



# CUSTODIAL TORTURE IN INDIA: A CRITICAL EXAMINATION OF THE NEED FOR AN ANTI-TORTURE LAW

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## ABSTRACT

*Initially the dawn of civilization, torture has been a component of the legal system, and in certain nations, law enforcement agencies continue to employ it as the most efficient means of coercing the truth from criminals. Torture, but no municipal legislation shielding or prohibiting its residents from torture has yet been passed. The document addresses torture in custody, abuse during police investigations, and the cruel jail conditions in India. However, as fundamental rights and natural rights have developed, torture has emerged as the most blatant infringement of the right to life, the right to live in dignity, and the freedom to live fearlessly. The Convention on Torture is a step towards establishing global consensus that torture of human beings is unacceptable. The article seeks to highlight the necessity and significance of India's anti-torture legislation. The fundamental need for maintaining the constitutional culture—which is fundamentally aimed at protecting people's dignity—is the prohibition forbidding torture. One of the very few nations in the world without a specific statute towards torture is India. The paper emphasises five connected areas: the Parliament's position on torture, the judiciary's position on it, the ideal law that ought to take effect as quickly as feasible, and the current laws on the subject.*

**Keywords:** Torture , Fundamental rights, Legislation , Judiciary , Right to Life.

## 1. INTRODUCTION

The most significant issue facing the third world is torture, which is seen as a global phenomena that affects people of all ages, genders, and health conditions. Even though it comprises one of the most broadly acknowledged human rights, the right to be free from torture is yet violated in practically every nation on the planet. When it comes to torture committed when a person is in custody, it occurs in practically every nation on Earth. In the hands of law enforcement and investigative organisations, it is a crucial tool for pressuring witnesses to utter lies. The worst human rights violation occurs here. The majority of the time, the military forces, police, jail officials, and other law enforcement organisations torture people. India is the biggest

democracy in the world, and since it has the diversity of religion, culture, practice, custom etc., The country where torture has been used in jails for quite awhile is India, and within the past year, there have been more and more of these cases. In India, the use of torture is still permitted in both jails and chowki cells. The use of torture is seen as normal and is not denigrated; it has also been openly incorporated into popular culture, including films and literature, where it is shown as a crucial component of crime suppression. Because of this, it is difficult for a nation like India to outlaw torture when the state has been using it for an extended period that it has stopped being deemed acceptable.

### 1.1 STATEMENT OF PROBLEM

In India, the police and military officials implicitly institutionalise and justify torture. The authorities' use of deadly torture techniques results in deaths as simple cases of severe injury; granting authorities a unique exemption from this would violate the fundamental human right to life and equal protection. Furthermore, State agents enjoy complete impunity for torturing and inflicting other brutal treatment on people, both de-jure and de-facto. It is impossible to alter the actual practice of State agents torturing people in order to justify the use of force until the UNCAT is ratified. Thus, the focus of the article is on the problems and obstacles related to the ratification and application of UNCAT and other anti-torture laws. Additionally, it will make the case that, given the state of affairs across the nation, an antitorture statute is desperately needed.

### 1.2 PURPOSE OF THE RESEARCH

- To comprehend how torture in custody has evolved in India.
- To be aware of the United Nations Convention Against Torture (UNCAT), which was enacted with the goal of outlawing torture globally.
- To assess the cause of India's non-ratification of UNCAT.
- To comprehend the necessity of enacting strict anti-torture legislation in India.
- To comprehend how anti-torture statutes are interpreted by judges.

### 1.3 THE RESEARCH METHODOLOGY

For this paper, the researcher has opted for a doctrinal approach. The sources utilised include the opinions of jurists gathered from pertinent works written by Indian and foreign authors; articles published in a variety of journals; newspaper and periodicals; law books; rulings from the high court and supreme court; magazine reports; and books pertaining to fields such as constitutional law.

