



UNCAT and Custodial Torture

For Prelims: [UNCAT 1984](#), [Human Rights](#), [Article 21](#), [Criminal Justice System](#), [NHRC](#), [UDHR](#), [International Covenant on Civil and Political Rights](#), [Law Commission](#).

For Mains: UNCAT and need for India to ratify it, Measures to avoid custodial torture.

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Why in News?

The UK High Court's **refusal to extradite** Sanjay Bhandari and Tahawwur Rana's **US appeal over custodial torture** risks have renewed debate on India's failure to ratify [UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(UNCAT\) 1984](#) and enact an **anti-torture law**.

What is UNCAT?

- **About:** It is an international [human rights treaty](#) to prevent **torture** and other cruel, **inhuman, or degrading treatment** or punishment worldwide.
 - It was adopted by the **UN General Assembly on 10th December 1984** and entered into force on **26th June 1987**.
- **Definition of Torture:** Article 1 of UNCAT defines **torture as the intentional infliction of severe physical or mental pain** for purposes like **obtaining information, punishment, or intimidation**, with involvement or consent of a public official.
- **Universal Jurisdiction:** Article 5 require states to **prosecute or extradite individuals** accused of torture, **regardless** of where the crime was committed or the **nationality of the perpetrator**.
- **State Obligations:** States parties to UNCAT are required to:
 - **Prohibit torture absolutely** (Article 2), even in times of war or other emergencies.
 - **Prohibit the extradition or deportation** of individuals (**Right to Non-refoulement**) to countries where they risk being tortured (Article 3)
 - **Criminalize torture** under domestic law (Article 4).
 - **Investigate allegations of torture** promptly and impartially (Article 12).
 - **Provide redress and compensation** to victims of torture (Article 14).
- **Committee Against Torture (CAT):** CAT (Article 17), a body of **independent experts** tasked with **monitoring** the implementation of the Convention.
- **Optional Protocol to UNCAT (OPCAT):** Adopted in 2002, it creates a **preventive mechanism** for regular detention visits by international and national bodies.
- **India and UNCAT:** India **signed** UNCAT in **1997** but has **not ratified it yet**.

What is Custodial Torture?

Click Here to Read: [Custodial Torture](#)

Why Is There a Need for India to Ratify the UNCAT?

- **Strengthening Extradition:** It will help extradite **financial fugitives**, often **shielded** by countries like **the UK and US**, while enhancing India's reputation for a fair criminal justice system.
- **Addressing Custodial Torture:** The NHRC calls custodial violence in India "**rampant**," with **1,731 detention deaths** reported in 2019 alone.
 - **Ratifying UNCAT** would require India to implement and **enforce measures to prevent torture**.
- **Constitutional Obligations:** **Article 21** of the Indian Constitution guarantees the right to **life and personal liberty**, which includes protection from torture.
 - In the **RD Upadhyay Case, 1999**, the SC ruled that custodial torture **violates basic rights, undermines human dignity**, and must be **addressed realistically** by the courts.
- **Ensuring Accountability:** UNCAT mandates **investigating, prosecuting, and criminalizing torture**; ratification would enforce these in India's legal framework.
 - In the **Prakash Singh Case, 2006**, the SC ordered **all States and UTs** to establish **Police Complaints Authorities** for independent oversight and citizen redressal against **police misconduct**.
- **Protecting Vulnerable Communities:** Marginalized communities, including **Dalits, minorities, and refugees**, are disproportionately affected by custodial violence.
 - Ratifying UNCAT would **ban torture** on all grounds (**religion, caste, race, and ethnicity**), upholding **human dignity** even in war or emergencies.

What Are the Implications of Non-ratification of UNCAT for India's Global Standing?

- **Impact on Extradition Requests:** Fugitives are increasingly using India's **lack of anti-torture laws** to challenge extradition, **compromising** the effectiveness of its **criminal justice system**.
 - This legal gap **weakens** India's ability to combat **transnational crime and terrorism**.
- **Erosion of Soft Power:** India's failure to address custodial torture undermines its **credibility** as a **democratic state committed to human rights**.
 - The **Guantanamo Bay example of US** demonstrates how torture in state custody irreparably damages a **nation's moral authority**.

What are Various Recommendation for an Anti-torture Law?

- **Rajya Sabha Committee (2010):** The Rajya Sabha committee on **Prevention of Torture Bill, 2010** recommended a comprehensive **anti-torture law** reflecting strong political and public support.
- **Law Commission of India:** In its **273rd Report (2017)**, it recommended **ratification of UNCAT** and **enacting a law** to implement the **UNCAT**, emphasizing the need to **criminalize torture**.
 - It also submitted a **draft Prevention of Torture Bill** for government consideration.
- **Supreme Court:**
 - **DK Basu vs State of West Bengal Case, 1997:** It laid down guidelines to **prevent custodial torture** and ensure transparency in arrests and detentions.
 - The SC said it is the right of the police to **investigate the case** and interrogate the accused but **not allowed to use third-degree tortures** to extract the information.
 - In cases of **custodial violence** by **public servants**, the State will also be **liable** for their actions.
 - **State of Uttar Pradesh vs Ram Sagar Yadav Case, 1985:** It is the **police officer** on whom **burden of proof** lies in cases involving custodial torture.
 - **Nambi Narayanan Case, 2018:** Highlighted the **psychological trauma** caused by

wrongful prosecution and **custodial abuse**.

- **National Human Rights Commission (NHRC):** The [NHRC](#) advised that **District Magistrates** and **Police Superintendents** must report incidents of custodial torture to its **Secretary General within 24 hours**.
 - Failure to do so may be seen as an attempt to **suppress the incident**.
- **International Obligations:** [Articles 51\(c\)](#) and [253](#) of the Constitution require adherence to international treaties.
 - India has ratified treaties like [UDHR \(1948\)](#) and [International Covenant on Civil and Political Rights \(1976\)](#) but has not ratified UNCAT, leaving a key gap in its human rights framework.

How to Address Custodial Torture in India?

- **Legal Reforms:** Enact a strict **Prevention of Torture law** with **penalties and victim compensation**, aligning with UNCAT standards, and **ratify UNCAT** to reinforce India's commitment to ending torture.
- **Institutional Accountability:** Take **swift, transparent action** against police in custodial violence cases and form district-level **specialized teams** for sensitive cases requiring police remand.
- **Capacity Building:** Train police in **human rights, ethical interrogations, and legal consequences** of custodial torture. Educate **magistrates on remand evaluation** and natural justice.
 - Separate **law enforcement and investigation wing** in the police to **prevent conflicts of interest** and reduce cases of torture.
- **Judicial Monitoring:** Magistrates must **monitor investigations**, ensuring legal compliance. Create independent bodies to probe custodial violence.

Conclusion

India's failure to ratify UNCAT **weakens its human rights record, hampers extradition requests, and allows custodial torture** to persist. Enacting an anti-torture law, **strengthening accountability, and judicial oversight** are essential to uphold **constitutional values**, protect vulnerable communities, and enhance **India's global credibility** as a democratic nation committed to human rights and justice.

Drishti Mains Question:

Discuss the need for legal and institutional reforms to address custodial violence in India and the associated challenges.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Mains

Q. Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analysing their structural and practical limitations, suggest remedial measures. (2021)

Q. National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of the above observation, assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards. (2014)

