

Unit 6

Convention Against Torture (CAT)

6.1 Introduction

The United Nations Convention against Torture (UNCAT) is one of the first documents at the international level that deals with the prevention of torture. The UN in its General Assembly resolution 39/46 of 10 December 1984 adopted the Convention and currently 141 States are parties to it. India signed it in October 1997 but is yet to ratify it.

This Convention condemns torture, inhuman and degrading treatment of prisoners by public officials. As per this convention, torture takes place only when a public official is involved in infliction of higher degree of pain, both mentally and physically. Torture includes a variety of methods, including severe beating, electric shock, sexual abuse, rape, prolonged solitary confinement and deprivation of sleep, food or water. Moreover, torture is not limited to acts causing physical pain or injury. It also includes acts that cause mental suffering, such as through threats against family or loved ones.

6.2 Objectives

After going through this unit, you should be able to:

- Define torture
- Understand the salient features of CAT, Optional Protocol
- Describe the Committee against Torture, Victims and Perpetrators of Torture; and
- Explain the initiatives taken by the Government of India and NHRC in drafting a legislation related to prevention of Torture.

6.3 Definition of Torture

Article 1 of Convention against Torture (CAT) defines torture as follows:

- 'any act causing severe pain or suffering, whether physical or mental intentionally inflicted on a person

- for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or third person has committed or is suspected of having committed,
- or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,
- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

This definition, points out three *essential elements* which constitute *torture*:

- The infliction of severe mental or physical pain or suffering
- By or with the consent or acquiescence of the state authorities
- For a specific purpose, such as gaining information, punishment or intimidation

The two main *guidelines* in *assessing* whether or not a set of facts amounts to torture are:

- (a) The *essential elements* contained in the definition of torture should be supported by the facts and
- (b) Torture may be distinguished from other forms of ill-treatment by the *degree of suffering* involved and the need for a *purposive element*.

CASE ONE

The use of torture in Tihar Jail has been brought to the notice of the higher authorities several

times. But effective measures have not been adopted yet. In June 2007 alone, nine prisoners died in Tihar Jail. The post-mortem reports confirmed the death of the three were as a result of ill-treatment that may amount to torture¹. On 13 February, 2007 an undertrial prisoner, Mr. Naqibullah Ali, aged 30, an Afghan national died in Tihar Jail in Delhi. The interim post-mortem revealed that the deceased body had injuries on the neck, lips, legs and back of head. The Delhi High Court ordered a probe into this custodial death and vehemently criticized the jail officials for using 'methodical torture', as well physical and psychological abuse enforced torture while the accused is in custody.

6.4 Salient Features of the Convention

The UNCAT consists of three parts, with 33 articles. Part one consists of Articles 1 to 16. Part Two - Article 17 to 24 and Part Three Articles 25 to 33.

Some of the important articles of this convention are:

- (a) Article 1 - defines the term 'torture'.
- (b) Article 3- deals with the prohibition on deportation or extradition to torture and other cruel, inhuman or degrading treatment or punishment.
- (c) Article 4- deals with the criminal liability for torture, liability of superior officers/commanding officers, Punishment for torture. In the sense, that each State Party shall ensure that all acts of torture are offence under their respective criminal law

1 Delhi police officials under scanner over death of inmates in Tihar, *The Pioneer*, 28 June 2007



- (d) Article 10- deals with the Education and Information for Prevention of Torture
- (e) Article 12- deals with the procedures of investigation, inquiry and trial.
- (f) Article 13- deals with protection to victims of and witnesses.
- (g) Article 14- deals with compensation to and rehabilitation of victims of torture.
- (h) Article 15- deals with the criminal offence of using information from torture. It states that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings...."

6.4.1 Obligations of States under Torture Convention

The overall objective of the Convention against torture is to **prevent torture** and to ensure that **effective remedies** are available to victims. [Art 2]

It requires States parties to **take preventive action** against torture such as the criminalization of acts of torture and the establishment of laws and regulations to promote respect for human rights among public servants for both the alleged victim and the accused.

States parties to the Convention are required to **outlaw torture** and are explicitly prohibited from using 'higher orders' or 'exceptional circumstances' as excuses for acts of torture [Art. 2(2) and 2 (3)].