## 2. THE ORIGINS OF CUSTODIAL TORTURE IN INDIA

### 2.1. DEFINITION OF TORTURE

The intentional infliction of physical or psychological distress onto another individual is known as torture. Put another way, it may be defined as an act of one person acting against another against that person's will. It should

be mentioned that the person in charge of the victim is always the one who tortures them. **Oxford English dictionary** defined torture as “The action or practice of inflicting severe pain on someone as a punishment or in order to force them to do or say something.” As per the **Merriam Webster dictionary** torture means, “the act of causing several physical pains as a form of punishment or as a way to force someone to do or say something” Article 1 of the **Convention Against Torture**, 1984<sup>1</sup> defined torture as “anything that involves intentionally causing someone great pain or suffering, either physically or mentally, for a variety of reasons, such as getting information or a confession from them, punishing them for something they have done or are suspected of doing, intimidating or coercing them, or any other reason based on discrimination, when said pain or suffering is caused by, at the request of, or with the consent or acquiescence of a public official or other person acting in an official capacity. It excludes suffering that is incidental to, inherent in, or results from legal consequences.”

A bill was introduced in the Indian Parliament in 2010<sup>2</sup>, but unfortunately it was not passed, the proposed definition in that bill defined torture as “Anyone who intentionally performs an act—either as a public servant, with the assistance of another public servant, or with the permission or cooperation of a public servant—with the intent to extract information or a confession from him or a third party that could lead to:

- (i) grievous harm to an individual; or
- (ii) danger to an individual's life, limb, or health (either mental or physical)—is considered to be torturing that person. However, nothing in this section applies to any pain, harm, or danger as a result of an act that is carried out in compliance with any legal procedure or justifiable by the law.”

## 2.2 HISTORICAL BACKGROUND OF CUSTODIAL TORTURE

Torture in custody is not a recent development in India. Police brutality and torture have been a part of Indian history since the Vedic era (2000–1400 B.C.). They employed solitary combat and the trials of fire. During the Epic era (1400–800 B.C.), police tortured their detainees. In the era of laws and philosophy, torture took many forms and was commonplace (800–320 B.C.). The Kautilya Arthashastra describes a variety of forms of torture, including limb burning, ripping by untamed animals, being tramped to death by bulls and elephants, limb chopping and dismemberment, etc. Manu, the era's lawmaker, believed that torture was necessary to keep criminals out of society. The Buddhist era, which lasted from 300 B.C. to 300 A.D., was characterised by a high degree of fairness and humanitarianism. Any kind of torture was outright forbidden. There was no criminal or civil code during the Mughal era. Torture as a means of extracting confessions was common.<sup>16</sup> The Buddhist era, which lasted from 300 B.C. to 300 A.D., was characterised by a high degree of fairness and humanitarianism. Any kind of torture was outright

<sup>14</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 (entry into force 26 June 1987), in the same way, Article 7(2)(e) of The Rome Statute of the International Criminal Court, (A/CONF.183/9) define the term torture. It says that torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent or incidental to, lawful sanctions.

<sup>2</sup> Prevention of Torture Bill, 2010, No. 58, Bill of Parliament, 2010 (India).

forbidden. There was no criminal or civil code during the Mughal era. Torture as a means of extracting confessions was common.

During the British era, officials, notably Kotwals, tortured people, which eventually led to their deaths. The British Government established the Madras Presidency Torture Commission in 1855, and the commission reported that police torture was a common practice there. This panel established the definition of torture, and as a result, the Police panel was established in 1860. Subsequently, the Police Act and the Torture Law were passed in 1861. Following independence, the Union and State Governments created a number of Police Commissions to investigate the early 1970s and 1980s. Kerala<sup>17</sup>, Punjab<sup>18</sup>, Bihar<sup>19</sup>, West Bengal<sup>20</sup>, Maharashtra<sup>21</sup>, Madhya Pradesh<sup>22</sup>, Delhi<sup>23</sup>, Tamil Nadu<sup>24</sup>, and Assam<sup>25</sup> are among the states where commissions have been constituted. Two commissions were also appointed by the Central Government<sup>26</sup>.

Between 1975 and 1977, there was widespread police violence during the emergency.<sup>27</sup> The government was advised by the National Police Commission of 1979 to take action to protect law enforcement from improper political and administrative intervention. When someone dies or is raped while in police custody, an obligatory legal investigation should be conducted.

