman Treatment and Other Cruel Punishment, which India signed in 1997 but yet not ratify. The NCRB (National Crime Records Bureau) reported 591 deaths in the custody of police between 2010 and 2015, reflecting all reasons for death, including torture<sup>12</sup>. But because they exclude the many cases that go unreported, the numbers do not accurately depict the possibility of torture. Human rights organizations or defenders of human rights in India have provided evidence of widespread police torture, and the continued use of cruel and inhumane treatment of detainees is a result of inadequate funding and training for forensic science. Giving the arrested person the chance to contact their attorney is one way to ensure that torture is avoided when they are detained by the police authorities. Other measures include the police identifying themselves and wearing precise, obvious, and legible identification tags with their name and designation on them. Remedies available to a victim of torture and unlawful detention include compensation and departmental action against the officials who committed the torture.

Torture by police in India can have grave psychological consequences on the victims. Research and reports have highlighted the enduring mental health consequences of torture, including long-term psychological distress.<sup>13</sup> The use of torture has been linked to the perpetuation of a culture of violence within the police force, with factors such as institutional structures and historical processes contributing to the production of this culture<sup>14</sup>. The suffering of torture victims is not only limited to physical but also psychological, and the effects can last for months or years This underscores the urgent need to address and prevent police brutality and torture in India to mitigate the profound psychological harm inflicted on the victims.

### **Legal Framework in India:**

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<sup>12</sup>Human Rights Watch, "*Bound by Brotherhood*" India's Failure to End Killings in "Police-Custody" (Dec. 19, 2016).

<sup>13</sup>Rasmussen, Reeves, et.al., "*The Effects of Torture-Related Injuries on Long-Term Psychological Distress in a Punjabi Sikh Sample.*" American Psychological Association (APA) 5-7 (2007).

<sup>14</sup>Deana Heath, "Olonial Terror: Torture and State Violence in Colonial India" *Oxford Academic* 62-78 (2021).

This unit is a virtual-carte blanche for the police to misuse their power of arrest without a warrant due to the unclear phrases “concerned in any cognizable offence” and “reasonable suspicion.” In India, there is no specific standalone law that explicitly criminalizes torture. However, the Indian legal system recognizes protection from torture and degrading or inhuman treatment as a human/fundamental right under the COI, and certain statutes address aspects of torture in different contexts. Key components of the legal framework related to torture in India include:

***Constitutional Provisions:*** Article 21 states that “No one's life or personal freedom shall be taken away from them unless a legally mandated process is followed”. Protection from torture is a concrete Fundamental/Human Right preserved under art21 (Right to Life) of the COI<sup>15</sup>.

***Article 22:*** Provides "Defense against apprehension and arrest in specific situations." Under Article 22(1) of the COI<sup>16</sup>, the right to advice/assistance is also considered a fundamental/human right. The arresting authority is required to follow the guidelines in Article 22 regarding the arrest. When someone is about to be taken into custody, she should be informed of the purpose for the arrest and given the opportunity to consult with any lawyer of her choosing. Everybody who has been arrested /detained must appear before the magistrate within twenty-four hours.

***Provisions under the Criminal Procedure Code (CrPC)***<sup>17</sup>: The 2009 amendment to Section 41 of the CrPC<sup>18</sup> added protections to defense that detentions and arrests for interrogating have legal justification and documented procedures, that arrests are transparent to the public, and friends, family, and that individuals are protected by legal counsel.

***Provisions under the Indian Evidence Act 1872***<sup>19</sup> - No confession given to a police officer, according to section 25, can be used against someone who is suspected of committing a crime.<sup>20</sup> Section 26 provides “No confession made by any person whilst he is in the custody of a

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<sup>16</sup>*Ibid.*

<sup>17</sup>The CRPC, 1973 (Act 2 of 1974).

<sup>18</sup>The CRPC, 1973 (Act 2 of 1974), s. 41.

<sup>19</sup>The Indian Evidence Act, 1872 (Act 1 of 1872).

<sup>20</sup>The Indian Evidence Act, 1872 (Act 1 of 1872), s. 25.

police officer/authority unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.”<sup>21</sup>

***The Bhartiya Nagarik Suraksha Sanhita, 2023***<sup>22</sup>:The new criminal laws place a strong emphasis on the police receiving more authority from the civil administration, which is run by the Indian Administrative Service. Currently, special executive magistrates can be appointed to police officers in addition to IAS members. The need for a magistrate's approval to attach property has been eliminated. Without a magistrate's warrant, the police have the authority to make arrests. The decision to handcuff an arrested individual rests with the police officer. An individual/Person can now be detained/ inside in police protection/custody for up to 90 days at time, instead of just 15 days. It would be great if the provision allowing an officer to conduct a preliminary inquiry prior to filing a first information report (FIR) could be implemented, as filing FIRs is currently a common practice of harassment. But it can be abused to stop a powerful person from being the target of a false police report that a helpless person files. Police arbitrariness is now considerably more likely due to the shift of authority towards the police.

***Mathura Case of 1972***:In the Mathura rape case, two police officers are accused of sexually abusing Mathura, a young tribal girl, on the grounds of Desai Ganj Police Station basically it is situated in the district of Maharashtra on March 26, 1972<sup>23</sup>, while she was in custody. Indian lawmakers changed the nation's rape laws because of this case. The criminal laws pertaining to rape were expanded in 1983 to include a new category. According to the law, a court must assume a woman is telling the truth/fact when she says she did not give consent to sexual activity. Mathura's case also resulted in the prohibition on identifying victims by their real names and the conduct of in camera rape trials as closed proceedings. The amendment did additional than just define custodial rape; it also moved the burden of proof from the accuser to the accused. It further specified that women could not be summoned to the police station prior to sunrise or after sunset.

In “*Sheela Barse v. State of Maharashtra*”<sup>24</sup>,<sup>37</sup> the Indian Court(SC) issued a number of directives to stop custodial torture/violence against women and the arrest of those responsible,

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<sup>21</sup>The Indian Evidence Act, 1872 (Act 1 of 1872), s. 26.