The Torture Convention specifies that the alleged torturers may be tried in any State party or they may be extradited to face trial in

the State party where their crimes were committed. Secondly, it provides for investigation of reliable reports of torture, including visits to the State party concerned, with its agreement, if the Committee receives reliable information, which appears to contain well-founded indications, that torture is being systematically practiced in the territory of a State party [Art 20]

6.4.2 Right to be Protected from Torture

Liability of the state for torture committed by agents of the state (e.g. police, soldiers, prison guards, etc.) is clear under international law. Some argue that the State is also responsible for torture carried out by private individuals ("non-state actors") in the form of racist attacks or domestic violence, for example, if it does not do enough to prevent such abuses.

Every State is required to take effective legislative, administrative, judicial, or other measures to prevent acts of torture in its territory. Acts of torture must be offences under criminal law. There is no justification to the use of torture in exceptional situations, e.g. during a state of war, internal political instability, or any other public emergency. Following an order from superior authorities also does not justify torture. [Articles 2 and 4 of CAT].

All governments are responsible for prosecuting offenders under the international criminal prosecution system that applies to torture. The principle of *universal jurisdiction* obliges all countries, where alleged offenders are found, to either extradite them for prosecution by the government that is more directly affected (i.e, the country where the offences were committed, or the country of citizenship of the victims or the abusers), or to

initiate prosecution themselves. (See articles 5, 6, 8 of CAT).

CASE TWO

Manadel al-Jamadi was captured by the U.S. Navy from his house at Baghdad on 4 November, 2003 on the suspicion that he had links with terrorists. He was severely tortured during the interrogation and later he was transferred to Central Intelligence Agency under custody for interrogation at Abu Ghraib prison. The witnesses in prison state that after Jamadi's interrogation by CIA officials, he was again taken to a shower room for interrogation. Some forty-five minutes later, he was found dead in the room. One CIA official and private contractor, working as Arabic-translator, tortured him and hanged him by tying his wrists with his back. The Government official was an agent of the state to impose torture and his name was not even spelled out anywhere relating to death of the deceased. The private contractor was given immunity in exchange for his cooperation.

Activity 1

Discuss the injustice committed by the State for not bringing the Government official and private contractor before a court of law.

6.4.3 Right to Non-refoulement

"No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". (Article 3 of CAT). This article creates an unconditional right of a person not to be expelled, returned or deported to another country where torture is a likely result. Return is prohibited under all circumstances on an unconditional basis, provided there are

substantial grounds for believing there would be a danger of torture. This would be determined by taking all relevant considerations into account, including whether there is a "consistent pattern of gross, flagrant or mass violations of human rights". This creates a stronger provision against *refoulement* than the 1951 Convention Relating to the Status of Refugees.

CASE THREE

Chahal vs. United Kingdom was a case relating to deportation of a Sikh separatist to India. He was an Indian national who had entered United Kingdom illegally in search of employment. In 1984 he visited Punjab and engaged in some rioting activities against the State. Though he was arrested, later he was released and sent back to U.K. He was arrested in U.K. on charges of plotting against Prime Minister Rajiv Gandhi while he was on a visit to Britain. But he was released after the arrest. He was noted by the Government agencies for instigating religious activists and sent notice for his deportation. The European Court of Human Rights ruled that Article 3 of the European Convention states that where substantial grounds are shown for believing there would be real risk to the deportee of torture or inhuman or degrading treatment or punishment in the receiving country, he cannot be deported. The court decided the case in apprehension of torture that Chahal may face in India due to deportation.

Activity 2

Do you feel that non-refoulement on apprehension of torture in the receiving country is justifiable? Analyse whether non-deportation of an anti-state activist leads to security problems in the host country.

6.4.4 Right of Victims for Reparation

There are five types of reparation: financial compensation, medical care and rehabilitation, restitution (seeking to restore the victim to his or her previous situation), guarantees of non-repetition, and forms of satisfaction such as restoration of their dignity and reputation and a public acknowledgment of the harm they have suffered (see Article 13, 14 of CAT).

CASE FOUR

Between 1984 and 1995 Punjab Security Forces killed thousands of Sikhs as a part of counter-insurgency operations. There were widespread human rights abuses, including torture, extrajudicial execution, forced disappearances, etc. The municipal records demonstrate that police officers had secretly cremated thousands of bodies in three crematoria in the district of Amritsar-then one of the 13 districts in Punjab. Several habeas corpus petitions were filed in Supreme Court and Supreme Court ordered for CBI probe into the incident. But the probe failed due to procedural issues. Later the matter was referred to the National Human Rights Commission pointing out “the flagrant human rights violations on a mass scale”. NHRC was appointed as a sui generis body with the powers of the Supreme Court under Article 32 to redress fundamental violations of Human Rights, in the Punjab mass cremations case. In its October 9, 2006 order, the NHRC compensated the next of kin of 1,051 individuals for the wrongful cremation of their loved ones and 194 individuals for the violation of the right to life, where the Punjab police admitted custody prior to death but did not admit liability for the unlawful killing.