### 3. CUSTODIAL TORTURE AND UNCAT – INTERNATIONAL PERSPECTIVE

From an international perspective, the United Nations and General Assembly have adopted a number of actions related to the torture statute. There are sufficient laws against torture in the world to be divided into four categories: universal laws against torture, laws against torture at the regional level, United Nations protocols and guidelines against torture, and committee comments against torture. Globally, torture is forbidden under Article 5 of the Universal Declaration of Human Rights, which also states that no one shall be the victim of cruel, inhuman, or degrading treatment or punishment.<sup>3</sup> Article 7 of the ICCPR prohibit torture and provides that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Specifically, no one may be the subject of medical or scientific research without that person's voluntary permission.<sup>4</sup> UN Convention Against Torture, UN Optional Protocol,<sup>5</sup> Rome Statute of International Criminal Court,<sup>6</sup> UN Declaration on Torture<sup>7</sup>. At the regional level there are various legal frame work on torture such as Article 5 of the American Convention on Human Rights which is also known as Pact of San Jose, Inter American Convention to Prevent and Punish Torture, Article 3 of the European Convention on Human Rights and Article 5 of the African Charter on People's and Human Rights provides for the prevention and punishment for torture.

<sup>3</sup> Universal Declaration of Human Rights, 1948(10th Dec 1948 as resolution No 217 by UN General Assembly).

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights, 1966 (Resolution No 2200A, XXI on 16th Dec. 1966, w.e.f. 23rd March 1976).

<sup>5</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002 (Passed on 18th Dec 2002 at 57th session of GA by Resolution No A/RES/57/199, Entry into force 22nd June 2006).

<sup>6</sup> Article 7(2) (e) of The Rome Statute of the International Criminal Court, (A/CONF.183/9) define the term torture. It says that torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent or incidental to, lawful sanctions.

<sup>7</sup> General Assembly on December 9, 1975 adopted a Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (Mar 29, 2022)



### 3.1. UN CONVENTION AGAINST TORTURE (UNCAT):

The UN has been instrumental in ensuring custodial justice and preventing acts of abuse, including torture, in detention. The Convention Against Torture and Other Cruel, inhuman, or Degrading Treatment and Punishment (CAT 1984), also known as the Convention against torture and other cruel, inhuman, or degrading treatment or punishment, was adopted by the UN General Assembly on December 10, 1984 (marked resolution No. 39/46). Since its founding, the UN has established standards and practices through the introduction of numerous international instruments, such as the UDHR 1948, ICCPR 1966, and many others. CAT was signed by India on October 14, 1997, however it has never been ratified. While signing the convention, India had submitted its reservation against articles 20,21 and 22 of the convention which pertains to an inquiry by the Convention against torture, state complaints against torture and individual's complaint, respectively. the United Nations Basic Principles of Justice for Victim of Crimes and Abuse of Power (UNBPVC1985), the United Nations Optional Protocol of Convention Against Torture and Other Cruel, Human and Degrading Treatment and Punishment (OPCAT 2006) and International Convention for the Protection of all Persons from Enforced Disappearance (ICPED 2007), the United Nations Standard Minimum Rules for Treatment of Offenders, 1955, United Nations Code of Conduct for Law Enforcement Officials, 1979, the United Nations Minimum Rules for non-Custodial Measures (the Tokyo Rules), the United Nations body Principles for Protection of all Persons from any forms of Detention or Imprisonment, and the United Nations Basic Principles on use of Force and Firearms for Law Enforcement Officials 1991.

The country in which torture has been used in jails for a long time is India, and within the past year, there have been more and more of these cases. In India, the use of torture is still permitted in both jails and chowki cells. The use of torture is seen as normal and is not denigrated; it has also been openly incorporated into popular culture, including films and literature, where it is shown as a crucial component of crime suppression. Because of this, it is difficult for a nation like India to outlaw torture when the state has been using it for so long that it is no longer considered acceptable. Nobody enjoys change, and bringing the law up to speed with UNCAT will bring about changes that the nation's law regulation and security forces will not appreciate as it would take away their most effective and deadly instrument. The issue at hand is how much this accomplishment will cost them.