<sup>22</sup>The BNSS, 2023 (Act 46 of 2023).

<sup>23</sup>*Tuka Ram v. State of Maharashtra*, 1979 SCR (1) 810.

<sup>24</sup>“*Sheela-Barse*” vs. *State of Maharashtra*, 1983 SCR (2) 337.

including the establishment of separate women's jails that are supervised by female constables and interrogations conducted in their presence.

In “*D.K. Basu v. State of West Bengal*”<sup>25</sup>, the court also gave many principles surrounding the arrest and the rights related to human rights of the arrested, such as the requirement that the arrestee’s questioning is documented in a register and that the person arrested be notified of his rights, including the ability to select the counsel of his choice and get free legal aid. According to the *135th Report of the Law Commission*<sup>26</sup>, which was cited by the Supreme Court in “*Munshi Singh Gautam v. State of Madhya Pradesh*,”<sup>27</sup> the IEA of 1872<sup>28</sup> should be amended by adding section 114-B, which would establish a rebuttable presumption that injuries/wounds sustained by an individual in custody of Police may be regarded to have been imposed by the police authority/officer.

***Prevention of Torture Bill, 2010:*** India cannot ratify the UNCAT Convention without passing a law. In order to convey this convention in accordance with Article 253 of the COI, the Minister of Home Affairs, Shri P. Chidambaram, introduced the Torture Bill related to Prevention, 2010 in the Lower House on April 26, 2010. The Bill, of 2010, aims to establish penalties for torture carried out by government agents. The definition of torture in the bill is "grievous hurt" or "risk to life, limb, or health." Torture complaints must be filed within 6(six) months of the alleged act. Before a court may consider a complaint, the competent authorities must approve it.

***Prevention of Torture Bill, 2017:*** Several changes were suggested by the Law Commission to bring the UNCAT into force. The Commission also developed legislation for the Government to present in parliament. It has been since October 2017 when the Government received the draft Legislation and the recommendations of the law panel.<sup>32</sup> The Law Commission suggested both a new type of law and revisions to the CRPC, 1973, and the IEA of 1872.

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<sup>25</sup>“*D.K. Basu vs. “State of West Bengal”*”, CRL.M.P. NO.16086 OF 1997.

<sup>26</sup>Law Commission of India, “135th Report on Women in Custody” (December, 1989).

<sup>27</sup>AIR 2005 SC 402.

<sup>28</sup>*Supra* note 17.

### III Custodial Death and the Role of the Criminal Justice System

“Custodial death” refers to the demise of an individual while in the protection or custody of law enforcement authorities<sup>29</sup>. This grim reality often involves allegations of torture, excessive use of force, or negligence. Such incidents highlight a dark aspect of the Indian justice system, challenging the principles of fairness, justice, and the right to life enshrined in the COI.

Custodial deaths due to torture in India have been a longstanding concern. The NCAT (National Campaign Against Torture) reported that around 5 people died in custody each day in 2019, with a total of 1,606 deaths in judicial custody and 125 deaths in police custody that year<sup>30</sup>. AFSP Agrants the Indian military sweeping powers in regions like Kashmir, where the army has been accused of custodial killings and torture. Despite legal protections and international conventions against torture, such as the UNCAT, which India has given assent to or signed but not yet ratified, custodial deaths and torture remain significant issues in the country<sup>31</sup>. The high number of custodial deaths and the lack of convictions point to a systemic problem that wants to be discussed/ addressed through legal, institutional, and societal changes. Custodial deaths in India denote to the deaths of persons in custody of the Police and judicial custody. The figure of custodial demises or deaths has been decreasing over the years, but there has been a recent increase in some cases<sup>32</sup>. According to data provided in the Rajya Sabha, the actual number of custodial demises or deaths in India declined from 146 in 2017-18 to 136 in 2018-19, then to 112 in 2019-20, and further to 100 in 2020-21. However, in 2021-22, the actual number of custodial demises or deaths increased to 175<sup>33</sup>. In the financial-year 2021-22, the NHRC (National Human Rights Commission) of India reported 2152 deaths in judicial custody. A report released by the NCAT (National Campaign Against Torture) in 2019 reported 1606 deaths in judicial custody and one hundred twenty-five (125) deaths in custody of police. Gujarat has recorded the highest number of custodial deaths for three consecutive years<sup>34</sup>. According to NCRB (National Crime

<sup>29</sup> National Human Rights Commission, “Death of Sh. Kantosh Prahlad Jadhav, in Police Custody by Torture: Latur, Maharashtra” 2-3 (2004).

<sup>30</sup> Murali Krishnan, “Custodial Deaths in India: A Toxic Play of Power”, *Deutsche Welle (DW)*, Nov. 19, 2021, available at: <https://www.dw.com/en/custodial-deaths-in-india-a-toxic-play-of-power-and-class/a-59873741> (last visited on Jan. 2, 2024).

<sup>31</sup> Amnesty International, “India: Briefing on the Armed Forces (Special Powers) Act, 1958” 4-33 (2005).

<sup>32</sup> *Ibid.*

<sup>33</sup> Editorial, “Deaths in Police Custody Rose Sharply Over Last Three Years, Rajya Sabha Told”, *The Wire*, Feb. 10, 2023, available at: <https://thewire.in/rights/india-custodial-deaths-data-rajya-sabha-2023> (last visited on Jan. 2, 2024).