On 12 July, 2010, the High Court of Delhi ordered for compensation to a father of a riot victim. The 90year old father was ordered to be given Rs. 7 lakh compensation by the Government. His son, Arjun was killed while he was returning home in an oil tanker from Ghaziabad.

6.4.5 Implementation of Torture Convention

The treaty created a Committee against Torture under Article 17. The Committee is composed of ten experts elected for a four-year term. The Committee reviews the periodic reports by state parties to the Convention. It is able to invite UN agencies, regional and non-governmental bodies, to submit information. Under Article 20, the Committee also has the power to initiate State visits provided the consent of the State concerned is obtained. All proceedings are confidential and all actions are carried out in cooperation with the State concerned.

The treaty allows for individual complaints to the Committee under Article 22, on the condition that all domestic remedies have been exhausted. This represented an important development in international law at the time as it enabled an individual to file a complaint to an international body about his/her own government. However, the application of this provision is subject to a government making a declaration that it accepts this article. To date, a minority of states have made such a declaration, meaning that most people do not have access to this procedure. India has entered a reservation to Articles 20 and 22 of the CAT signifying its unwillingness to accept them.



6.5 Committee against Torture

The Committee against Torture (CAT) is a body of ten independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties. All State parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

The Committee performs its monitoring functions by

- (under certain circumstances) considering individual complaints or communications from individuals claiming that their rights under the Convention have been violated
- undertaking inquiries
- considering inter-state complaints

6.6 Perpetrators of Torture

The perpetrators of torture include

- The police
- The *gendarmerie* (in countries where this institution exists)
- The military
- Paramilitary forces
- State-controlled contra-guerrilla forces
- Prison officers

- Death squads (torture following disappearance and preceding killing)
- Any Government official
- Health professionals - doctors, psychiatrists or nurses may participate in torture either by act (direct involvement which may include certifying someone fit for interrogation) or by omission (falsifying medical reports or failure to give appropriate treatment)
- Co-detainees acting with the approval or on the orders of public officials

6.7 Victims of Torture

Anybody can be a victim of torture - man or woman, young or old, religious or atheist, intellectual or farmer. Very often the determining factor may be membership of a particular political, religious, or ethnic group or minority. However, no one should be considered immune.

The identity of the victim is important because specific groups, such as children, women, the elderly, or religious persons, may be more vulnerable to the effects of ill-treatment, making it easier to consider that the degree of suffering is severe enough to amount to torture.

Specific examples where the identity of the victim may be of particular relevance include:

- **Children:** They are considered an especially vulnerable group. In particular, it should be emphasised that the effects of a certain type of ill-treatment on a child may be different to the effects which would be suffered by an adult undergoing the same treatment.



It should also be noted that one form of ill-treatment which may have very far-reaching effect on a child is being made to witness the torture of a parent or a close relative. Similarly, threatening or forcing parents to witness the torture of their child may have severe psychological effect on the parents.

- **Gender-specific torture:** Rape as a method of torture is not exclusive to female victims, but it is nonetheless commonly used in a gender-specific form, as a means of emphasising feelings of weakness and subordination in the victim or in the community. Cases of male rape may also be under-reported for many reasons, among which is the lack of awareness of the interviewer. Further examples where the gender of the victim may be relevant include the case of pregnant women, who are especially vulnerable, and women of child-bearing age, who may become pregnant as an aggravated effect of rape.
- **Religious persons:** There are examples where ill-treatment has been found to amount to torture or inhuman treatment on account of the religious character of the victim e.g. devout persons subjected to religious taunts; the plucking of the beard of an Orthodox priest etc.
- **Ill-treatment targeting a person's profession:** In one case, psychological torture was found to have occurred where a piano player was forced to undergo simulated amputation of his fingers.

6.8 Optional Protocol to CAT

The OPCAT is the first international instrument which seeks to prevent torture and

other forms of ill-treatment through the establishment of a system of regular visits to places of detention carried out by independent international and national bodies. International and national bodies will work together to conduct regular visits to all places of detention in all States parties and will make recommendations to the authorities to establish effective measures to prevent torture and ill-treatment and to improve the conditions of detention of all persons deprived of liberty.

The Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment consists of a preamble and seven parts. It was adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations and was available for signature, ratification and accession as from 4 February 2003. It has entered into force and there are over 22 State parties to OPCAT at present. Under Article 2, the Optional Protocol sets up an expert body, a Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee Against Torture, to carry out inspection visits to places of detention and to submit confidential reports to the relevant authorities on how to prevent torture and ill-treatment.

The following points are being emphasised by the protocol:

- The protocol reaffirmed that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights.
- It also states that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

or Punishment and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

- It also recognizes that States have the primary responsibility of implementing and strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,
- It recalls that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system
- It also emphasises non-judicial means of preventive nature, based on regular visits to places of detention.

CASE FIVE

In *Ranchod vs. State of M.P.*, the need for reforming prison visitorial system came before the court of law. In the present case the negligent behaviour of jail doctors, ill-treatment by jail staff and prison authorities resulted in death of the deceased. Two of his co-inmates wrote a letter to the High Court which was considered as writ petition. The court's observation stressed on the inefficient visiting system in jail by the staff appointed by the State Government, the District Magistrate, the police and the unethical conduct of doctors. In spite of these judgments, the prison conditions are worsening. Even the visits of officers of State

Government are not regular. As we have mentioned above, OPCAT is of preventive nature to avoid torture in prisons. It advocates for regular visits to places of detention.

Activity 3

Discuss different ways apart from constituting a committee by State, for prison visits and also discuss the possibility of incorporating NGO and social activists in the team of official committee for prison visits?

6.9 CAT and India

The Government of India signed the Torture Convention in October 1997 but is yet to ratify it. Efforts are on currently to harmonise domestic legislation to conform with the CAT. India has however entered reservations to Article 20 (relating to inquiry by the CAT Committee), Article 21 (relating to State complaints) and Article 22 (relating to individual complaints). India signed the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment on October 14, 1997. A law needs to be enacted for India to be able to ratify the Convention.

6.9.1 Prevention of Torture Bill, 2010

On the basis of the above, The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on April 26, 2010 by the Minister of Home Affairs. The Bill was passed by the Lok Sabha on May 6, 2010 and is pending in the Rajya Sabha. The Bill seeks to provide punishment for torture inflicted by public servants. The following are the procedures involved:

- Any public servant who tortures a person to obtain information or confession or on

the grounds of religion, caste, race, or language shall be liable to imprisonment for upto ten years and a fine.

- A court shall take cognizance of an offence under the Act if a complaint is made within six months after commission of the offence.
- The central or state government needs to give sanction for a court to take cognizance of an offence committed by a public servant (if employed by the centre or state). In any other case, the authority competent to remove the accused shall have to give sanction.

6.10 National Human Rights Commission

In recognition of the scale and intensity of torture, on 14 December 1993, the NHRC issued guidelines directing all District Magistrates and Superintendents of Police in every district to report to the Secretary General of the NHRC on custodial deaths/rapes within 24 hrs of their occurrence. The Commission also issued guidelines on arrest and fake encounters. According to the NHRC records, during 1994-2008, a total of 16,836 custodial deaths or an average of 1,203 persons per year took place. These included 2,207 deaths in police custody and 14,629 deaths in judicial custody. The National Human Rights Commission has been addressing individual complaints relating to torture. The Commission has also been conducting training programmes, workshops and debates for paramilitary forces and army personnel.

The Advisory Council of Jurists recommends that the National Human Rights Commission urge its government to address the following issues:

- The need for India to sign and/or ratify the First Optional Protocol, CAT
- The provision of the Prevention of Terrorism Act which prevents the legal practitioner of a detainee to remain present through the period of interrogation;

Pursuant to the Commission's efforts, India signed the Convention against Torture on 14 October 1997. Since then, the Commission has been advocating for the ratification of the Convention. The Government has prepared a draft bill on the Prevention of Torture, which is now placed before the Parliament. The NHRC has sent its comments on the draft to the Government.

Check your progress

1. Define torture?
2. What are the obligations of the State under the Torture Convention?
3. What are the functions of committee against Torture?
4. Briefly explain the major categories of victims against torture.
5. Explain the importance of Prevention of Torture Bill, 2010.

6.11 Let us sum up

In this unit the trainee has been introduced to the Convention against Torture and its salient features. This unit also covers the Committee against Torture, perpetrators of torture, victims of Torture and the Optional Protocol to CAT. This unit then covers the importance of the Convention against Torture and the developments related to it in India. It also glances through the initiatives taken by the NHRC.