**3.2. UNITED NATIONS BODIES AND MECHANISM REGARDING TORTURE:** The United Nations has established various Committees, bodies, special Reporter etc. to monitor of human rights standards at domestic level such as

- UN Human Rights Committee
- UN High Commissioner for Human Rights
- UN Committee Against Torture

- UN Subcommittee on Prevention of Torture
- UN Special Reporter on Torture
- UN Voluntary Fund for Victims of Torture
- UN International Day for Victims of Torture on 26th Jun

#### **4. CUSTODIAL TORTURE LAW AND INDIA (CONSTITUTION AND STATUTORY PROVISIONS)**

There are merely two kinds of custody in India: judicial custody and police custody. The majority of torture occurs while a person is under police custody as a result of police abuse of authority and instilling fear in the public. Torture-related deaths in police custody are among the worst crimes in a nation where the rule of law guarantees individuals rights to equality, justice, and liberty, among other things. Such situations are an insult to human dignity as well as a severe danger to the well-ordered civilised society.

##### **4.1. INDIAN CONSTITUTION**

Three Articles—20, 21, and 22—both directly and indirectly deal with torture. Article 20(1) forbids the retroactive application of criminal laws, which is akin to torture and other harsh treatment of people. Double jeopardy is prohibited under Article 20(2), meaning that no one may be prosecuted or punished for the same offence twice. According to Article 20(3), no one may be forced to testify against himself. However, one article went farther; in the police station, a person is tortured into confessing against himself. Article 21 guarantees everyone the right to life and personal freedom, stating that these rights cannot be taken away from someone unless a legally prescribed process is followed. Given that torture is an act that affects both the mind and the body, this also has to do with the legislation against torture. The person making the arrest is required to adhere to the rules for arrests provided in Article 22. For example, the person who is going to be arrested need to be notified of the reason for the arrest and have the freedom to speak with any attorney of her choosing. Within 24 hours after being arrested, everyone should appear before the magistrate.

##### **4.2. UNDER THE INDIAN PENAL CODE:**

Officers and authorities who imprison someone for corrupt or malevolent reasons are subject to penalties under Section 220. Sections 330 and 331 stipulate the penalties for those who cause harm or severe distress to another person in order to coerce a confession or information on the commission of a crime. The IPC expressly renders torture illegal under Section 330.

##### **4.3. UNDER THE CODE OF CRIMINAL PROCEDURE:**

Section 50 gives the person who is about to be arrested some rights and the person making the arrest certain obligations. The victim of torture has the right to a medical examination under section 54. According to Section

56, the arrested individual must appear before the magistrate right away. According to Section 57, an apprehended individual may not be held for longer than the 24-hour period specified in Section 167, which is also covered by Article 22 of the Constitution.

#### 4.4. UNDER THE INDIAN EVIDENCE ACT:

According to section 25, a confession given to a police officer cannot be utilised against the individual who is being charged of a crime. Citizens typically view rapes that occur in police custody as a stain on the law enforcement organisation. If police officers become engaged in rape cases while in jail, they represent the agency whose primary responsibility is to ensure the protection of women and children. Section 376 of the Indian Penal Code was slightly amended in 1983 to address custodial rape. The amended section states that if a police officer, public servant, jail staff member, or hospital employee commits rape on a woman while she is under their custody, they can face a maximum sentence of ten years in prison, with an additional seven years in cases.

#### 5. ROLE OF JUDICIARY:

The judiciary was and continues to be crucial in preventing torture while a person is in detention, but the Supreme Court's orders and judgements are not being followed. While the Supreme Court's rulings and orders are obligatory on all courts under Article 141, their execution need to be treated the same as a legislation passed by parliament. When the authorities apply any kind of pressure—no matter how mild or severe, mental or physical, direct or indirect—to get information from the accused, it becomes forced testimony that violates Article 20(3)'s prohibition on self-incrimination. Too harsh or painful of a punishment is unconstitutional. After the petitioner was found not guilty in a full dress trial, the Supreme Court denied his claim of sovereign immunity and granted the compensation since the petitioner had been unlawfully held in jail for more than fourteen years.