<sup>34</sup> *Ibid.*



Records Bureau) data, the majority of sixty-nine percent (69%) of the 1,004 deaths in custody of police over the past ten years (2010-19) have been related to either illness or natural causes (40%) or claimed suicide (29%)<sup>35</sup>. The NCRB's yearly Crime in India reports, the primary central government database, do not include information on whether hospitalizations are related to conditions or circumstances in detention, whether illnesses are sudden or persistent, or whether assaults occur while custody. Over the previous ten years, more suicide fatalities while in police custody have been documented; between 2015 and 2019, 36% of these deaths were classified as suicides<sup>36</sup>. However, a review of media stories indicates that in several cases, families have claimed foul play or that suicides were caused by mistreatment while in custody. Only since 2014 has their physical violence, and even then, only in 6% of incidents. According to the statistics for 2019, violence by police accounted for only 2.4% of the 85 deaths that occurred while the people were in police custody<sup>37</sup>. As we mentioned earlier, the category "death due to illness" does not indicate if the sickness was sudden or chronic. No information is available regarding the reasons why a person was hospitalized, including whether it was because of circumstances in custody, police violence, or another inmate's attack. According to retired IPS officer Kamal Kumar, information regarding whether the disease existed before to arrest or not should be documented and thereafter reported by the NCRB in every case of death related to sickness.

When thinking about NCRB data, it's crucial to remember its source. India's police stations provide the NCRB with their statistics. The police may file a First Information Report, or FIR, after receiving a complaint from a complainant who approaches the station. To create these statistics, all police station FIRs nationwide are gathered at the state level and then combined at the national level. However, the procedures and methods used by the NCRB are opaque. Data journalist Rukmini S. observes in her book *Whole Numbers and Half-Truths* that India's officially recorded crime rates are lower than the global average, evocatively lower than

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<sup>35</sup> Editorial, "Suicide or Prolonged Illness, Death in Police Custody is India's Shame", *Business Standard*, Nov. 23, 2020, available at: [https://www.business-standard.com/article/politics/suicide-or-prolonged-illness-death-in-police-custody-is-india-s-shame-120112200651\\_1.html](https://www.business-standard.com/article/politics/suicide-or-prolonged-illness-death-in-police-custody-is-india-s-shame-120112200651_1.html) (last visited on Jan. 2, 2024).

<sup>36</sup> *Ibid.*

<sup>37</sup> Raja Bagga, "Existing Data on Custodial Deaths in India Fails to Give a Full Picture", *Scroll*, Nov. 26, 2020, available at: <https://scroll.in/article/978919/existing-data-on-custodial-deaths-in-india-fails-to-give-a-full-picture> (last visited on Jan. 2, 2024).

advanced countries, and even low by middle-class standards. The country's crime statistics start from a point of significant underreporting.

### **Role of Criminal Justice System in Torture**

The government's method for upholding law and order, managing social control, and dispensing justice is known as the criminal justice system. As a comrade of the State in preserving law and order, it has evolved into an essential requirement in every society. India's current legal and judicial system has its roots primarily in the two centuries of British rule over the Indian Subcontinent, though some aspects date back to Muslim and Hindu governance during the pre-British era.<sup>38</sup>

India's criminal justice system is fundamentally adversarial. This implies that the entire procedure is a competition between two parties<sup>39</sup>. In terms of criminal activity, these two entities are the state and the individual who is being held accountable for the offense. The court acts impartially throughout the procedure. The court has no discernible influence on how a case is prepared. The trial itself is a hearing to determine, under a complicated set of rules, whether the accused is proven guilty of the specific offenses the prosecution has charged him with, rather than an investigation into events or allegations<sup>40</sup>. Unless the prosecution can demonstrate a person's guilt beyond a reasonable doubt, they are supposed innocent until proven guilty.

The goal of criminal justice is to punish wrongdoers who can be proven guilty. Unless otherwise excluded or expressly provided for, all criminal proceedings in India are governed by the Criminal Rules and Orders and the CrPC, 1974<sup>41</sup>. The justice system basically in criminal matters is administered by four agencies: the police, the prosecution, the courts, the jail, and the probation authority.

**Phases of Criminal Cases** Four periods can be distinguished from the stages: Stage (1) Pre-Proceeding stage: This is the first phase of inquiry, investigation, and criminal case preparation. Stage (2) Moving forward (Court), Stage (3): Trial (Court), Stage (4) The post-trial phase (authorities from the police, jail, or probation department, etc.).

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<sup>38</sup> Sumeet Malik, *V D Kulshreshtha's Landmarks in Indian Legal and Constitutional History* 35-78 (EBC, 12th edn., 2022).

<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid*.

<sup>41</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974).

In Indian criminal law, there are 2 categories of offenses. Both cognizable and non-cognizable exist in them. According to Section 2(c) of the CRPC, 1974, a police authority or officer may make detain or arrest without a warrant for certain crimes, which include rape, rioting, murder, robbery, theft, and assault<sup>42</sup>.

CRPC 1974, Section 41 Because of the vague terms "concerned in any cognizable of fence" and "reasonable suspicion," this section gives the police virtually unlimited latitude to abuse their power of arrest without a warrant<sup>43</sup>. A First Information Report (FIR), filed by the victim, family members, or a witness, is the first step in any criminal prosecution in India. A formal complaint, either verbal or written, is filed with the investigating officer and is recorded in the police files in accordance with CrPC Section 154<sup>44</sup>. A number of human rights advocates and attorneys have expressed concern that filing a false police report (FIR) on someone can be a means for them to retaliate against their adversaries or to continue neighborly disputes. False, vindictive reporting is especially common in cases involving the throwing of acid and other cases covered by laws safeguarding women and children. The FIR's structure and the improper police practices that go along with it give citizens the ability to influence the legal system and draw it into personal disputes.

According to Article 22 of the COI, once the police file a report and an arrest is made, the person being held in custody must appear before the closest magistrate within 24 hours of the arrest, not counting the time required for transportation from the arrest site to the magistrate's court. If the person is held in custody for longer than that, a magistrate must grant permission to the holding authority. Within 24 hours of being imprisoned, the defendant must appear before a magistrate in accordance with Section 57 of the CrPC<sup>45</sup> to determine whether more detention is required. However, magistrates may remand the case under Section 167 of the CrPC<sup>46</sup> for a maximum of 15 days upon the officer's request. To request additional time spent in custody, police must display that they have reasonable suspicions that the information or charge that led to the arrest is accurate. The remand period is crucial because it allows for serious violations of human rights. In detention, extrajudicial executions, mistreatment, and torture are frequent

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<sup>42</sup>The CRPC, 1973 (Act 2 of 1974), s. 2(c).

<sup>43</sup>The CRPC, 1973 (Act 2 of 1974), s. 41.

<sup>44</sup>The CRPC, 1973 (Act 2 of 1974), s. 154.

<sup>45</sup>The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 57.

<sup>46</sup>The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 167.

occurrences. Police primarily use torture and abuse in an attempt to get bail money from the accused/suspects though they are being held in custody.

#### IV India's Compliance with UNCAT

India had not ratified the UNCAT and Other Cruel, Degrading, or Inhuman Treatment or Punishment<sup>47</sup>. Ratifying UNCAT involves a commitment by a state to stop and prohibit torture, conduct thorough investigations into accusations of torture, and prosecute those responsible. It also includes cooperation with the UNCAT, which monitors the application of the convention.

In the absence of ratification, India is not directly bound by these obligations under UNCAT. However, India is a party to various international human/fundamental rights agreements and conventions that include prohibitions against torture and ill-treatment, such as the ICCPR and the Convention Against Torture and Other Degrading Inhuman Treatment or Punishment<sup>48</sup>.

When assessing reported occurrences of torture in India, it is crucial to consider both domestic and international perspectives. Human rights organizations and protestors have raised worries about accusations of torture by law enforcement agencies in India. Such allegations include instances of custodial violence, extrajudicial killings, and other forms of ill-treatment<sup>49</sup>.

Analyzing these reported incidents in the context of UNCAT, the following aspects are relevant:

- I. *Prohibition of Torture*: Regardless of ratification, the prohibition of torture is a fundamental principle of IHR law. Acts constituting torture, if proven, would be contrary to these principles.
- II. *Investigation and Prosecution*: Even without ratification, international human rights norms expect states to investigate and prosecute cases of torture. Failure to do so may be a violation of broader human rights obligations<sup>50</sup>.

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<sup>47</sup> *Supra*, note 40.

<sup>48</sup> *Ibid.*

<sup>49</sup> BT Kaur, "India's Silent Over on Torture Has Make them 'Public Secret' 53(36) *E&P Weekly EPW* 01, 14 (2018).

<sup>50</sup> *Ibid.*

III. *International Scrutiny*: While not bound by UNCAT, India is subject to international scrutiny and criticism or disapproval for its human rights practices. Reports of torture can lead to reputational damage and diplomatic pressure.

It's very crucial to note that the absence of ratification does not absolve any state from the responsibility to prevent and address torture. However, ratifying UNCAT would signify a stronger commitment to international standards specifically tailored to combatting torture and would provide a more structured framework for monitoring and enforcement.

### **If India were to ratify UNCAT, it would have numerous implications for the country**

Ratifying UNCAT would legally bind India to adhere to the provisions outlined in the convention. This includes the prohibition of torture, the obligation to investigate and prosecute instances of torture, and the commitment to prevent torture within its jurisdiction<sup>51</sup>. Ratification might necessitate changes to domestic legislation to align it with the principles of UNCAT. Countries often enact new laws or amend existing ones to meet their IHR obligations. Ratification would imply a commitment to greater transparency and accountability in dealing with allegations of torture. India would be required to submit periodic reports to the UN Committee Against Torture, detailing the steps taken to implement UNCAT provisions<sup>52</sup>.

Ratification involves cooperating with the UN Committee which is specially dealing with torture-related issues, which reviews states' reports and issues recommendations. India would be subject to this international scrutiny, and the committee could provide guidance on improving anti-torture measures. Ratifying UNCAT would also impact India's extradition and asylum cases<sup>53</sup>. The convention prohibits the return or extradition of individuals to states where there are extensive grounds for believing they would be subjected to torture. Ratification reflects a commitment to international human rights standards, enhancing India's standing in the global community. It signals a willingness to engage in the fight against inhuman behavior or torture and collaborate with the intercontinental community on human rights issues. While ratification alone doesn't guarantee the elimination of torture, it provides a framework for addressing and

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<sup>51</sup> Qadeer Alam, "An Overview of Inhuman Punishments and Torture in Indian Subcontinent History 31(2)" *Journal of the PU Historical Society JPUHS* 127-128 (2018).

<sup>52</sup> *Ibid.*

<sup>53</sup> Joshua N Aston, *Torture Behind Bars Role of the Police Force in India* 10-47 (Oxford University Press, 1st edn., 2020).

preventing such incidents. The legal obligations and international scrutiny may act as deterrents and contribute to a culture of accountability.

Function of national and international monitoring systems:

1. “National Human Rights Institutions (NHRIs) and Human Rights Commissions”:

- Role: NHRIs and “Human Rights Commissions” operate at the state level and are tasked with promoting and monitoring human rights within a country. They show a vibrant role in overseeing government actions, investigating complaints, and promoting accountability<sup>54</sup>.
- Functions:
  - Receiving and investigating complaints of human rights relating to abuses, including torture.
  - Conducting independent inquiries and investigations into alleged violations.
  - Advising the government on human rights compliance.
  - Promoting public awareness and education on human rights issues.

2. Non-Governmental Organizations (NGOs):

- Role: NGOs often act as independent watchdogs, promoting awareness of human rights and holding administrations accountable for their activities. They play a crucial role in bringing attention to cases of torture, providing care to needy victims, and pushing for policy changes<sup>55</sup>.
- Functions:
  - Documenting and reporting on cases of torture and ill-treatment.
  - Encouraging for the rights of victims and pressing for accountability.
  - Conducting research and raising responsiveness on torture issues.

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<sup>54</sup> NHRC, “Custodial Violence and Custodial Deaths” Chap.3(d) (2005).

<sup>55</sup> *Ibid.*

- Offering legal assistance and support to victims.

### 3. International Monitoring Bodies:

- Role: International bodies, such as the UNCAT committee, play a role in monitoring state compliance with international treaties like UNCAT. They are involved in a dialogue with states, review reports, and issue recommendations<sup>56</sup>.
- Functions:
  - Reviewing state reports and providing feedback.
  - Conducting country visits and inspections.
  - Responding to individual complaints and conducting inquiries.
  - Issuing recommendations and observations.