Supreme Court issued various directions to protect the custodial violence against female person and arrest thereof in *Sheela Barse V. State of Maharashtra*<sup>8</sup> like to set up separate lock-ups for woman and guarded by female constable, interrogation in the presence female constable etc. It may be legitimate rights of the police to interrogate or arrest any suspect on some credible material but such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries.<sup>9</sup> Any form of torture or cruel inhuman degrading treatment or punishment is in the purview of Articles 21, 32, 142 and 226 of the Constitution of India. It is acknowledged remedy. Court has obligation to grant relief formally and finally rejected the defense of sovereign immunity. It also referred Article 9(5) of the International Covenant on

<sup>8</sup> AIR 1983 SC 378.

<sup>9</sup> Bhagwan Singh V. State of Punjab, (1992) 3 SCC 249.

Civil and Political Rights.<sup>10</sup> No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person, it should be prudent of a police officer in the interest of protection of the constitutional rights of a citizens.<sup>11</sup>

In *D.K. Basu V. State of West Bengal*<sup>12</sup> Supreme Court initiated the development of custodial jurisprudence including torture to arrestee, infringement of fundamental rights, right to compensation from state and punishment under section 330 of the Indian Penal Code is inadequate to repair the wrong done to citizen. In this case court also provided various guidelines regarding arrest and rights of arrested person, like interrogation of the arrestee must be recorded in a register, the person arrested must be made aware of his rights such to have someone informed regarding his arrest, to choose a lawyer of his own choice, regarding free legal aid etc. Where fundamental rights of the citizens are violated, the plea of sovereign immunity would not be available. In spite of such Supreme Court guidelines police continue to detain people without maintaining any record and torture them during such illegal detentions.

In *Munshi Singh Gautam V. State of Madhya Pradesh*<sup>13</sup> the Supreme Court took reference of the 135th Report of the Law Commission which has recommended that a section 114-B should be inserted in the Indian Evidence Act, 1872, to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by the police officer. Test results of polygraph and brain finger printing tests have been held to be barred by Article 20(3). Accused has right to maintain silence & not to disclose his defense before the trial. Arrest in violation of due procedure seriously jeopardizes the dignity of the person arrested and the law does not condone abuse of power which causes pain and trauma.

## 6. NEED FOR ANTI TORTURE LAW IN INDIA

Although the idea of torture is prohibited in democracies, in actuality it is not a foreign concept. Although there have been several occasions where this idea has been questioned and attempts have been made to undermine it, it is extremely unlikely. The writers attempted to address how the judiciary was crucial in defending citizens' rights in the preceding portion of the article. However, it is also important to acknowledge the Law Commission's involvement in promoting anti-torture laws through its findings. It is important to remember that India has signed the UNCAT since 1997, but it has not yet ratified the agreement. However, there have been several occasions when the corresponding governments have attempted to introduce certain laws, and the Law Commission has offered a number of studies about the introduction of anti-torture legislation. Now let's compare and contrast the two bills and offer a final analysis.

<sup>10</sup> Nilabati Behara V. State of Orissa, AIR 1993 SC 1960.

<sup>11</sup> Joginder Kumar V. State of Uttar Pradesh, (1994) 4 SCC 260: AIR 1994 SC 1349.

<sup>12</sup> (1997) 1 SCC 416: AIR 1997 SC 610.

<sup>13</sup> AIR 2005 SC 631.



## 6.1. INITIATIVES TAKEN BY LAW COMMISSION

The World Organisation against Torture (OMCT), People's Watch, Quill Foundation, International Commission of Jurists, National Law University of Law, Delhi, and the Commonwealth Human Rights Initiative (CHRI) collaborated to hold a two-day conference on October 26 and 27. Numerous speakers at the conference criticised the government, particularly the statute Commission of India, for suggesting a draft anti-torture bill in its 273rd report from 2017 that fell well short of the minimum parameters needed to create a strong statute. Additionally, they discussed the system's underlying structural issues and the reformative and remedial actions that must be implemented as soon as possible. The Commission noted that extradition of offenders from other nations has proven to be difficult for India. This is so because extradition to a nation where torture is a possibility is prohibited by treaty. It was suggested that ratifying the convention would be the best way to settle this matter.

The Commission suggested putting in place a strong system to shield witnesses, complainants, and victims of torture from potential abuse and violence. The state governments are in charge of providing protection for these people under the proposed Prevention of Torture Bill, 2017. This kind of protection will be offered by the state government from the moment the complaint is filed until the end of the criminal trial.