### 4. Special Rapporteur on Torture:

- Role: The UN-Special Rapporteur on Torture is an independent expert appointed by the UN-Human Rights Council. This role focuses on investigating and reporting on torture globally.
- Functions:
  - Conducting fact-finding missions and country visits.
  - Receiving and acting on information related to torture.
  - Engaging with states to resolve the basic concerns and promote compliance.
  - Providing thematic reports to the UN Human Rights Council.

### 5. Treaty Bodies:

- Role: Treaty bodies, such as the Committee Against Torture, oversee the application of specific human rights treaties. State agencies are required to submit periodic reports, and the committees review and issue recommendations.

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<sup>56</sup>*Ibid.*

- Functions:
  - Assessing state reports and engaging in a dialogue with states.
  - Issuing concluding observations and recommendations.
  - Considering individual complaints and inquiries.

#### 6. International Courts and Tribunals:

- Role: International courts, such as the ICC and regional human rights courts, may have jurisdiction over cases of torture and can hold entities accountable for such crimes.
- Functions:
  - Adjudicating cases involving torture and related human rights violations.
  - Prosecuting individuals responsible for torture as a crime against humanity.

In summary, the combined efforts of domestic and international monitoring mechanisms, along with the advocacy of NGOs, contribute to holding states accountable for torture. These mechanisms serve to expose abuses, provide support to victims, promote legal reforms, and create a framework for prevention and accountability on a global scale. The effectiveness of these mechanisms often depends on collaboration and sustained efforts from multiple stakeholders.

Monitoring mechanisms, both domestic and international, play a critical and viable role in holding states accountable for torture and other issues that lead to human rights violations. These mechanisms involve a range of actors, including governmental bodies, non-governmental organizations (NGOs), human rights commissions, and international entities. Here's an exploration of their roles:

#### **Impact of India's monitoring mechanism after UNCAT rectification:**



The monitoring mechanism for the UNCAT involves several components to ensure compliance by the state parties<sup>57</sup>. The primary monitoring body is the UN Committee which is dealing to Torture, and the process includes the following key elements:

State parties to UNCAT are required to submit regular reports to the UN Committee Against Torture. These reports provide info on the measures taken to implement the provisions of UNCAT within their jurisdictions. The initial report is usually due within one year of ratification, followed by periodic reports at intervals determined by the committee. The Committee Against Torture is composed of independent experts who review the reports submitted by state parties. The committee considers the application of UNCAT provisions and may issue recommendations and observations based on the information provided. The committee engages in a constructive dialogue with the state party during its sessions to seek clarification, additional information, and responses to specific concerns or questions raised in the reports. This dialogue allows for an interactive assessment of the state's compliance with UNCAT.

Following the review, the Committee Against Torture issues concluding observations. These observations acknowledge positive steps taken by the state party, identify areas of concern, and provide references for improvement. States are encouraged to take these references into account in their future actions. States are expected to provide follow-up reports to the committee on the steps taken to address the concerns and implement the recommendations outlined in the concluding observations. The Committee which is related to Torture can also consider individual complaints (communications) and undertake inquiries into systematic patterns of torture in specific countries. While the convention itself does not establish an individual complaints mechanism, some states make declarations under art, 22 of UNCAT, allowing individuals to file complaints.

The UN Special-Rapporteur on Torture, an independent expert appointed by the UNHRC, also plays a role in monitoring torture globally. The Special Rapporteur can conduct country visits, receive information on alleged cases of torture, and communicate with states to address concerns. The Committee Against Torture may offer technical assistance to states to enhance their capacity to prevent and address torture. Cooperation between the state party and the

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<sup>57</sup> MHA, “*Prevention of Torture Bill*”, 2014 (Jab2, 2024), available at: <https://pib.gov.in/PressReleaseI-framePage.aspx?PRID=1513316>.

committee is crucial for the effective implementation of UNCAT. The monitoring mechanism established by UNCAT aims to create a framework for ongoing evaluation, dialogue, and collaboration between states and related international groups/communities to prevent and eradicate torture. It emphasizes a cooperative approach while holding parties accountable for their promises or commitments under the convention.

## V      **Psychological Consequences of Torture in Police Custody**

Torture in police custody can have severe and lasting psychological consequences on the victims. The psychological impact is often profound, affecting not only the individuals who directly experience torture but also their communities and families. Torture in police custody can have very serious psychological consequences on the victims in India. According to the Journal of Psychopathology and Clinical Sciences, Indian security police or forces and Punjabi police have tortured, disappeared, affected, and illegally incinerated more than 10,000 Punjabi Sikhs, which has resulted in long-term serious psychological distress among the survivors<sup>58</sup>. According to J. Wesley, torture is common in Indian prisons, and mental health illnesses are predominant among prisoners<sup>59</sup>. Survivors of torture and systematized violence in India have shown substantial improvements in social participation, emotional well-being, social participation, and self-perceived anger and pain through testimonial therapy, as per National Library for Medicine (U.S Government)<sup>60</sup>.

Victims of torture often experience symptoms of PTSD, which may include invasive thoughts, flashbacks, nightmares, and heightened anxiety. The traumatic memories of torture can persist long after the event, interfering with a person's aptitude to function in daily life<sup>61</sup>. Torture can lead to feelings of hopelessness, despair, and suicidal thoughts, increasing the risk of

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<sup>59</sup>J. Wesley Boyd M.D., Ph.D., "Mental Health Woes and Torture in Indian Prisons" *Psychology Today* 1-3 (2021).

<sup>60</sup>Inger Agger, Mia Myhre Jørgensen, Jens Modvig, *et.al.*, "Testimonial Therapy: Impact on Social Participation and Emotional Wellbeing Among Indian Survivors of Torture and Organized Violence" *NLM* 1-3 (2015).

<sup>61</sup>Giuseppe Davide Albano, Daniela Guadagnino, *et.al.*, "Torture and Maltreatment in Prison: A Medico-Legal Perspective" *NLOM* 1-10 (2023).

depression<sup>62</sup>. Victims of psychological torture may present symptoms associated with anxiety disorders, such as difficulty concentrating, insomnia, hypervigilance, irritability, and exaggerated startled responses<sup>63</sup>. The effects of torture can also extend to the victim's family and friends, who may experience secondary trauma and a range of emotional responses, such as fear, guilt, grief and Torture can lead to isolation, stigma, and a loss of trust in others, making it difficult for victims to reintegrate into society<sup>64</sup>.

### **Composite examples of the kinds of testimonies given by persons who have experienced torture in lawful custody in India:**

#### **1. Survivor of Torture in Detention:**

Name: \*\*\*\*\* (67-year-old Man)

"During my time in custody, I endured both physical and psychological torture. The isolation cell became my entire world, and the interrogations were relentless. They aimed to break my spirit. I felt like a mere shell of myself, detached from reality. The humiliation and degradation I experienced left scars that are not visible to the eye. Trusting others has become nearly impossible, and I carry the weight of the trauma with me every day. It's like a shadow that never fades, affecting my relationships, my ability to work, and my overall well-being<sup>65</sup>."

#### **2. Case of Arbitrary Detention and Torture:**

Name: \*\*\*\*\* Khan

"I was held in custody without any charges, and the days seemed endless. The constant uncertainty and fear of what might happen next were unbearable. The isolation and lack of information exacerbated my anxiety. When the interrogations began, the physical pain was excruciating, but it was the psychological torment that lingered. The constant threat of harm and the feeling of helplessness stripped away my sense of self. Even after my

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<sup>62</sup>"Torture and its Perspective" *Amnesty International* (2015).

<sup>63</sup>Hernán Reyes, "The Worst Scars are in the Mind: Psychological Torture" *International Review on Red Cross* 1-27 (2007).

<sup>64</sup>Nils Melzer and Steven J. Barela, "The Méndez Principles: Beware Crossing the Line to Psychological Torture" *By Just Security* (2021)

<sup>65</sup>OMCT, "India: The Family of a Torture Victim is Punished and Silenced Under Security Laws", *OMCT*, Nov. 15, 2023, available at: <https://www.omct.org/en/resources/statements/india-the-family-of-a-torture-victim-is-punished-and-silenced-under-security-laws> (last visited on Jan. 2, 2024).

release, the nightmares and intrusive thoughts persisted, making it challenging to reintegrate into society<sup>66</sup>."

These testimonies reflect the deeply personal and lasting impact of torture on individuals who have experienced it in lawful custody. The psychological toll includes not only the immediate trauma endured during the period of detention but also the ongoing challenges in rebuilding one's life and mental well-being after release. It is crucial to recognize the resilience of survivors and advocate for the protection IHR to prevent such abuses in the first place.

## **Rehabilitation and Support**

Rehabilitation and psychological support services play a very important and crucial role in mitigating the psychological consequences of torture. These services are designed to help survivors cope with trauma, rebuild their lives, and address the complex interplay of mental and physical health challenges. In India, various organizations and programs have been established to provide support to torture survivors, although challenges persist.

### *Role of Rehabilitation and Psychological Support Services:*

Rehabilitation programs often offer trauma-informed counseling, which is crucial for helping survivors process their experiences, manage symptoms of trauma, and regain a sense of control over their lives. Many survivors of torture require medical care for physical injuries. Rehabilitation programs address both physical and mental health needs, providing necessary medical interventions, pain management, and rehabilitation services. Rehabilitation programs may offer legal support to survivors, assisting them in seeking justice and holding perpetrators accountable. Legal advocacy can be empowering for survivors and contribute to their psychological healing.

Support groups and community-based initiatives foster social support and help survivors reintegrate into society. Building a supportive community can mitigate feelings of isolation and promote a sense of belonging. Rehabilitation programs often include skill development and vocational training to empower survivors economically. Enhancing employment opportunities

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<sup>66</sup>Gaurav Vivek Bhatnagar, "Testimonies of Torture Victims Lay Bare India's Claim of It 'Being Alien to Our Culture'", *The Wire*, Oct. 19, 2018, *available at*: <https://thewire.in/rights/testimonies-of-torture-victims-lay-bare-indias-claim-of-it-being-alien-to-our-culture> (last visited on Jan. 2, 2024)

can play a crucial role in a sense of purpose and stability. Effective programs take into account cultural and contextual factors, safeguarding that interferences are culturally sensitive and relevant to the exclusive needs of survivors.

*Challenges and Effectiveness in India:*

a) Limited Awareness and Access:

- Many torture survivors in India may not be aware of available rehabilitation services, and access may be limited due to geographic, economic, or social barriers. Increasing awareness and improving accessibility are ongoing challenges.

b) Stigmatization and Discrimination:

- Stigmatization of torture survivors remains a challenge, hindering their willingness to seek help. Discrimination can be a barrier to successful rehabilitation and community integration.

c) Insufficient Resources:

- Rehabilitation programs in India may face supply constraints, restraining their ability to provide comprehensive and sustained support. Adequate funding is vital for the efficiency and sustainability of these programs.

d) Coordination and Collaboration:

- Coordinated efforts among numerous stakeholders, also government agencies, NGOs, and mental health professionals, are essential. Ensuring collaboration and a comprehensive approach can enhance the impact of rehabilitation programs.

e) Legal Framework and Accountability:

- Strengthening the legal framework and ensuring accountability for perpetrators are critical components of effective rehabilitation. Without legal recourse and accountability, survivors may struggle to achieve closure.

While some organizations in India are making commendable efforts to provide rehabilitation and psychological support services, there is room for improvement. Advocacy for the rights of torture

survivors, increased awareness, and the allocation of adequate resources are crucial for enhancing the efficiency of rehabilitation programs in India. Additionally, a comprehensive approach that addresses the broader economic and social factors contributing to torture is essential for preventing further instances of torture and promoting the well-being of survivors.