## 6.2 PREVENTION OF TORTURE BILL, 2010

Though it hasn't been ratified yet, India signed the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment on October 14, 1997. For India to ratify the Convention, legislation must be passed. In order to carry out this agreement in accordance with Article 253 of the Constitution, Minister of Home Affairs Shri P. Chidambaram proposed the Prevention of Torture Bill, 2010 in the Lok Sabha on April 26, 2010. On May 6, 2010, the Lok Sabha approved the Bill; it is currently pending in the Rajya Sabha. The bill was then forwarded by the Rajya Sabha to the select committee led by Shri Ashwani Kumar for revision. The committee turned in their report on December 6th, 2010. Accordingly, the committee spent a great deal of time discussing the many aspects of the bill and listening to the opinions of a wide range of professionals and organisations, including renowned jurists, academics, government workers, and representatives of civil society. The committee points out that the bill's guiding principles and goals are to allow India to ratify the "United Nation Convention against Torture and Other Cruel or Degrading Treatment or Punishment," which was adopted by the UN General Assembly on December 9, 1975, and to demonstrate its unwavering commitment to upholding the rights of people as guaranteed by the Indian Constitution. Next, there was The bill was never passed as it expired with the dissolution of the 15th Lok Sabha due to India's reluctance to revoke the Armed Forces (Special Powers) Act, 1958. The 2010 Prevention of Torture Bill aims to penalise government personnel who torture citizens. According to the Bill, torture is "grievous hurt" or a risk to one's life, limb, or health. Within six months, complaints of torture must be submitted. A court cannot consider a complaint unless it receives approval from the relevant authorities.

### 6.3. PREVENTION OF TORTURE BILL, 2017:

The Law Commission was consulted on the proposed revisions to the IPC by the NDA Government, which sent the Bill to them in May 2017. The Law Commission made recommendations for changes that were required in order to put the UN Convention against torture into effect. Additionally, the Commission wrote a law that the Government was to present to the legislature. Although the law panel's recommendations and the draft bill were delivered to the government in October 2017, the legislation has not yet been passed.<sup>39</sup> The Law Commission suggested amending the Evidence Act of 1872 and the Cr. P. C. of 1973 in addition to proposing stand-alone legislation.

## 7. CONCLUSION

In India, the majority of torture is carried out by law enforcement agencies such as the police, jails, and armed forces. There are several laws in place to prohibit torture, but their execution is lacking. Although the Indian Constitution, other laws, the Law Commission, and the Supreme Court have all played a significant part in establishing the prohibition on torture, there are still a number of incidents involving torture that occur when a person is in the custody of the police or courts. India must enact a separate anti-torture law since the current Indian legislation is ineffective and has clauses against torture spread over many papers, making it hard to put into practice.

There are 171 state parties to the UN Convention against Torture as of June 2021. With the exception of India, all four BRICS countries have signed and ratified the convention; India signed it on October 14, 1997, but has not done so as of yet. The Convention was signed by Brazil on September 23, 1985, and ratified on September 28, 1989. Russia signed it on December 10, 1985, and ratified it on March 3, 1987. China signed it on December 12, 1986, and ratified it on October 4, 1988. South Africa signed the Convention on June 29, 1993, and ratified it on December 10, 1998. India, the world's largest democracy, ought to ratify the Convention as soon as feasible due to its regard for human rights as well as the fact that other members of its common group have already done so. Regarding the distinct laws pertaining to torture, only two of the BRICS countries—Brazil and South Africa—have laws that specifically prohibit and combat torture. The Prevention of Combatting and Torture of Persons Act, 2013 was approved in South Africa, while a federal legislation establishing a National System to Prevent and Combat Torture was passed in Brazil in 2015. China and Russia both have internal laws that forbid and prohibit torture. India has its own domestic laws as well, which are contained in the Constitution of 1950, the Indian Penal Code of 1860, the Indian Evidence Act of 1872, the Criminal Procedure Code of 1973, and other documents. However, these laws are ineffective because there is no enforcement mechanism in place, so India must enact separate legislation against torture, just as its fellow BRICS members, South Africa and Brazil, have done.