## **VI International Perspectives and Comparisons**

India has enacted laws such as the Safeguard the Human Rights Act and the Criminal Procedure Code, criminalizing torture. However, these laws do not fully bring into line with international values, such as the UNCAT. NHRC serves as the oversight body, but concerns persist about its effectiveness, and custodial torture cases are still reported. While rehabilitation programs exist, there are challenges in terms of accessibility, awareness, and coordination among stakeholders. Independent investigations into custodial deaths or torture cases face issues of delays, lack of transparency, and concerns about impartiality.

### *(A) Norway's Practice<sup>67</sup>:*

Norway has ratified the UNCAT, incorporating its principles into domestic law. Torture is explicitly criminalized, and legal provisions align with international standards. Norway has established independent oversight bodies, such as the Parliamentary Ombudsman and the Norwegian National Preventive Mechanism, to safeguard accountability and transparency in places of detention. Norway's rehabilitation model is comprehensive, offering medical, psychological, and social support to torture survivors. The Norwegian Centre for Violence and Traumatic Stress Studies provides specialized care. Ongoing training modules or programs for law enforcement and legal professionals emphasize human rights standards, with a focus on preventing torture. Norway has a system that ensures independent and prompt investigations into allegations of torture. Legal immunities for perpetrators are removed, promoting accountability. As a signatory to UNCAT, Norway actively engages with international mechanisms, fostering cooperation and accountability on a global scale.

### *(B) United Kingdom Practice<sup>68</sup>:*

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<sup>67</sup>Ochr, "Submission from the Norwegian Ngo-Forum for Human Rights Regarding the Universal Periodic Review of Norway" (Apr. 20, 2009).

<sup>68</sup>Govt of Britain, "The Seventh Periodic Report Submitted by the United Kingdom of Great Britain Under Article 19 of UNCAT Pursuant to the Optional Reporting Procedure" (July 17, 2023).

The United Kingdom has a strong legal framework and established best practices to prevent torture and ill-treatment in lawful custody. These actions are in place to safeguard the protection of human values or rights and to comply with international standards. The HRA(Human Rights Act) 1998 integrates the European Convention on Human Rights into UK law. Article 3 of the Convention prohibits torture and degrading or inhuman treatment or punishment. PACE (Police and Criminal Evidence Act 1984) provides a framework for the detention and treatment of individuals in police custody. It includes safeguards such as the right to legal representation, access to medical treatment, and the right to be informed of one's rights. PACE is supported by various Codes of Practice that provide guidance to law enforcement agencies. Code C specifically relates to the detention of suspects and covers issues such as custody records, reviews of detention, and the treatment of detainees. Independent Custody Visitors (ICVs) are volunteers who visit police stations to check on the welfare of detainees and the conditions of custody. They play a crucial role in ensuring accountability and transparency.

Law implementation agencies take training on human rights, ethics, and the appropriate treatment of detainees. Independent oversight bodies, such as the IOPC(Independent Office for Police Conduct), are accountable for investigating issues or complaints and allegations of misconduct. The UK has established a National Preventive Mechanism, in line with its responsibilities under the OPCAT. The NPM is a network of organizations that monitor places of detention to prevent torture and ill-treatment. Evidence obtained through torture is inadmissible in court proceedings, as established by legal precedent and IHR standards. The UK is a party to numerous international human rights treaties and conventions that prohibit torture, such as the CAT and Other Cruel, Degrading, or Inhuman, Treatment or Punishment (CAT). It's important to note that these measures are designed to safeguard the protection of individuals' rights and to prevent torture and ill-treatment in all circumstances, including lawful custody. Authorities are expected to adhere to these standards, and accountability mechanisms are in place to address any breaches of these principles.

*(C) United State Practice<sup>69</sup>:*

The United States has a very crucial legal framework aimed at preventing torture and ill-treatment in lawful custody. The 8th Amendment to the U.S. Constitution prohibits cruel and

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<sup>69</sup>Redress, *A Guide to Reporting to the Committee Against Torture* (Sept. 15, 2018).

unusual punishment. This constitutional provision is interpreted to prohibit torture and cruel treatment in the context of lawful custody. The U.S. has laws in place to prohibit torture and cruel, inhuman, or degrading treatment. The Torture Victim Protection Act and the U.S. Code (Title 18, Section 2340) make it a crime to engage in torture outside the United States. The U.S. is a party to the UNCAT. The CAT requires states to prevent and punish torture and to provide remedies to victims.

The U.S. Army Field Manual on Human Intelligence Collector Operations provides guidelines for the treatment of detainees. It explicitly prohibits the use of torture and cruel, inhuman, or degrading treatment. Executive Order 13491, signed by President Barack Obama in 2009, explicitly prohibited torture and established guidelines for the treatment of detainees. It revoked the use of enhanced interrogation techniques. Various oversight bodies, including the Department of Justice, conduct investigations into allegations of torture or abuse. The Office of the Inspector General and the Civil Rights Division play roles in ensuring compliance with regulations and laws. Policies regarding the treatment of detainees at Guantanamo Bay have evolved, and there have been efforts to safeguard that treatment aligns with legal standards, including the prohibition of torture. It's important to note that the interpretation and application of these laws and policies have been subject to debate and scrutiny. Additionally, the United States has faced criticism and legal challenges related to its treatment of detainees in certain contexts. Efforts are ongoing to ensure that U.S. practices align with IHR standards and obligations.

### *A comparative Analysis*

Norway's legal framework, aligned with international standards, serves as a strong deterrent against torture, whereas India could benefit from revisiting and amending its laws to meet these standards. Independent oversight mechanisms in Norway contribute to transparency and accountability, offering a model for India to strengthen its oversight institutions. Norway's comprehensive rehabilitation model, covering medical, psychological, and social aspects, highlights the importance of holistic support services, which can be a lesson for India in enhancing its rehabilitation programs.

Ongoing training in Norway emphasizes human rights standards, contributing to a culture of prevention. India could learn from this approach to ensure consistent training for its law enforcement and legal professionals. Norway's commitment to international cooperation,



evidenced by its ratification of UNCAT, provides a model for India to engage with global efforts in preventing and addressing torture.

Both India and the USA have made strides in addressing torture, but challenges remain. In the U.S., the key issues revolve around past practices related to national security and ongoing debates about police brutality. In India, the challenges are more about institutional reforms, effective implementation of laws, and changing public attitudes towards police practices. Continuous efforts in both countries are required to align their practices with international human rights standards and to effectively prevent torture and address its consequences.

Comparing India and the United Kingdom (UK) in their approaches to preventing torture and addressing its consequences involves examining the legal, institutional, and cultural frameworks in each country. Both countries have distinct historical, legal, and social contexts influencing their approaches to this issue. The UK and India have different approaches and challenges in addressing torture. The UK's legal and institutional frameworks are more developed, with stronger independent oversight mechanisms and a deep-rooted culture of human rights. India faces significant challenges in terms of implementing existing laws, the need for specific anti-torture legislation, and reforming institutional practices. Both countries, however, continue to grapple with the legacies of their past actions and ongoing human rights obligations.

## **VII Challenges and Recommendations**

Addressing torture in lawful custody presents a range of challenges globally, including cultural attitudes, institutional resistance, and gaps in legal enforcement. These challenges can hinder the prevention of torture, the prosecution of perpetrators, and the protection of human rights.

- a. Cultural Attitudes: In some societies, there may be a historical or cultural acceptance of the use of force by law enforcement, especially in cases where there's a perception of maintaining order or extracting information quickly. A lack of public awareness or outcry regarding custodial torture can contribute to a culture of impunity, where such practices persist without significant repercussions.
- b. Institutional Resistance: Some law enforcement agencies may resist external oversight and accountability mechanisms, fostering an environment where abuses can go unchecked.

c. **Legal Enforcement Gaps:** India lacks specific legislation criminalizing torture, making it difficult to prosecute and punish perpetrators. Even where such laws exist, they may not be comprehensive or effectively enforced. In some cases, weak judicial systems can contribute to a lack of redress for victims, with cases taking years to be heard, if they are heard at all.

d. **Poor Oversight Mechanisms:** Oversight bodies that investigate allegations of torture may lack independence, either due to political influence or a lack of resources. Reporting mechanisms for victims of torture may be ineffective or insufficient, leading to underreporting due to fear of reprisals or lack of confidence in the system.

e. **Political Will:** Political leaders may lack the will to address torture, either due to prioritizing other issues or fearing backlash from security forces.

Addressing these challenges requires a multifaceted approach, involving legal reforms, awareness campaigns, international collaboration, and the development of strong, independent oversight mechanisms. Efforts to change cultural attitudes towards torture and improve accountability within institutions are crucial for creating a society where torture is universally condemned and prevented.

**Recommendation:** Improving the situation regarding torture in lawful custody requires a comprehensive approach that involves legal reforms, awareness campaigns, and international cooperation. The goal should be to enhance accountability, transparency, and victim support. Here are recommendations across these dimensions:

*(B) Legal Reforms:*

- a) **Comprehensive Anti-Torture Legislation:** Enact and enforce comprehensive anti-torture legislation that clearly defines torture, criminalizes it, and ensures adequate penalties for perpetrators.
- b) **Removal of Immunity Provisions:** Remove legal provisions that grant blanket immunity to law enforcement officials, ensuring that those responsible for torture can be held accountable under the law.

- c) **Strengthen Judicial Systems:** Provide training to judges and legal professionals on human rights standards and torture prevention, and ensure the prompt adjudication of torture cases.
- d) **Independent Oversight Mechanisms:** Establish independent oversight bodies with the authority to investigate allegations of torture, ensuring transparency and accountability in law enforcement agencies.
- e) **Prohibition of Evidence Obtained through Torture:** Implement strict rules excluding evidence obtained through torture from legal proceedings to discourage the use of such methods by law enforcement.

*(C) Awareness Campaigns:*

- a) **Public Awareness Programs:** Conduct public awareness campaigns to educate the public on the consequences of torture, the importance of human rights, and the role of communities in preventing and reporting abuse.
- b) **Police and Military Training:** Integrate human rights education into the training programs of police and military personnel, emphasizing non-coercive investigative techniques.
- c) **Media Engagement:** Encourage responsible reporting by the media on cases of torture, shedding light on the issue and fostering public demand for accountability.
- d) **Community Engagement:** Facilitate community dialogues involving law enforcement, civil society, and local communities to build trust, address concerns, and promote collaborative efforts against torture.

*(D) International Cooperation:*

- a) **Ratification and Implementation of International Conventions:** Encourage countries to ratify and effectively implement international conventions against torture, such as the UN Convention Against Torture (UNCAT).
- b) **Sharing Best Practices:** Facilitate international forums for the sharing of best practices in torture prevention, bringing together experts, policymakers, and civil society to exchange ideas and strategies.

- c) **Mutual Legal Assistance:** Strengthen mechanisms for mutual legal assistance, allowing for the prosecution of individuals involved in torture across borders.

*(E) Accountability, Transparency, and Victim Support:*

- a) **Victim Protection Programs:**
- Establish programs to support and protect victims of torture, providing medical, psychological, and legal assistance along with measures to prevent retaliation.
- b) **Whistleblower Protection:** Implement strong whistleblower protection laws to encourage individuals within law enforcement agencies to report incidents of torture without fear of reprisals.
- c) **Transparency in Detention Centers:** Ensure transparency in detention centers by implementing measures such as regular inspections by independent bodies, video surveillance, and public reporting of conditions.
- d) **Compensation and Rehabilitation:** Develop comprehensive national policies for compensating and rehabilitating victims of torture, including access to healthcare, education, and vocational training.
- e) **Regular Reporting and Reviews:** Mandate regular reporting on torture prevention measures and conduct periodic reviews to assess the effectiveness of legal reforms and awareness campaigns.

By combining these measures, nations can work towards creating a legal and societal framework that prevents torture, holds perpetrators accountable, and supports victims on their path to recovery. International cooperation is essential to share knowledge, resources, and collective efforts in addressing this pervasive human rights issue.